

Ref: Exim Bank/Infra-EPC/2521

Date: February 16, 2024

Request for Inputs / Feedback on the Model Agreement for Engineering, Procurement and Construction (EPC) Contractor

1. Export-Import Bank of India (Exim Bank) extends Lines of Credit (LOCs) to select countries or their nominated agencies, multilaterals, on behalf of and with the support of the GOI.
2. Exim Bank is in the process of standardization of the Model Tender Documents which are proposed be used for all the procurement under LOC projects. The captioned tender document is attached for Inputs / Feedback from stakeholders, industry and members of the public.
3. Inputs / Feedback on the draft document should only be sent as per the format at the **Annexure** by February 29, 2024, at the email address locmis@eximbankindia.in. For any clarification, Mr. Rohan Sharma may be contacted on Phone No. +91-11- 24607757 during office hours (10:00 AM – 06:00 PM).

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Annexure

**INPUTS ON MODEL CONTRACT AGREEMENT FOR THE SELECTION OF
ENGINEERING, PROCUREMENT AND CONSTRUCTION (EPC) CONTRACTOR**

Name of the Organization	
Name and Designation of the Contact Person	
Phone & Email for Clarifications	

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

ENGINEERING PROCUREMENT AND CONSTRUCTION (EPC) CONTRACT

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

Export-Import Bank of India



February 2024

[Country]**

[Name of Project Authority]**

**ENGINEERING, PROCUREMENT AND
CONSTRUCTION (EPC) CONTRACT**

FOR

[Name of the Project **]

REFERENCE NO:

Funded by:

Export-Import Bank of India



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APPENDIX 2-PROVISIONAL AND PROJECT COMPLETION CERTIFICATE

APPENDIX 3-MAINTENANCE COMPLETION CERTIFICATE

PART III. GENERAL CONDITIONS OF CONTRACT (GCC)

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

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

“Affiliate” means, in relation to either Party and/or Members, a person who controls, is controlled by, or is under the common control with such Party or Member (as used in this definition, the expression

“Agreement” means this Agreement, its Recitals, the Schedules hereto and any amendments thereto or any supplementary agreement made in accordance with the provisions contained in this Agreement;

“Applicable Guidelines” means (i) the Public Procurement Guidelines of the Government of India and Export-Import Bank of India (Exim Bank), (ii) IDEAS Guidelines, and (iii) Public Procurement Orders Nos. 1 & 2 dated July 23, 2020, Public Procurement Order No. 3 dated July 24, 2020, and Public Procurement Order No. 4 dated February 23, 2023, issued by the Public Procurement Division of the Department of Expenditure, Ministry of Finance, Government of India as maybe in force and effect and any other guidelines **as specified in the 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, licences, permits, authorisations, 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” means the date on which the following conditions (preceding the commencement of work) have been fulfilled and after the Authority’s Engineer has issued a Notice to the Contractor instructing the Contractor to commence work. The conditions to be fulfilled preceding the commencement of work shall include:

(a) Contractor has delivered to the Authority the Performance Security in accordance with Clause 6 [Performance Security];

(b) Issuance of Contract Inclusion Letter by Exim Bank;

(c) Authority has handed over the Site or part of the site thereof in conformity with Sub-Clause 4.1.5 together with such permission(s) under of Sub- Clause 4.3.1 [Obligations relating to Environmental and Forest Clearances] as required for the commencement of works.

(d) In case of exemption of taxes in accordance with Sub-Clause 15.1.3, letter from the concerned Government Instrumentality notifying the exemption of all the taxes for the Contract. In case of reimbursement of taxes, letter from the Project Authority 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.

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

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

“Authority’s Engineer”, **“Authority’s Representative”** or **“Authority’s Agent”** means the person appointed by the Authority to act as the Engineer for the purposes of the Contract, or other person appointed from time to time by the Authority and notified to the Contractor;

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

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

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

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

“Change in Law” means the occurrence of any of the following after the signing of the Contract:

(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;

"Completion Date" or "Date of Completion" or shall mean the date on which the Works are deemed to have been completed in accordance with the Contract; or date stated in the Project Completion Certificate or Maintenance 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" means the Contract Agreement, the Letter of Acceptance, the Letter of Tender, these Conditions, the Specification, the Drawings, the Schedules, and the further documents (if any) which are listed in the Contract Agreement or in the Letter of Acceptance.

"Contract Inclusion Letter" means the approval accorded by Exim Bank for funding this contract under the LOC.

"Contractor" means the Indian Entity named as contractor in the Letter of Tender accepted by the Authority and the legal successors in title to this person(s). "Contractor" shall have the meaning attributed thereto in the array of Parties hereinabove as set forth in the Recitals;

"Contractor's Equipment" means all apparatus, machinery, vehicles and other things required for the execution and completion of the Works and the remedying of any defects. However, Contractor'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;

"Contractor's Personnel" means the Project Manager, Contractor's Representative and all personnel whom the Contractor utilises on Site, who may include the staff, labour and other employees of the Contractor and of each Subcontractor; and any other personnel assisting the Contractor in the execution of the Works. Contractor's Personnel includes Key Personnel;

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

"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 Contractor, 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 for curing any breach or default of any provision of this Agreement by the Party responsible for such breach or default and shall:

(a) commence from the date on which a notice is delivered by one Party to the other Party asking the latter to cure the breach or default specified in such notice;

(b) not relieve any Party from liability to pay Damages or compensation under the provisions of this Agreement; and

(c) not in any way be extended by any period of Suspension under this Agreement; provided that if the cure of any breach by the Contractor requires any reasonable action by the Contractor that must be approved by the Authority or the Authority’s Engineer hereunder, the applicable Cure Period shall be extended by the period taken by the Authority or the Authority’s Engineer to accord their approval;

“Day” means a calendar day and “year” means 365 days;

“Defect” means any defect or deficiency in 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 Contractor’s Documents;

“Drawings” means all of the drawings, calculations and documents pertaining to the Project as set forth in Schedule-G, and shall include ‘as-built’ drawings of the Project;

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

“Encumbrances” means, in relation to the Project, any encumbrances such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations, and shall include any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project, where applicable herein;

“EPC” means engineering, procurement and construction;

“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 Contractor’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 contractor engaged in the same type of undertaking as envisaged under this Agreement and which would be expected to result in the performance of its obligations by the Contractor in accordance with this Agreement, Applicable Laws of India, Applicable Laws of Country, and Applicable Permits of Country in reliable, safe, economical and efficient manner;

“**Government**” means the Government of the Authority’s Country in which the Project Site (or most of it) is located, where the 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 Contractor under or pursuant to this Agreement;

“**Handing Over of Site**” means the constructive possession of the Site free from encroachments and encumbrances, together with all way leaves, easements, unrestricted access and other rights of way, howsoever described, necessary for 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, trade marks, 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**” of “**JV**” means the consortium of entities which have formed a joint venture for implementation of this Project;

“**Lead Member**” shall, in the case of a Joint Venture, mean the member of such Joint Venture who shall have the authority to bind the Contractor and each

member of the Joint Venture; and shall be deemed to be the Contractor for the purposes of this Agreement;

“Letter of Acceptance” or **“LOA”** means the letter of formal acceptance, signed by the Authority, of the Letter of Tender, including any annexed memoranda comprising agreements between and signed by both Parties. If there is no such letter of acceptance, the expression **“Letter of Acceptance”** means the Contract Agreement and the date of issuing or receiving the Letter of Acceptance means the date of signing the Contract Agreement;

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

“Materials” means things of all kinds (other than Plant) intended to form or forming part of the Permanent Works, including the supply-only materials (if any) to be supplied by the Contractor under the Contract;

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

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

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

“Permanent Works” means the permanent works to be executed by the Contractor under the Contract;

“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;

“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 Contract as forming part of the Site;

“Specification” means the document entitled specification, as included in the Contract, and any additions and modifications to the specification in accordance with the Contract. Such document specifies the Works;

“Specifications and Standards” means the specifications and standards relating to the quality, quantity, capacity and other requirements for the Project, as set forth in Schedule-D, and any modifications thereof, or additions thereto, as included in the design and engineering for the Project submitted by the Contractor to, and expressly approved by, the Authority;

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

“Taxes” means any taxes in India or in the Country including excise duties, customs duties, value added tax, sales tax, 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. For the avoidance of doubt, Taxes shall not include taxes on corporate income. The goods and services provided under this Agreement shall be free from all kinds of taxes and duties of any nature. Indicative Details shall be mentioned in the Special Conditions of Contract;

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

“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.

1.2 Interpretation

1.2.1 In this Agreement, unless the context otherwise requires,

- a) references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;
- b) references to 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, removing of defects, if any, and other activities incidental to the construction and “**construct**” or “**build**” shall be construed accordingly;
- 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 importing singular shall include plural and vice versa;
- m) references to any gender shall include the other and the neutral gender;
- n) “**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;
- o) references to the “**winding-up**”, “**dissolution**”, “**insolvency**”, or “**reorganisation**” of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganisation, dissolution, arrangement, protection or relief of debtors;
- p) save and except as otherwise provided in this Agreement, any reference, at any time, to any agreement, deed, instrument, licence or document of any description shall be construed as reference to that agreement, deed, instrument, licence or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this Sub-Clause(s) shall not operate so as to increase liabilities or obligations of the Authority hereunder or pursuant hereto in any manner whatsoever;
- q) any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party or the Authority’s Engineer shall be valid and effective only if it

is in writing under the hand of a duly authorised representative of such Party or the Authority's Engineer, as the case may be, in this behalf and not otherwise;

- r) the Schedules and Recitals to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
- s) references to Recitals, Clauses, Sub-Clauses, Provisos or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Clauses, Sub-Clauses, Provisos and Schedules of or to this Agreement; reference to an Annex shall, subject to anything to the contrary specified therein, be construed as a reference to an Annex to the Schedule in which such reference occurs; and reference to a Paragraph shall, subject to anything to the contrary specified therein, be construed as a reference to a Paragraph of the Schedule or Annex, as the case may be, in which such reference appear;
- t) 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
- u) 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.

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

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

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

1.3 Measurements and arithmetic conventions

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

1.4 Priority of agreements and errors/discrepancies

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

- (a) this Agreement; and
- (b) all other agreements and documents forming part hereof or referred to herein;

the Contract Form;
the Special Conditions of Contract;
the General Conditions of Contract
Appendices

i.e. this Agreement at (a) above shall prevail over the agreements and documents at (b).

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

- (a) between the provisions of the Special Conditions and this General Conditions, the provisions of the Special Conditions shall prevail;
- (b) between the Clauses of this General Conditions and the Schedules, the Clauses of Schedules shall prevail;
- (c) between the Schedules and Special Conditions, the Special Conditions shall prevail;
- (d) between two or more Clauses of this Agreement, the provisions of a specific Clause of this Agreement relevant to the issue under consideration shall prevail over those in other Clauses;
- (e) between Schedules and Annexes, the Schedules shall prevail;
- (f) between any two Schedules, the Schedule relevant to the issue shall prevail;
- (g) between the written description on the Drawings and the Specifications and Standards, the latter shall prevail;
- (h) between the dimension scaled from the Drawing and its specific written dimension, the latter shall prevail;
- (i) between any value written in numerals and that in words, the latter shall prevail; and
- (j) in all other cases not forming a part of the above, the Special Conditions shall prevail.

1.5 Joint and several liability

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

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

(b) the Contractor shall ensure that no change in the composition of the Joint Venture is affected. 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.

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

decision or communication of the Lead Member.

1.6 Law and Language The Contract shall be governed by the law of the Authority's Country. The Procurement Guidelines of Exim Bank shall be followed. The language of the Contract shall be English. If there are versions of any part of the Contract 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.

2. SCOPE OF THE PROJECT

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

(a) Undertaking the Works and Construction of the Project on the Site set forth in **Schedule-A** and as specified in **Schedule-B** together with provision of Project Facilities as specified in **Schedule-C**, and in conformity with the Specifications and Standards set forth in **Schedule-D**; and

(b) Performance and fulfilment of all other obligations of the Contractor, including maintenance obligations, in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Contractor under this Agreement.

2.2 Scope of Works 2.2.1 Unless otherwise expressly limited in this Agreement, the Contractor’s obligations cover the provision of all Works and the performance of all services required for the design, and the construction (including procurement, quality assurance, construction, installation, associated civil works, Pre-commissioning and delivery), installation, completion and commissioning in accordance with the plans, procedures, specifications, drawings, codes and any other documents under this Agreement. Such specifications include, but are not limited to, the provision of supervision and engineering services; the supply of labour, materials, equipment, spare parts and accessories; Contractor’s Equipment; construction utilities and supplies; temporary materials, structures and facilities; transportation (including, without limitation, unloading and hauling to, from and at the Site), true and proper setting out of facilities and storage, except for those supplies, works and services that will be provided or performed by the Authority. When completed, the Project should be fit for the purposes for which it is intended.

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

2.2.3 After completion of the Project, the Contractor shall maintain the project in accordance with Clause 12 [Maintenance Obligations]. In addition to the supply of Mandatory Spare Parts included in the Contract, if any, the Contractor agrees to supply spare parts required for the operation and maintenance of the Project as identified in and in accordance with Sub-Clause 12.1 [Maintenance Manual].

3. OBLIGATIONS OF THE CONTRACTOR

3.1 Obligations of the Contractor

- 3.1.1 Subject to and on the terms and conditions of this Agreement, the Contractor shall undertake the survey, investigation, design, engineering, procurement, construction, and any other requirement for completion of the Works and maintenance of the Project, and shall observe, fulfil, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 3.1.2 The Contractor shall comply with all Applicable Laws, Applicable Guidelines and Applicable Permits (including renewals as required), environmental and forest clearances approvals / permits, local customs, rules, and regulations in the performance of its obligations including Maintenance Obligations under this Agreement.
- 3.1.3 Save and except as otherwise provided in this Agreement or Applicable Laws, the Contractor shall, in discharge of all its obligations under this Agreement, conform with and shall adhere to Good Industry Practice at all times.
- 3.1.4 The Contractor shall remedy and rectify any and all loss or damage to the Project, occurring on or after the Appointed Date and until the date of Provisional Certificate, with respect to the Works completed prior to the issuance of the Provisional Certificate and/or Completion Certificate, with respect to the Works referred to in the Punch List, at its own cost, save and except to the extent that any such loss or damage shall have arisen from any default of the Authority or on account of a Force Majeure Event in which case the provisions of Clause 19 [Termination] shall apply.
- 3.1.5 The Contractor shall remedy any and all loss, defects or damage to the Project during the Defects Liability Period at its own cost, to the extent that such loss, defect or damage shall have arisen out of the reasons specified in Sub-Clause 13.3 [Cost of remedying Defects]. The Contractor shall maintain the Project during the Maintenance Period at its own cost, to the extent to meet its Maintenance Obligations in accordance with Clause 12 [Maintenance Obligations].
- 3.1.6 The Contractor shall, at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out in this Agreement:
- (a) Withing 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 4.5.1.
 - (b) make, or cause to be made, necessary applications to the relevant Government Instrumentalities with such particulars and details as may be required for obtaining Applicable Permits set forth in Schedule-E and other Applicable Permits and obtain and keep in force and effect such Applicable Permits in conformity with the Applicable Laws;

- (c) procure, as required, the appropriate proprietary rights, licences, agreements and permissions for Materials, methods, processes, know-how and systems used or incorporated into the Project;
- (d) make reasonable efforts to maintain harmony and good industrial relations among the personnel employed by it or its Sub-contractors in connection with the performance of its obligations under this Agreement;
- (e) ensure and procure that its Sub-contractors comply with all Applicable Permits and Applicable Laws in performance by them of any of the Contractor's obligations under this Agreement;
- (f) always act in a manner consistent with the provisions of this Agreement and not cause or fail to do any act, deed or thing, whether intentionally or otherwise, which may in any manner be violative of any of the provisions of this Agreement;
- (g) support, cooperate with and facilitate the Authority in the implementation and operation of the Project in accordance with the provisions of this Agreement;
- (h) ensure that Contractor and its Sub-Contractors comply with the safety and welfare measures for labour in accordance with local laws and Good Industry Practice;
- (i) keep, on the Site, a copy of this Agreement, publications named in this Agreement, the Drawings, Documents relating to the Project, and Change of Scope Orders and other communications sent under this Agreement, and provide access to all these documents at all reasonable times to the Authority, Authority's Engineer and its authorised personnel, and Exim Bank;
- (j) cooperate with other contractors employed by the Authority, Government Instrumentalities and personnel of Government Instrumentalities;
- (k) not interfere unnecessarily or improperly with the convenience of the public, or the access to and use and occupation of all the existing facilities within the Site, irrespective of whether they are public, in the possession of the Authority, Government Instrumentalities or others;
- (l) shall be responsible for the adequacy, stability and safety of all the Contractor's operations and activities, of all methods of Construction and of all the Works;
- (m) effect and maintain at its own cost the insurances in accordance with this Agreement;
- (n) ensure that the Construction, Materials and workmanship are in accordance with the requirements specified in this Agreement, Specifications and Standards and Good Industry Practice.

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

3.1.8 The Contractor shall provide the Contractor's Documents, and all Contractors' personnel, goods, consumables and other things and services, whether of a temporary or permanent nature, required in and

for the execution, completion of Works and remedying defects and fulfilling the Contractor's obligations under this Agreement.

- 3.1.9 The Contractor shall maintain required staff and necessary Contractor's equipment and Materials within the reach of the Site during the Defects Liability Period so that any defects arising are promptly attended. The Contractor shall also ensure or cause to ensure required staff, equipment, and Materials for maintenance of the Project during the Maintenance Period.
- 3.1.10 The Contractor shall ensure the value of Plant, Material and services sourced from India (the "**Indian Content**") by the Contractor under this Agreement shall constitute at least the percentage of the total Contract Price **as specified in the SCC**.
- 3.1.11 The Contractor shall facilitate and attend to the inspection, if any, carried out by the Authority / Authority's Engineer, Government Instrumentalities or the Exim Bank, comply with their statutory requirements and effectively arrange for replying to their observations and remarks.
- 3.1.12 The Contractor shall give all notices, pay all applicable taxes, duties and fees, and obtain all permits, licences and approvals, as required by the Laws in relation to the execution and completion of the Works and the remedying of any defects; and the Contractor shall indemnify and hold the Authority harmless against and from the consequences of any failure to do so, unless the Contractor is impeded to accomplish these actions and shows evidence of its diligence. Levy of taxes shall be in accordance with Sub-Clause 15.1.3.
- 3.2 Obligations relating to sub-contracts and any other agreements**
- 3.2.1 The Contractor shall not sub-contract Works comprising more than the percentage of the Contract Price **as specified in the SCC** and shall carry out Works for at least the percentage of the total Contract Price **as specified in the SCC** directly under its own supervision and through its own personnel. The Parties expressly agree that only for the purposes of computing the value of sub-contracts under this Sub-Clause 3.2.1, the Contract Price shall exclude any sub-contract for (a) the procurement of goods, if the supplier is the OEM or an authorized supplier of the OEM; and (b) supplier of labour and material.
- 3.2.2 The Parties agree that in case of the contractor being a JV, the obligation of the Contractor to carry out Works corresponding to at least the percentage of the Contract Price **as specified in the SCC** shall be discharged solely by the Lead Member. Further, The Parties agree that the obligation of the Contractor to carry out Works corresponding to at least the percentage the Contract Price **as specified in the SCC** shall be discharged solely by the JV Member(s).
- 3.2.3 The Contractor shall not sub-contract any part of the Works for which subcontracting is not permitted **as specified in the SCC**.

- 3.2.4 In the event any sub-contract for Works, the Contractor shall take approval no less than 28 (twenty eight) days before communicating the name and particulars, including the relevant experience of the sub-contractor, to the Authority's Engineer prior to entering into any such sub-contract. The Authority's Engineer, in consultation with the Authority, shall examine the particulars of the sub-contractor and no later than 15 (fifteen) business days from the date of receiving the communication from the Contractor or 15 (fifteen) business days from the date of receipt of last material information in this regard, whichever is later, shall convey its decision on appointment of the sub-contractor. The Authority's Engineer shall provide reasons in case it decides not to proceed with the sub-contract, and the Contractor shall comply therewith. For avoidance of doubt, such approval by the Authority's Engineer shall be required for appointment of all the sub-contractors, irrespective of the sub-contractor being an equipment supplier, labour or material supplier or any other sub-contractor.
- 3.2.5 The Contractor shall follow the qualification criteria as **specified in the SCC** for the appointment of a sub-contractor.
- 3.2.6 The Contractor shall be responsible for the acts or defaults of any Sub-contractor, his agents or employees, as if they were the acts or defaults of the Contractor.
- 3.2.7 It is expressly agreed that the Contractor shall, at all times, be responsible and liable for all its obligations under this Agreement notwithstanding anything contained in the agreements with its Sub-contractors or any other agreement that may be entered into by the Contractor, and no default under any such agreement shall excuse the Contractor from its obligations or liability hereunder.

3.3 Obligations relating to employment of foreign nationals

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

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

- 3.4 Obligations relating to Contractor's personnel and Representative**
- 3.4.1 The Contractor shall ensure and procure that the personnel engaged by it or by its Sub-contractors for performance of its obligations under this Agreement are at all times appropriate and adequately qualified, skilled and experienced in their respective functions in conformity with Good Industry Practice.
- 3.4.2 The Authority's Engineer may, for reasons to be specified in writing, direct the Contractor to remove any member of the Contractor's or Sub-contractor's personnel from the Project with the approval of the Authority, who
- (a) are involved in misconduct of lack of care;
 - (b) carries out duties incompetently or negligently;
 - (c) Fails to perform within the provisions of the contract; or
 - (d) persists in any conduct which is prejudicial to safety, health, or the protection of environment or personnel.
- 3.4.3 The Contractor shall, on receiving a direction from the Authority's Engineer under the provisions of Sub-Clause 3.4.2, ensure and procure the removal of such person or persons from the Project with immediate effect. The Contractor shall further ensure that such persons have no further connection with the Project. The contractor shall then appoint a suitable replacement for the person.
- 3.4.4 The Contractor shall appoint a Contractor's Representative (the "**Project Manager**") and shall give him all authority necessary to act on the Contractor's behalf under the Contract.
- 3.4.5 The Project Manager shall, on behalf of the Contractor, receive instructions from the Authority and Authority's Engineer under Sub-Clause 14.4 [Instructions of the Authority's Engineer].
- 3.4.6 The Project Manager shall be fluent in the language for communications as specified in Sub-Clause 1.6 [Law and Language]. If the Project Manager is not fluent in the said language, the Contractor shall make competent interpreters available during all working hours.
- 3.4.7 Except as otherwise stated in the Specification, the Contractor shall make arrangements for the engagement of all staff and labour, local or otherwise, and for their payment, housing, feeding and transport.
- 3.4.8 The Contractor shall provide and employ on the Site in the installation of the Facilities such skilled, semi-skilled and unskilled labour as is necessary for the proper and timely execution of the Contract.
- 3.4.9 The Contractor shall at its own expense provide the means of repatriation to all of its and its Sub-contractor's personnel employed on the Contract 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 Contract to the date programmed for their departure. In the event that the Contractor defaults in providing such means of transportation and temporary maintenance,

the Authority may provide the same to such personnel and recover the cost of doing so from the Contractor.

- 3.5 Labour Laws**
- 3.5.1 The Contractor shall obtain all relevant labour registrations and shall comply with all the relevant labour Laws applicable to the Contractor's Personnel, including Laws relating to their employment, health, safety, welfare, immigration and emigration, and shall allow them all their legal rights.
- 3.5.2 The Contractor shall at all times during the progress of the Contract 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-contractors.
- 3.6 Rates of Wages and Condition of Labour**
- 3.6.1 The Contractor shall pay rates of wages, and observe conditions of labour, which are not lower than those established for the trade or industry where the work is carried out. If no established rates or conditions are applicable, the Contractor shall pay rates of wages and observe conditions which are not lower than the general level of wages and conditions observed locally by employers whose trade or industry is similar to that of the Contractor.
- 3.6.2 The Contractor shall inform the Contractor's Personnel about their liability to pay personal income taxes as applicable in respect of such of their salaries, wages and allowances as are chargeable under the Laws for the time being in force, and the Contractor shall perform such duties in regard to such deductions thereof as may be imposed on him by such Laws.
- 3.7 Working Hours**
- 3.7.1 No work shall be carried out on the Site on locally recognized days of rest, or on public holidays or outside the normal working hours, unless:
- (a) otherwise stated in the Contract,
 - (b) the work is unavoidable, or necessary for the protection of life or property or for the safety of the Works, in which case the Contractor shall immediately advise Authority's Engineer.
- 3.8 Facilities for Staff and Labour**
- 3.8.1 Except as otherwise stated, the Contractor shall provide and maintain all necessary accommodation and welfare facilities for the Contractor's Personnel. The Contractor shall also provide facilities for the Authority's Personnel as stated in the Specification. The Contractor shall not permit any of the Contractor's Personnel to maintain any temporary or permanent living quarters within the structures forming part of the Permanent Works.
- 3.9 Health and Safety**
- 3.9.1 The Contractor shall at all times take all reasonable precautions to maintain the health and safety of the Contractor's Personnel. The Contractor shall appoint an accident prevention officer at the Site, responsible for maintaining safety and protection against accidents. Throughout the performance of the Contract, the Contractor shall provide whatever is required by this person to exercise this responsibility and authority.

- 3.9.2 The Contractor shall send to the Authority Engineer, details of any accident as soon as practicable after its occurrence. The Contractor shall maintain records and make reports concerning health, safety and welfare of persons, and damage to property, as the Authority Engineer may reasonably require.
- 3.9.3 In the event of the death of any of the Contractor's personnel or accompanying members of their families, the Contractor shall be responsible for making the appropriate arrangements for their return or burial.
- 3.10 Record of Contractor's Personnel**
- 3.10.1 The Contractor shall keep accurate records of the Contractor's personnel, including the number of each class of Contractor's Personnel on the Site and their name, age, gender, hours worked, and wages paid. These records shall be available for inspection until the issuance of Project Completion Certificate.
- 3.11 Alcoholic Liquor or Drugs**
- 3.11.1 The Contractor shall not, otherwise than in accordance with the Applicable Laws import, sell, give barter or otherwise dispose of any alcoholic liquor or drugs, or permit or allow importation, sale, gift barter or disposal by Contractor's Personnel.
- 3.12 Arms and Ammunition**
- 3.12.1 The Contractor shall not give, barter, or otherwise dispose of, to any person, any arms or ammunition of any kind, or allow Contractor's Personnel to do so.
- 3.13 Prohibition of Forced or Compulsory Labor and Child Labor**
- 3.13.1 The contractor 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.
- 3.13.2 The Contractor shall not employ any child to perform any work that is economically exploitative, or is likely to be hazardous to, or to interfere with, the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral, or social development.
- 3.14 Obligations relating to Contractor's care of the Works**
- 3.14.1 The Contractor shall bear full risk in and take full responsibility for the care of Works, and of Materials, goods and equipment for incorporation therein, on and from the Appointed Date and until the date of Provisional Certificate, with respect to the Works completed prior to the issuance of the Provisional Certificate, and/or Completion Certificate, with respect to the Works referred to in the Punch List.
- 3.15 Obligations relating to electricity, water and other services**
- 3.15.1 The Contractor shall be responsible for procuring of all power, water and other services that it may require for the Project.
- 3.16 Obligations relating to information**
- 3.16.1 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 may be

necessary to enable it to perform any of its functions, the Contractor shall provide such information to the Authority forthwith and in the manner and form required by the Authority.

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

3.17 Unforeseeable difficulties

- 3.17.1 Except as otherwise specified in this agreement
- (a) The Contractor shall be deemed to have obtained all necessary information as to risks, contingencies and other circumstances which may influence or affect the Works;
 - (b) The Contractor acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in this Agreement and hereby acknowledges and agrees that the Authority shall not be liable for the same in any manner whatsoever to the Contractor, or any person claiming through or under any of them, and shall not lead to any adjustment of Contract Price or Scheduled Completion Date.
 - (c) the Contractor accepts complete responsibility for having foreseen all difficulties and costs of successfully completing the Works;
 - (d) the Contract Price shall not be adjusted to take account of any unforeseen difficulties or costs; and
 - (e) the Scheduled Completion Date shall not be adjusted to take account of any unforeseen difficulties or costs.
- 3.17.2 For the purposes of this Clause, unforeseeable difficulties include physical conditions like man-made or natural physical conditions including sub-surface and hydrological conditions, climatic conditions, which the Contractor encounters at the Site during execution of the Works. Provided however that such unforeseeable difficulties shall exclude the Force Majure events as specified under Sub-Clause 17.2 [Non-Political events and Indirect Political events] and Sub-Clause 17.3 [Political Events].

3.18 Transport of Goods

- 3.18.1 The Contractor shall give a Notice to the Authority not less than 15 days before the date on which any Plant, or a major item of other Goods (as specified in the Authority's Requirements), will be delivered to the Site;
- 3.18.2 The Contractor shall be responsible for packing, loading, transporting, receiving, unloading, storing and protecting all Goods and other things required for the Works.
- 3.18.3 The Contractor shall be responsible for customs clearance, permits, fees and charges related to the import, transport and handling of all Goods, including all obligations necessary for their delivery to the Site.

3.19 Safety, Health and Environment

- 3.19.1 The Contractor shall appoint a Safety, Health and Environment (SHE) officer who shall be responsible for ensuring that all work is performed in

Officer

compliance with **Schedule-N** which shall specify the safety, health and environmental regulations in accordance with Applicable Laws and Applicable Permits. The SHE officer shall have the authority to stop any work that he or she deems to be unsafe or environmentally hazardous. The Contractor shall ensure that the SHE officer is qualified and experienced in the field of safety, health and environmental management, and has the necessary training and certification as required in accordance with the Good Industry Practice. The Contractor shall notify the Authority Engineer of the name and qualifications of the SHE.

3.20 Site Data

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

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

3.21 Clearance of Site

3.21.1 During the provision of the Works, and as a pre-condition to the issue of the Project Completion Certificate and Maintenance Completion Certificate, in accordance with Sub-Clause 10.4.2, the Contractor shall clear away and remove from the Site, all Contractor's equipment, surplus material, wreckage, rubbish and temporary Works, and shall keep the Site free from all unnecessary obstructions and shall not store or dispose of any Contractor's equipment or surplus materials on the Site. The Contractor shall promptly clear away and remove from the Site any

wreckage, rubbish or temporary Works no longer required and leave the Site and the Works in a clean and safe condition to the sole satisfaction of the Authority.

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

3.22 Sufficiency of the Contract Price

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

3.23 Contractor's Documents

3.23.1 The Contractor's Documents shall comprise the documents:
(a) stated in the Specifications and Standards;
(b) required to satisfy all Applicable Permits;
(c) Design and Drawings
(d) Maintenance Manual;
(e) Any other document as required under the agreement

3.23.2 Unless otherwise stated in the Specifications and Standards, the Contractor's Documents shall be written in English.

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

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

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

(i) of its no-objection (which may include comments concerning minor matters which will not substantially affect the Works); or

(ii) that the Contractor's Document fails (to the extent stated) to comply with this Agreement, with reasons.

After receiving a notice under Sub-Clause 3.23.5(ii) above, the Contractor shall revise the Contractor's Document and resubmit it to the Authority's Engineer for review and the period of 21 days for review shall be calculated from the date that the Authority's Engineer receives it.

3.24 Inspection

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

3.25 Compliance with Laws

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

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

4. OBLIGATIONS OF THE AUTHORITY

4.1 Obligations of the Authority

4.1.1 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.

4.1.2 The Authority shall provide the Scope of the Project and the Project Works.

4.1.3 All information and / or data to be provided by the Authority as described in this Contract Agreement shall be deemed to be accurate, except when the Authority expressly states otherwise. The Authority shall be responsible for the correctness of the Scope of the Project, Project Works, Specifications and Standards and the criteria for Testing of the Works.

4.1.4 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 for the proper execution of the Contract, including all requisite rights of way and access to the site for successful execution of the project. The Authority shall give full possession of and accord all rights of access thereto in accordance with Sub-Clause 4.1.5.

4.1.5 The Authority upon receiving the Works Performance Security under Sub-Clause 6.1 [Performance Security] and after signing of this Agreement shall provide:

- (a) Handing Over of Site in accordance with the provisions of Sub-Clause 7.2 [Procurement of the Site] and 7.3 [Damages for delay in handing over the site and Extension of Time] within a period of 15 (fifteen) days from the date of this Agreement, on no less than the percentage of the total land required for the Project **as specified in the SCC**; and
- (b) Approval of the general arrangement drawings (the “GAD”) in accordance with the Specifications and Standards, and subject to the terms and conditions specified in such approval, to the extent possible.

4.1.6 If the Contractor suffer delays and/or incur cost as a result of failure by the Authority to give any such rights or possessions with the stipulated time, in accordance with the provisions of Sub-Clause 4.1.5, shall entitle the Contractor to Time Extension and Damages in accordance with the provisions of Sub-Clause 7.3 [Damages for delay in handing over the site and Extension of Time]. However, if and to the extent the Authority’s failure was caused by any error or delay by the Contractor, including any error or delay in submission of the any applicable Contractor’s Documents, the Contractor shall not be entitled to such Time Extension.

4.1.7 The Authority agrees to provide support to the Contractor and undertakes to observe, comply with and perform, subject to and in accordance with the provisions of this Agreement and Applicable Laws, the following:

- (a) upon written request from the Contractor, provide reasonable assistance to the Contractor in obtaining access to all necessary infrastructure facilities and utilities, including water and electricity at rates and on terms no less favourable than those generally available to commercial customers receiving substantially equivalent services;

- (b) procure that no barriers that would have a material adverse effect on Works are erected or placed on or about the Project by any Government Instrumentality or persons claiming through or under it, except for reasons of Emergency, national security or law and order;
- (c) not do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement;
- (d) support, cooperate with and facilitate the Contractor in the implementation of the Project in accordance with the provisions of this Agreement; and
- (e) upon written request from the Contractor and subject to the provisions of Sub-Clause 3.3 [Obligations relating to employment of foreign nationals], provide reasonable assistance to the Contractor and any expatriate personnel of the Contractor or its Sub-contractors to obtain applicable visas and work permits for the purposes of discharge by the Contractor or its Sub-contractors of their obligations under this Agreement and this agreements with the Sub-contractors.
 - a. shall obtain environmental and forest clearance for the Project from the concerned authorities and Government Instrumentalities as per Good Industry Practice;
 - b. shall provide sufficient, properly qualified operating and maintenance personnel;
 - c. shall be responsible for the continued operation of the Project after Completion, and shall be responsible for facilitating the Tests in accordance with Sub-Clause 9.10 [Tests] and Sub-Clause 10.1 [Tests on Completion].

4.2 Obligations relating to Operation & Maintenance The Authority shall undertake the operation and maintenance of the facilities existing prior to the Appointed Date within the Right of Way and for continued operations of the Project after completion of the project in accordance with Clause 10 [Completion Certificate] and Clause 12 [Maintenance Obligations].

4.3 Obligations relating to Environmental and Forest Clearances

4.3.1 The Authority shall obtain the environmental and forest clearances required for commencement of works for the sections within a reasonable time period **as specified in the SCC** of Handing Over of the Site or sections of Site for execution of Works.

4.3.2 In the event of any delay beyond such time, the Contractor shall be entitled to Time Extension for the period of such delay in accordance with the provisions of Sub-Clause 8.4 [Extension of time for completion] this Agreement and shall also be entitled to Damages calculated as if the Right of Way for and in respect of such Sections of the Project has not been provided in accordance with the provisions of Sub-Clause 7.2 [Procurement of the Site] and as a consequence thereof, the Contractor shall be entitled to Damages under and in accordance with the provisions of Sub-Clause 7.3 [Damages for delay in handing over the site and time extension]. For the avoidance of doubt, the present status of environmental and forest clearances is specified in **Schedule-A**.

4.4 Permits, Licenses or Approvals Upon written request from the Contractor, and subject to the Contractor complying with Applicable Laws, provide reasonable support to the Contractor in procuring in timely and expeditious manner:

(a) Applicable Permits / licenses required from any Government Instrumentality necessary for implementation of the Project including but not restricted to:

- (i) any permits, licenses or approvals required by the Laws of the Authority's Country, which the Contractor is required to obtain in accordance with this agreement;
- (ii) permits and approvals for the delivery of Goods, including clearance through customs, and
- (iii) any permits, licences or approvals for the export of Contractor's Equipment when it is removed from the Site.

(b) copies of the Laws of the Authority's Country which are relevant to the Contract but are not readily available, and

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

**4.5 Authority's
Financial
Arrangements**

4.5.1 The Authority undertakes that the Authority has financial arrangements from Exim Bank which will enable the Authority to pay the Contract Price punctually in accordance with Sub-Clause 15.1 [Contract Price]. Within 15 days of signing of this Agreement, the Authority shall 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 shall have other financial arrangements for the Works not forming part of the Contract Inclusion Letter.

4.5.2 If Exim Bank has notified to the Borrower that Exim Bank has suspended disbursements under its LOC, which finances in whole or in part the execution of the Works, the Authority shall give notice of such suspension to the Contractor with detailed particulars, including the date of such notification, with a copy to the Engineer, within 7 days of the Borrower having received the suspension notification from Exim Bank. If alternative funds will be available in appropriate currencies to the Authority to continue making payments to the Contractor beyond a date 60 days after the date of Exim Bank notification of the suspension, the Authority shall provide reasonable evidence in his notice of the extent to which such funds will be available and shall also notify the Contractor about the mechanism for making payment under the Contract.

**4.6 Authority's
Use of
Contractor's
Documents**

4.6.1 The Contractor shall be deemed (by signing the Contract) to give to the Authority a non-terminable transferable non-exclusive royalty-free licence to copy, use and communicate the Contractor's Documents, including making and using modifications of them. This licence shall:

- (a) apply throughout the actual or intended working life (whichever is longer) of the relevant parts of the Works,
- (b) entitle any person in proper possession of the relevant part of the Works to copy, use and communicate the Contractor's Documents for the purposes of

- completing, operating, maintaining, altering, adjusting, repairing and demolishing the Works, and
- (c) in the case of Contractor's Documents which are in the form of computer programs and other software, permit their use on any computer on the Site and other places as envisaged by the Contract, including replacements of any computers supplied by the Contractor.

4.6.2 The Contractor shall retain the copyright and other intellectual property rights in the documents made by (or on behalf of) the Contractor, which are not included under the Contractor's Documents but are incidental to the performance of the Contractor's Obligations under this Agreement. The documents made by (or on behalf of) the Contractor, which are not included under the Contractor's Documents but are incidental to the performance of the Contractor's Obligations under this Agreement shall not, without the Contractor's consent, be used, copied or communicated to a third party by (or on behalf of) the Authority for purposes other than those permitted under this Clause.

4.7 Authority's reimbursement to Contractor for any taxes paid by the Contractor In accordance with the provisions of Sub-Clause 15.1.3, if the taxes paid by the Contractor have to be reimbursed by the Authority, the Authority shall promptly reimburse such taxes in accordance with Sub-Clause 15.1.3

5. REPRESENTATIONS, DISCLAIMER AND WARRANTIES

- 5.1 Representations and warranties of the Contractor** The Contractor represents and warrants to the Authority that:
- a) it is duly organised and validly existing under the laws of India, and has full power and authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
 - b) it has taken all necessary corporate and other actions under Applicable Laws to authorise the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
 - c) this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement will be legally valid, binding and enforceable obligations against it in accordance with the terms hereof;
 - d) it is incorporated in and is subject to the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising thereunder including any obligation, liability or responsibility hereunder;
 - e) the information furnished in the Bid, and Request for Proposal or otherwise and as updated on or before the date of this Agreement is true and accurate in all respects as on the date of this Agreement;
 - f) the execution, delivery and performance of this Agreement will not conflict with, or result in the breach of, or constitute a default under, or accelerate performance required by any of the terms of its memorandum and articles of association or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
 - g) there are no actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its obligations under this Agreement;
 - h) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any Government Instrumentality or Government of India which may result in any Material Adverse Effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;
 - i) it has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a Material Adverse Effect on its ability to perform its obligations under this Agreement;
 - j) no representation or warranty by it contained herein or in any other document furnished by it to the Authority contains or will contain any untrue or misleading statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;
 - k) no sums, in cash or kind, have been paid or will be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for securing the

contract or entering into this Agreement or for influencing or attempting to influence any officer or employee of the Authority, Authority's Engineer, or Government Instrumentality in connection with the Project or this Agreement;

- l) all information provided by it in response to the Request for Proposal or otherwise, is true and accurate in all respects;
- m) all undertakings and obligations of the Contractor arising from the Request for Proposal or otherwise shall be binding on the Contractor as if they form part of this Agreement;
- n) nothing contained in this Agreement shall create any contractual relationship or obligation between the Authority and any Sub-contractors, designers, consultants or agents of the Contractor;
- o) it is adequately financed, has the requisite knowledge, expertise, technical know-how, experience, resources, infrastructure, licenses, patents, copy rights for carrying out the Works including designing, supplying and procuring goods and materials, and for providing installation and construction services required for completion of the Project, remedying the defects during Defects Liability Period and performing its maintenance obligations; and
- p) it shall comply with the Applicable Laws and Applicable Guidelines during the execution of the Project.

5.2 Representations and warranties of the Authority

The Authority represents and warrants to the Contractor that:

- a) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Agreement, exercise its rights and perform its obligations, under this Agreement;
- b) it has taken all necessary actions under Applicable Laws to authorise the execution, delivery and performance of this Agreement;
- c) it has the financial standing and capacity to perform its obligations under this Agreement;
- d) this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- e) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Instrumentality which may result in any Material Adverse Effect on the Authority's ability to perform its obligations under this Agreement;
- f) it has complied with Applicable Laws in all material respects;
- g) it will timely facilitate Handing Over of Site to the Contractor;
- h) it shall have procured, as on the Appointed Date, Handing Over of Site such that the Contractor can commence construction forthwith in accordance with Sub-Clause 4.1.5; and
- i) it shall comply with the Applicable Laws and the Applicable Guidelines.

5.3 Disclosure

5.3.1 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.

5.4 Disclaimer

5.4.1 The Contractor acknowledges that prior to the execution of this Agreement, the Contractor has, after a complete and careful examination, made an independent evaluation of the Request for Proposal, Scope of the Project, Specifications and Standards, Site, local conditions, physical qualities of ground, subsoil and geology, 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 as provided in Sub-Clause 4.1.2 and Sub-Clause 5.2 [Representations and Warranties of the Authority], the Authority makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy, adequacy, correctness, reliability and/or completeness of any assessment, assumptions, statement or information provided by it and the Contractor confirms that it shall have no claim whatsoever against the Authority in this regard.

5.4.2 The Parties agree that any mistake or error in or relating to any of the matters set forth in Sub-Clause 5.4.1 above shall not vitiate this Agreement or render it voidable.

5.4.3 In the event that either Party becomes aware of any mistake or error relating to any of the matters set forth in Sub-Clause 5.4.1 above, that Party shall immediately notify the other Party, specifying the mistake or error.

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

6. PERFORMANCE SECURITY

- 6.1 Performance Security**
- 6.1.1 The Contractor shall, for ensuring the performance of its obligations hereunder, provide to the Authority, an irrevocable and unconditional bank guarantee, at Contractor's cost, issued by a Bank acceptable to the Authority as **specified in the SCC**, for currency and amount equal to the percentage of the Contract Price **as specified in the SCC**, in the form set forth in **Annex-I of Appendix 1** (the "**Works Performance Security**"), prior to signing of this Agreement. The Works Performance Security shall be valid for the period **as specified in the SCC**. Until such time the Performance Security is provided by the Contractor pursuant hereto and the same comes into effect, the Bid Security shall remain in force and effect, and upon providing the Works Performance Security, the Authority shall release the Bid Security to the Contractor.
- 6.1.2 Notwithstanding anything to the contrary contained in this Agreement, the Parties agree that in the event of failure of the Contractor to provide the Works Performance Security in accordance with the provisions of Sub-Clause 6.1.1, the Authority may encash the Bid Security and appropriate the proceeds thereof as Damages, and thereupon all rights, privileges, claims and entitlements of the Contractor under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Contractor, and this Agreement shall be deemed to have been terminated by mutual agreement of the Parties.
- 6.1.3 After completion of Works and atleast 15 days before release of the Works Performance Security or the commencement of the Maintenance Period, whichever is earlier, the Contractor shall provide to the Authority, an irrevocable and unconditional bank guarantee, at Contractor's cost, issued by a Bank in accordance with Clause 6.1.1, for currency and amount equal to the percentage of the Contract Price **as specified in the SCC**, in the form set forth in **Annex-I of Appendix 1** (the "**Maintenance Performance Security**"). The Maintenance Performance Security shall be valid for the period **as specified in the SCC**.
- 6.1.4 Works Performance Security and Maintenance Performance Security shall be jointly referred to as the "**Performance Security**".
- 6.2 Extension of Performance Security**
- 6.2.1 The Contractor shall provide the Performance Security for the period in accordance with Sub-Clause 6.1.1 and Sub-Clause 6.1.3; provided that it shall procure the extension of the validity of the Performance Security, as necessary, 60 (sixty) days prior to the date of expiry thereof, wherever required.
- 6.3 Appropriation of Performance Security**
- 6.3.1 Upon occurrence of a Contractor's Default, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate from the Performance Security the amounts due to it as Damages for the Contractor's Default.
- 6.3.2 The Authority shall not encash or appropriate the Performance Security, except for amounts to which the Authority is entitled under this Agreement in the event of:

- a) failure by the Contractor to extend the validity of the Performance Security, as described in Sub-Clause 6.2.1, in which event the Authority may claim the full amount (or, in the case of previous reduction(s), the remaining amount) of the Performance Security;
- b) failure by the Contractor to pay the Authority an amount due, as agreed or determined under this Agreement or agreed or decided under Clause 19 [Termination];
- c) failure by the Contractor to remedy a Defect under Clause 13 [Defects Liability];
- d) circumstances which entitle the Authority to terminate this Agreement in accordance with Sub-Clause 21.1 [Termination for Contractor's Default], irrespective of whether a notice of termination has been given; or
- e) if under Sub-Clause 13.2 [Remedy and rectification of Defects and deficiencies], the Contractor removes any defective or damaged Plant from the Site, failure by the Contractor to repair such Plant, return it to the Site, reinstall it and retest it by the date agreed by the Authority / Authority Engineer.

6.3.3 Upon such encashment and appropriation from the Performance Security, the Contractor shall, within 30 (thirty) days thereof, replenish, in case of partial appropriation, to its original level the Performance Security, and in case of appropriation of the entire Performance Security provide a fresh Performance Security, as the case may be, and the Contractor shall, within the time so granted, replenish or furnish fresh Performance Security as aforesaid failing which the Authority shall be entitled to terminate this Agreement in accordance with contractual provisions. Upon such replenishment or furnishing of a fresh Performance Security, as the case may be, the Contractor shall be entitled to an additional Cure Period of 30 (thirty) days for remedying the Contractor's Default, and in the event of the Contractor not curing its default within such Cure Period, the Authority shall be entitled to encash and appropriate such Performance Security as Damages, and to terminate this Agreement in accordance with the provisions of this Agreement.

6.3.4 The Authority shall indemnify and hold the Contractor harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from a claim under the Performance Security to the extent that the Authority was not entitled to make the claim.

6.3.5 Any amount which is received by the Authority under the Performance Security shall be taken into account:

- a) in the final payment to the Contractor; or
- b) if the Contract is terminated, in payment due to the Contractor under then in accordance with Sub-Clause 19.6.1.

6.4 Release of Performance Security

6.4.1 The Authority shall release the Works Performance Security within the days as **specified in the SCC**, under this Agreement. Notwithstanding the aforesaid, the Parties agree that the Authority shall not be obliged to release the Performance Security until all Defects identified during the Defects Liability Period or the extended Defects Liability Period, as the case may be, have been rectified.

6.4.2 The Authority shall release the Maintenance Performance Security within the days as **specified in the SCC**, under this Agreement.

6.5 Retention Money

6.5.1 From every payment for Works due to the Contractor in accordance with the provisions of Sub-Clause 15.5 [Stage Payment for Works], the Authority shall deduct 12.5% (twelve and half per cent) thereof as guarantee money for performance of the obligations of the Contractor during the Construction 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.

6.5.2 Upon occurrence of a Contractor's Default, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to appropriate the relevant amounts from the Retention Money as Damages for such Contractor's Default.

6.5.3 The Authority shall release the retention Money within the days of Project Completion Certificate **as specified in the SCC**, under this Agreement.

6.5.4 The Parties agree that in the event of Termination of this Agreement, the Retention Money specified in this Sub-Clause 6.5 shall be treated as if they are Performance Security and shall be reckoned as such for the purposes of Termination Payment under Sub-Clause 19.6 [Termination Payment].

7. HANDING OVER OF SITE AND UTILITIES MANAGEMENT

7.1 The Site

7.1.1 The site of the Project (the “**Site**”) shall comprise the site described in Schedule-A in respect of which the Handing Over of Site shall be provided by the Authority/Authority’s Engineer to the Contractor. The Authority shall be responsible for:

- (a) acquiring and providing Handing Over of Site in accordance with this Agreement, free from all encroachments and encumbrances, and free access thereto for the execution of work under this Agreement (“**Right of Way**”)
- (b) obtaining licences and permits for environment clearance and forest clearance for the Project

7.2 Procurement of the Site

7.2.1 The Authority’s Engineer and the Contractor shall, within 15 (fifteen) days of the date of this Agreement, inspect the Site and prepare a memorandum containing an inventory of the Site including the vacant and unencumbered land, buildings, structures, road works, trees and any other immovable property on or attached to the Site. Subject to the provisions of Sub-Clause 7.2.2, such memorandum shall have appended thereto an appendix (the “**Appendix**”) specifying in reasonable detail those parts of the Site to which vacant access and land has not been given to the Contractor by the Authority / Authority Engineer. Signing of the memorandum, in 2 (two) counterparts (each of which shall constitute an original), by the authorised representatives of the Parties shall be deemed to constitute valid evidence of Handing Over of Site to the Contractor for discharging its obligations under and in accordance with the provisions of this Agreement and for no other purpose whatsoever.

For the avoidance of doubt, the Parties agree that subject to the provisions of Sub-Clause 7.2.2 and Sub-Clause 7.2.3, whenever the Authority/Authority’s Engineer is ready to arrange Handing Over of Site for any part or parts of the Site included in the Appendix, the Authority’s Engineer shall by notice inform the Contractor of the proposed date and time when the Authority’s Engineer and the Contractor shall inspect the specified parts of the Site, and prepare a memorandum which shall be deemed to constitute a valid evidence of Handing Over of Site to the Contractor in accordance with the provision of this Sub-Clause 7.2.1 and acceptance by the Contractor.

7.2.2 Notwithstanding anything to the contrary contained in this Clause 7.2, the Authority’s Engineer shall specify the parts of the Site, if any, for which Handing Over of Site shall be arranged to be provided to the Contractor on the dates specified in **Schedule-A**. Such parts shall also be included in the Appendix prepared in pursuance of Sub-Clause 7.2.1. For the avoidance of doubt, the Parties expressly agree that the Appendix shall in no event contain Sections of the Project the cumulative area of which exceeds the permissible percentage of the total land required for the Project for which Handing Over of Site is not available.

7.2.3 The Authority shall provide the Right of Way to the Contractor, in respect of the land included in the **Annex**, by the date specified in **Schedule-A** for each part of the Site referred to therein, but in no case later than the date **as specified in the SCC** for those parts of the Site for which no time has been specified in **Schedule-A**, and

in the event of delay for any reason other than Force Majeure or breach of this Agreement by the Contractor, it shall pay to the Contractor, Damages in accordance with Sub-Clause 7.3 [Damages for delay in handing over the Site and Extension of Time] and shall provide suitable Extension of Time.

7.3 Damages for delay in handing over the Site and Extension of Time

7.3.1 In the event the Right of Way is not provided by the Authority on or before the date(s) specified in Sub-Clause 7.2 [Procurement of Site] for any reason other than Force Majeure or breach of this Agreement by the Contractor, then the Authority shall pay reasonable damages to the Contractor.

In accordance with this Sub-Clause 7.3.1, the Contractor shall, subject to the provisions of Sub-Clause 8.4 [Extension of time for Completion] be entitled to Time Extension equal to the period of such delay, save and except that:

- (a) if any delays involve time overlaps, the overlaps shall not be additive; and
- (b) such Time Extension shall be restricted only to the Works which are affected by the delay in Handing Over of Site.

For the avoidance of doubt, the Parties expressly agree that the Damages specified hereunder and the Time Extension specified in Sub-Clause 8.4 [Extension of time for completion] shall be restricted only to failure of the Authority in Handing Over of Site for and in respect of the Site required for Works in accordance with the Good Industry Practice.

7.3.2 Notwithstanding anything to the contrary contained in this Agreement, the Contractor expressly agrees that Works on all parts of the Site for which Handing Over of Site is granted within 90 (ninety) days of the Appointed Date, or with respect to the parts of the Site provided in **Schedule-A**, no later than the date(s) specified therein, as the case may be, shall be completed before the Scheduled Completion Date and shall not qualify for any Time Extension.

7.3.3 Notwithstanding anything to the contrary contained in this Agreement, the Authority may at any time withdraw any part of the Site and the Works forming part of this Agreement, subject to such Works not exceeding an aggregate value, such value to be determined in accordance with **Schedule-F**, equal to 10% (ten per cent) of the Contract Price.

Provided that if Handing Over of Site has not been provided within 240 (two hundred and forty) days of the Appointed Date [the "**Long Stop Date**"], for commencing construction on any part of the Site included in the Appendix, the affected Works shall be deemed to be withdrawn under the provisions of this Sub-Clause 7.3.3 unless the Parties agree to the contrary, and such Works shall not be computed for the purposes of the aforesaid ceiling of 10% (ten per cent) of the Contract Price hereunder. For the avoidance of doubt, the Parties agree that such deemed withdrawal of Works hereunder shall be without prejudice to the Contractor's entitlement to Time Extension.

7.3.4 In the event of withdrawal of Works under Sub-Clause 7.3.3, including deemed withdrawal of Works, the Contract Price shall be reduced by an amount equal to the percentage of the value of the Works withdrawn **as specified in the SCC** and the

Contractor shall not be entitled to any other compensation or Damages for the withdrawal of Works, including their deemed withdrawal.

Provided that if any Works are withdrawn after commencement of the Construction of such Works, the Authority shall pay to the Contractor percentage of the fair value of the work done **as specified in the SCC**, as assessed by the Authority's Engineer.

7.4 Site to be free from Encumbrances

7.4.1 Subject to the provisions of Sub-Clause 7.2 [Procurement of the Site], the Authority shall ensure that the Site being made available to the Contractor pursuant hereto free from all Encumbrances and occupations and without the Contractor being required to make any payment to the Authority on account of any costs, compensation, expenses and charges for the acquisition and use of such Site for the duration of the Project Completion Schedule. For the avoidance of doubt, it is agreed that the existing rights of way, easements, privileges, liberties and appurtenances to the Site shall not be deemed to be Encumbrances. It is further agreed that, unless otherwise specified in this Agreement, the Contractor accepts and undertakes to bear any and all risks arising out of the inadequacy or physical condition of the Site.

7.5 Protection of Site from encroachments

7.5.1 On and after signing the memorandum and/or subsequent memorandum referred to in Sub-Clause 7.2.1, and until the issue of the Provisional Certificate, the Contractor shall maintain a round-the-clock vigil over the Site and shall ensure and procure that no encroachment thereon takes place. During the Construction Period, the Contractor shall protect the Site from any and all occupations, encroachments or Encumbrances, and shall not place or create nor permit any Sub-contractor or other person claiming through or under this Agreement to place or create any Encumbrance or security interest over all or any part of the Site or the Project Assets, or on any rights of the Contractor therein or under this Agreement, save and except as otherwise expressly set forth in this Agreement. In the event of any encroachment or occupation on any part of the Site, the Contractor shall report such encroachment or occupation forthwith to the Authority and undertake its removal at its own cost and expenses.

7.6 Temporary Right of Way

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

7.7 Access to the Authority and the Authority's Engineer

7.7.1 The Site given to the Contractor by the Authority hereunder shall always be subject to the right of access of the Authority, the Authority's Engineer, Exim Bank and their employees and agents for inspection, viewing and exercise of their rights and performance of their obligations under this Agreement.

7.7.2 The Contractor shall ensure, subject to all relevant safety procedures that the Authority has unrestricted access to the Site during any Emergency.

7.8 Geological and archaeological finds

7.8.1 It is expressly agreed that mining, geological or archaeological rights do not form part of this Agreement with the Contractor for the Works, and the Contractor hereby acknowledges that it shall not have any mining rights or interest in the underlying minerals, fossils, antiquities, structures or other remnants or things either of particular geological or archaeological interest and that such rights, interest

and property on or under the Site shall vest in and belong to the Country's Government Instrumentality. The Contractor shall take all reasonable precautions to prevent its workmen or any other person from removing or damaging such interest or property and shall inform the Authority forthwith of the discovery thereof and comply with such instructions as the Authority or the Government Instrumentality may reasonably give for the removal of such property. For the avoidance of doubt, it is agreed that any reasonable expenses incurred by the Contractor hereunder shall be reimbursed by the Authority. It is also agreed that the Authority shall procure that the instructions hereunder are issued by the concerned Government Instrumentality within a reasonable period so as to enable the Contractor to continue its Works with such modifications as may be deemed necessary.

7.9 Familiarity of Site Conditions

7.9.1 The Contractor acknowledges that it is their responsibility to become familiar with the site conditions prior to commencing any work. The Contractor shall conduct a site visit to check temporary works on the site and logistics and review all available site data, including geotechnical reports, environmental reports, and site surveys, to understand the site's conditions and the nature and extent of the work required. The Contractor shall also perform any additional site investigations necessary to identify any potential hazards or risks. Any unforeseen site conditions discovered during the course of the work shall be promptly brought to the attention of the Authority, and the Contractor shall take all necessary measures to deal with such conditions in accordance with the Contract Documents.

7.10 Existing utilities and roads

7.10.1 Notwithstanding anything to the contrary contained herein, the Contractor shall ensure that the respective entities owning the existing roads, right of way, level crossings, structures, or utilities on, under or above the Site are enabled by it to keep them in continuous satisfactory use, if necessary, by providing suitable temporary diversions with the authority of the controlling body of that road, right of way or utility.

7.11 Shifting of obstructing utilities

7.11.1 The Contractor shall, in accordance with Applicable Laws and with assistance of the concerned utility owning agency and Government Instrumentalities, cause shifting of any utility (including electric lines, water pipes, telephone cables etc.) to an appropriate location or alignment, if such utility or obstruction adversely affects the execution of Works in accordance with this Agreement. The cost of such shifting, as approved and communicated by the entity owning the utility, shall form a part of this Agreement, and shall be deemed to be a part of the Contract Price. The Contractor shall execute the utility shifting works under the supervision of the utility owning agency and Authority's Engineer. For the avoidance of doubt, the Contractor shall not be paid any additional amount towards cost of shifting of such obstructing utilities.

In the event of any delay in such shifting by the entity owning the utility beyond a period of 180 (one hundred and eighty) days from the date of notice by the Contractor to the entity owning the utility and to the Authority, the Contractor shall be entitled to Time Extension in accordance with Sub-Clause 8.4 [Extension of time for Completion] for and in respect of the part(s) of the Works affected by such delay;

provided that if the delays involve any time overlaps, the overlaps shall not be additive.

The dismantled material/scrap of existing utility shall belong to the Contractor for disposal as deemed fit by the Contractor, subject to any Applicable Laws unless otherwise agreed. The Contract Price shall include the cost of shifting of obstructing utility. There should not be any upgradation/augmentation of facilities, except where the technologies/provisions are obsolete. In case of upgradation, the utility owners shall bear the costs of such upgradation.

7.12 New utilities

7.12.1 The Contractor shall allow, with prior approval from the Authority, access to the Site for laying new utilities as the Government may specify, subject to compensation or damages to the Contractor, if such access causes such damages or losses. For the avoidance of doubt, it is agreed that use of the Site under this Sub-Clause 7.12 shall not in any manner relieve the Contractor of its obligation to construct and maintain the Project in accordance with this Agreement and any damage caused by such use shall be restored forthwith by the Contractor. In the event construction of any Works is affected by a new utility or works undertaken in accordance with this Sub-Clause 7.12, the Contractor shall be eligible for a Time Extension for carrying out these additional works as determined by the Authority's Engineer.

7.13 Felling of trees

7.13.1 The Authority shall facilitate the Contractor obtaining Applicable Permits for felling of trees in non-forest land and forest land to be identified by the Authority and/or Authority Engineer for this purpose.

Such felling of trees that shall be a part of the Scope of the Project and performed by the Contractor in accordance with the Applicable Permits obtained by it.

The Parties hereto agree that the felled trees shall be, subject to provisions of Applicable Laws and deemed to be owned by the Authority / Government Instrumentalities.

7.14 Dismantling of Structures

7.14.1 Contractor at its own cost shall dismantle the structures in the acquired lands, including disposal of the dismantled material in its sole discretion as deemed appropriate while complying with Good Industry Practice.

8. INITIATION OF WORKS, DESIGN AND CONSTRUCTION

8.1 Obligations prior to commencement of Works 8.1.1 Upon the receipt of notice for Commencement of Works under Sub-Clause 14.2.4 within 15 (fifteen) days of the Appointed Date, the Contractor 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) appoint a design director or a designing firm (the “**Design Director**”) who will head the Contractor’s design unit and shall be responsible for surveys, investigations, collection of data, and preparation of preliminary and detailed designs;
- (c) undertake and perform all such acts, deeds and things as may be necessary or required before commencement of Works under and in accordance with this Agreement, Applicable Laws, and Applicable Permits; and
- (d) make its own arrangements for quarrying of materials and procurement needed for the Project under and in accordance with Applicable Permits, Applicable Laws

8.1.2 The Authority shall, within the time as specified in Sub-Clause 14.1 [Appointment of the Authority’s Engineer] from the date of this Agreement, appoint an engineer (the “**Authority’s Engineer**”) to discharge the functions and duties specified in this Agreement, and shall notify to the Contractor the name, address and the date of appointment of the Authority’s Engineer forthwith.

8.1.3 Within 30 (thirty) days of the Appointed Date, the Contractor shall submit to the Authority’s Engineer a programme (the “**Programme**”) for construction of the Works, developed using networking techniques and giving the following details:

Part I Contractor’s organisation for the Project, the general methods and arrangements for design and construction, environmental management plan, Quality Assurance Plan including design quality plan and safety plan covering safety of users and workers during construction, Contractor’s key personnel, and equipment.

Part II Programme for completion of all stages of construction given in Schedule-F and Project Milestones of the Works as specified in Project Completion Schedule set forth in Schedule-H. The Programme shall include:

- (a) the order in which the Contractor intends to carry out the Works, including the anticipated timing of design, and stages of Works
- (b) the periods for reviews under Sub-Clause 8.2 [Design and Drawings]; and
- (c) the sequence and timing of inspections and tests specified in this Agreement.

The Contractor shall submit a revised programme whenever its previous Programme is inconsistent with the actual progress or with the Contractor’s obligations or as and when required by the Authority’s Engineer, but without modifications in Project Completion Schedule and any extension granted in accordance with Sub-Clause 8.4 [Extension of Time for Completion].

Part III Monthly cash flow forecast for the Project – The Contractor shall submit a Monthly Cash Flow Projections along with its plan to finance the Project Cash Flow Deficit, if any.

The Contractor acknowledges and agrees that the Authority’s Engineer may, within a period of 15 (fifteen) days of receipt of the Programme, convey its comments to the Contractor stating the modifications, if any, required for compliance with the provisions of this Agreement, and the Contractor shall carry out such modifications, to the extent required for conforming with the provisions of this Agreement.

8.1.4 The Contractor shall compute, on the basis of the Drawings prepared in accordance with Sub-Clause 8.2.6 [Design and Drawings], and provide to the Authority’s Engineer, the length, area and numbers, as the case may be, in respect of the various items of work specified in Schedule-F and comprising the Scope of the Project. The Parties expressly agree that these details shall form the basis for estimating the interim payments for the Works in accordance with the provisions of Sub-Clause 15.3 [Procedure for estimating the payment for the Works]. For the avoidance of doubt, the sum of payments to be computed in respect of all the items of work shall not exceed the Contract Price, as may be adjusted in accordance with the provisions of this Agreement.

8.1.5 The Contractor shall appoint a safety consultant (the “**Safety Consultant**”) to carry out safety audit at the design stage of the Project in accordance with Applicable Laws And Good Industry Practice. Provided that the Safety Consultant appointed should be acceptable to the Authority’s Engineer

8.1.6 The safety audit pursuant to Sub-Clause 8.1.5 shall be carried out by the Safety Consultant in respect of all such design details that have a bearing on safety of Users as well as pedestrians and animals involved in or associated with accidents. The recommendations of the Safety Consultant shall be incorporated in the design of the Project and the Contractor shall forward to the Authority’s Engineer a certificate to this effect together with the recommendations of the Safety Consultant. In the event that any works required by the Safety Consultant shall fall beyond the scope of Schedule-B, Schedule-C or Schedule-D, the Contractor shall make a report thereon and seek the instructions of the Authority’s Engineer for Change in Scope. The Authority’s Engineer shall convey its decision to the Contractor with the consultation of the Authority. For the avoidance of doubt, the Safety Consultant to be engaged by the Contractor shall be independent of the design and implementation team of the Contractor.

8.2 Design and Drawings

8.2.1 Design and Drawings shall be developed in conformity with the Specifications and Standards set forth in Schedule-D. In the event, the Contractor requires any relaxation in design standards in any Section, the alternative design criteria for such Section shall be provided for review of the Authority’s Engineer.

8.2.2 The Contractor shall appoint a qualified proof check consultant (the “**Proof Consultant**”) and shall inform the details of to the Authority / Authority Engineer.

8.2.3 The Proof Consultant shall:

- (a) evolve a systems approach with the Design Director so as to minimise the time required for final designs and construction drawings; and
- (b) proof check the detailed calculations, drawings and designs, which have been approved by the Design Director.

8.2.4 In respect of the Contractor's obligations with respect to the design and Drawings of the Project as set forth in Schedule-G, the following shall apply:

- (a) The Contractor shall prepare and submit, with reasonable promptness and in such sequence as is consistent with the Project Completion Schedule, 3 (three) copies each of the design and Drawings, duly certified by the Proof Consultant, to the Authority's Engineer for review. Provided, however, that in respect of Structure, the Authority's Engineer may require additional drawings for its review in accordance with Good Industry Practice;
- (b) by submitting the Drawings for review to the Authority's Engineer, the Contractor shall be deemed to have represented that it has determined and verified that the design and engineering, including field construction criteria related thereto, are in conformity with the Scope of the Project, Specifications and Standards, Applicable Laws, and Good Industry Practice;
- (c) within 15 (fifteen) days of the receipt of the Drawings, the Authority's Engineer shall review the same and convey its observations to the Contractor with particular reference to their conformity or otherwise with the Scope of the Project and the Specifications and Standards;
- (d) if the aforesaid observations of the Authority's Engineer indicate that the Drawings are not in conformity with the Scope of the Project or the Specifications and Standards, such Drawings shall be revised by the Contractor in conformity with the provisions of this Agreement and resubmitted to the Authority's Engineer for review. The Authority's Engineer shall give its observations, if any, within 10 (ten) days of receipt of the revised Drawings. In the event the Contractor fails to revise and resubmit such Drawings to the Authority's Engineer for review as aforesaid, the Authority's Engineer may cause the payment for the affected works to be withheld under the provisions of Sub-Clause 15.5 [Stage Payment for Works]. If the Contractor disputes any decision, direction or determination of the Authority's Engineer hereunder, the Dispute shall be resolved in accordance with the Dispute Resolution Procedure;
- (e) no review and/or observation of the Authority's Engineer and/or its failure to review and/or convey its observations on any Drawings shall relieve the Contractor of its obligations and liabilities under this Agreement in any manner nor shall the Authority's Engineer or the Authority be liable for the same in any manner; and The Contractor shall be responsible for correction of all errors, omissions, ambiguities, inconsistencies, inadequacies or other Defects in the Drawings, , along with the correction of affected Works, at the Contractor's cost, notwithstanding any review under this Clause 8 [Initiation of Works, Design and Construction]. Provided that the contractor shall not be responsible if errors, omissions, ambiguities, inconsistencies, inadequacies or other Defects are because of inaccurate information furnished in writing to the Contractor by or on behalf of Authority.
- (f) the Contractor shall be responsible for delays in submitting the Drawings, as set forth in Schedule-G, caused by reason of delays in surveys and field investigations, and shall not be entitled to seek any relief in respect thereof from the Authority; and

- (g) the Contractor warrants that its designers, including any third parties engaged by it, shall have the required experience and capability in accordance with Good Industry Practice and it shall indemnify the Authority against any damage, expense, liability, loss or claim, which the Authority might incur, sustain or be subject to arising from any breach of the Contractor's design responsibility and/or warranty as set out in this Clause.

8.2.5 Works shall be executed in accordance with the Drawings provided by the Contractor in accordance with the provisions of this Sub-Clause 8.2 and the observations of the Authority's Engineer thereon as communicated pursuant to the provisions of Sub-Clause 8.2.4(d). Such Drawings shall not be amended or altered without prior written notice to the Authority's Engineer. If a Party becomes aware of an error or defect of a technical nature in the design or Drawings, that Party shall promptly give notice to the other Party of such error or defect.

8.2.6 The Contractor shall give notice to the Authority's Engineer whenever the Works are likely to be delayed or disrupted if any necessary drawing or instruction is not issued to the Contractor within a reasonable time. The notice shall include details of the necessary drawing or instruction, details of requirement of the drawings and instructions and by when it should be issued, and the nature and amount of the delay or disruption likely to be suffered if it is late. If the Contractor suffers delay and/or incurs cost as a result of a failure of the Authority's Engineer to issue the notified drawing or instruction within a reasonable time specified in the notice with supporting details, the Contractor shall give a further notice to the Authority's Engineer and shall be entitled to (a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion], and payment of reasonable damages. However, if and to the extent that the Engineer's failure was caused by any error or delay by the Contractor, including an error in, or delay in the submission of, any of the Contractor's Documents, the Contractor shall not be entitled to such extension of time and damages.

8.2.7 In accordance with Sub-Clause 10.4 [Project Completion Certificate], at the time of making the request for issuance of the Project Completion Certificate, the Contractor shall furnish to the Authority and the Authority's Engineer a complete set of as-built Drawings, in 2 (two) hard copies and in its editable digital format or in such other medium or manner as may be acceptable to the Authority, including an as-built survey illustrating the layout of the Project and setback lines, if any, of the buildings and structures forming part of Project Facilities, and shall hand them over to the Authority against receipt thereof.

8.3 Construction of the Project

8.3.1 The Contractor shall construct the Project as specified in **Schedule-B** and **Schedule-C**, and in conformity with the Specifications and Standards set forth in Schedule-D. The Contractor shall be responsible for the correct positioning of all parts of the Works, and shall rectify any error in the positions, levels, dimensions or alignment of the Works. The day **as specified in the SCC** from the Appointed Date shall be the scheduled completion date (the "**Scheduled Completion Date**") and the Contractor agrees and undertakes that the construction shall be completed on or before the Scheduled Completion Date, including any extension thereof.

Pre-Construction activities like utility shifting, boundary wall construction, or any other such activity, may be commenced immediately after signing of the contract by the Parties. The Parties agree that these works may be taken up and completed to the extent feasible by the Contractor, before declaration of the Appointed Date ("**Development Period**"), but no claim against the Authority for delay shall survive during this period and that the undertaking of these works by the Contractor shall not count towards the Scheduled Construction Period of the project which starts counting only from the Appointed Date. No construction activity of the Project shall be undertaken during the development period.

8.3.2 The Contractor shall construct the Project in accordance with the Project Completion Schedule set forth in Schedule-H. In the event that the Contractor fails to achieve any Project Milestone or the Scheduled Completion Date within a period of 30 (thirty) days from the date set forth in Schedule-H, unless such failure has occurred due to Force Majeure or for reasons attributable to the Authority, it shall pay Damages to the Authority in a sum calculated at the rate **as specified in the SCC** for delay of each day reckoned from the date specified in Schedule-H and until such Project Milestone is achieved or the Works are completed; provided that if the period for any or all Project Milestones or the Scheduled Completion Date is extended in accordance with the provisions of this Agreement, the dates set forth in Schedule-H shall be deemed to be modified accordingly and the provisions of this Agreement shall apply as if Schedule-H has been amended as above; provided further that in the event the Works are completed within or before the Scheduled Completion Date including any Time Extension, the Damages paid under this Sub-Clause 8.3.2 shall be refunded by the Authority to the Contractor, but without any interest thereon. For the avoidance of doubt, it is agreed that recovery of Damages under this Sub-Clause 8.3.2 shall be without prejudice to the rights of the Authority under this Agreement including the right of Termination thereof. The Parties further agree that Time Extension hereunder shall only be reckoned for and in respect of the affected Works as specified in Sub-Clause 8.4.2.

8.3.3 The Authority's Engineer shall notify the Contractor of its decision to impose Damages in pursuance of the provisions of this Sub-Clause 8.3. Provided, however, that no deduction on account of Damages shall be effected by the Authority's Engineer without taking into consideration the representation, if any, made by the Contractor within 20 (twenty) days of such notice. The Parties expressly agree that the total amount of Damages under Sub-Clause 8.3.2 shall not exceed 5% (five percent) of the Contract Price in accordance with the IDEAS Guidelines.

8.3.4 During the Construction Period, the Contractor shall maintain, at its cost, the existing components of the Project so that the worthiness and safety thereof are at no time materially inferior as compared to their condition on Appointed Date, and shall undertake the necessary repair and maintenance works for this purpose except for fair wear and tear of the components.

8.3.5 Notwithstanding anything to the contrary contained in this Agreement, in the event of default by the Contractor in discharging the obligations specified in Sub-Clause 8.3.4 above, the Authority shall get these maintenance works

completed in the manner recommended by the Authority's Engineer to avoid public inconvenience at the risk and cost of the Contractor.

8.4 Extension of time for completion

8.4.1 Without prejudice to any other provision of this Agreement for and in respect of extension of time, the Contractor shall be entitled to extension of time in the Project Completion Schedule (the "**Time Extension**") to the extent that completion of any Project Milestone is or will be delayed by any of the following, namely:

- (a) delay in providing Handing Over of Site, or approval of authorities, specified in Sub-Clause 4.1.4 and Sub-Clause 4.3 [Obligations relating to Environmental and Forest Clearances];
- (b) Change of Scope, unless an adjustment to the Scheduled Completion Date has been agreed;
- (c) occurrence of a Force Majeure Event;
- (d) any delay, impediment or prevention caused by or attributable to the Authority, the Authority's personnel or the Authority's other contractors on the Site; and
- (e) any other cause or delay which entitles the Contractor to Time Extension in accordance with the provisions of this Agreement.

8.4.2 The Contractor shall, no later than 15 (fifteen) business days from the occurrence of an event or circumstance specified in Sub-Clause 8.4.1, inform the Authority's Engineer by notice in writing, with a copy to the Authority, stating in reasonable detail with supporting particulars, the event or circumstances giving rise to the claim for Time Extension in accordance with the provisions of this Agreement:

Provided that the period of 15 (fifteen) business days shall be calculated from the date on which the Contractor became aware, or should have become aware, of the occurrence of such an event or circumstance:

Provided further that notwithstanding anything to the contrary contained in this Agreement, Time Extension shall be due and applicable only for the Works which are affected by the aforesaid events or circumstances and shall not in any manner affect the Project Completion Schedule for and in respect of the Works which are not affected thereby.

8.4.3 In the event of the failure of the Contractor to issue to the Authority's Engineer a notice in accordance with the provisions of Sub-Clause 8.4.2 within the time specified therein, the Contractor shall not be entitled to any Time Extension and shall forfeit its right to any such claims in future. For the avoidance of doubt, in the event of failure of the Contractor to issue notice as specified in this Sub-Clause 8.4.3, the Authority shall be discharged from all liability in connection therewith.

8.4.4 The Authority's Engineer shall, on receipt of a claim in accordance with the provisions of Sub-Clause 8.4.2, examine the claim within the time frame specified herein. In the event the Authority's Engineer requires any clarifications to examine the claim, the Authority's Engineer shall seek the same within 15 (fifteen) days from the date of receiving the claim. The Contractor shall, on the receipt of the communication of the

Authority's Engineer requesting for clarification, furnish the same to the Authority's Engineer within 10 (ten) days thereof. The Authority's Engineer shall, within a period of 30 (thirty) days from the date of receipt of such clarifications, forward in writing to the Contractor its determination of Time Extension. For the avoidance of doubt, the Parties agree that the Authority's Engineer shall, in accordance with the provisions of this Agreement, notify the Contractor of the aforesaid Time Extension no later than 60 (sixty) days from the date of receipt of the Contractor's claim for Time Extension.

Provided that when determining each extension of time under this Clause 8.4 [Extension of Time for Completion], the Authority's Engineer shall review previous determinations and may increase, but shall not decrease, the total Time Extension.

- 8.4.5 If the event or circumstance giving rise to the notice has a continuing effect:
- (a) the detailed claim shall be considered as interim;
 - (b) the Contractor shall, no later than 10 (ten) days after the close of each month, send further interim claims specifying the accumulated delay, the extension of time claimed, and such further particulars as the Authority's Engineer may reasonably require; and
 - (c) the Contractor shall send a final claim within 30 (thirty) days after the effect of the event or the circumstance ceases.

Upon receipt of the claim hereunder, the Authority's Engineer shall examine and determine the same in accordance with the provisions of Sub-Clause 8.4.4 within a period of 60 (sixty) days of the receipt thereof.

8.5 Incomplete Works In the event the Contractor fails to complete the Works in accordance with the Project Completion Schedule, including any Time Extension granted under this Agreement, the Contractor shall endeavour to complete the balance work expeditiously and shall pay Damages to the Authority in accordance with the provisions of Sub-Clause 10.3.2 for delay of each day until the Works are completed in accordance with the provisions of this Agreement. Recovery of Damages under this Clause shall be without prejudice to the rights of the Authority under this Agreement including the right to termination under Sub-Clause 19.1 [Termination for Contractor Default].

8.6 Latent Defects

8.6.1 The Contractor confirms that the design of the project meets the technical and performance requirements specified in the Contract Documents, including any applicable codes, standards, and regulations. The Contractor shall ensure that the design is based on sound engineering practices, and that it is fit for its intended purpose

8.6.2 The Contractor shall be responsible for any defects or deficiencies in the design that result in a failure to meet the project's technical and performance requirements. The Contractor shall correct any such defects or deficiencies at its own cost and shall be liable for any damages or losses that result from such failures.

- 8.6.3 If specified in the SCC, the contractor shall submit Latent Defects Guarantee for the amount and duration **as specified in the SCC**. During this period, the Contractor shall be responsible for any defects or deficiencies that are due to design errors or omissions and shall promptly take corrective action to remedy any such issues.
- 8.6.4 The Contractor shall maintain complete and accurate records of the design process, including all design calculations, drawings, specifications, and other relevant documentation. The Contractor shall provide the Authority with access to these records upon request.
- 8.6.5 If the Contractor engages any sub-contractors or third-party design professionals to assist with the design, the Contractor shall ensure that they are qualified and experienced in the relevant field, and that their work is subject to the same Latent Defects Guarantee as that of the Contractor.
- 8.6.6 This Clause shall survive the completion of the project and shall remain in effect until the expiration of the Latent Defects Period.
- 8.6.7 In accordance with Sub-clause 8.6.3, if required, the Contractor shall provide, for its obligations related to the Latent Defects Guarantee, no later than thirty (30) days prior to the expiry of the Performance Security, a Performance Security in respect of the Latent Defects Guarantee covering the Latent Defects Guarantee Period. Save as specifically provided otherwise in this Agreement, the terms of this Agreement that relate to the Performance Security shall apply mutatis mutandis to the Latent Defects Guarantee including the obligation of the Contractor to maintain and replenish such Bank guarantee and the rights of the Authority to encash and appropriate such Bank guarantee.

9. QUALITY ASSURANCE AND SUPERVISION

9.1 Quality of Materials and Workmanship 9.1.1 The Contractor shall ensure that the Construction, Materials and Workmanship are in accordance with the requirements specified in this Agreement, Specifications and Standards and Good Industry Practice.

9.1.2 The Contractor warrants that all Materials shall be new, unused, not reconditioned and in conformity with Specification and Standards, Applicable Laws and Good Industry Practice, and that the Contractor shall not use any materials which are generally recognised as being deleterious under Good Industry Practice.

9.2 Quality control system 9.2.1 The Contractor shall establish a quality control mechanism to ensure compliance with the provisions of this Agreement (the “**Quality Assurance Plan**” or “**QAP**”).

9.2.2 The Contractor shall, within 30 (thirty) days of the Appointed Date, submit to the Authority’s Engineer its Quality Assurance Plan which shall include the following:

- (a) organisation, duties and responsibilities, procedures, inspections and documentation;
- (b) procedure for Request for Inspection (RFI), procedure for submission and approval of Method Statements, Non-Conformity Reports (NCR) etc.
- (c) quality control mechanism including sampling and testing of Materials, test frequencies, standards, acceptance criteria, testing facilities, reporting, recording and interpretation of test results, approvals, check list for site activities, and proforma for testing and calibration in accordance with the Specifications and Standards and Good Industry Practice; and
- (d) internal quality audit system.

9.2.3 The Authority’s Engineer shall convey its comments to the Contractor within a period of 21 (twenty-one) days of receipt of the QAP stating the modifications, if any, required, and the Contractor shall incorporate those in the QAP to the extent required for conforming with the provisions of this Clause 9.2.

9.2.4 The Contractor shall procure all Contractor’s Documents, apparatus and instruments, fuel, consumables, water, electricity, labour, Materials, samples, and qualified personnel as are necessary for examining and testing the Works, Materials and Workmanship in accordance with the Quality Assurance Plan.

9.2.5 The cost of testing of Construction, Materials and Workmanship under this Clause 9 shall be borne by the Contractor.

9.3 Methodology 9.3.1 The Contractor shall, at least 15 (fifteen) days prior to the commencement of Works, submit to the Authority’s Engineer for review and consent the methodology proposed to be adopted for executing the Works and measures for ensuring safety. The Authority’s Engineer shall complete the review and convey its consent or its

comments, if any, to the Contractor within a period of 10 (ten) days from the date of receipt of the proposed methodology from the Contractor.

9.4 Inspection and review by the Authority 9.4.1 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 Authority's Engineer and the Contractor for taking remedial action in the event the Works are not in accordance with the provisions of this Agreement.

9.5 External Technical Audit 9.5.1 At any time during construction or the Defects Liability period, the Authority may appoint an external technical auditor to conduct an audit of the quality of the Works. The findings of the audit, to the extent accepted by the Authority, shall be notified to the Contractor and the Authority's Engineer for taking remedial action in accordance with this Agreement. The Contractor shall provide all assistance as may be required by the auditor in the conduct of its audit hereunder.

9.6 Inspection of Records 9.6.1 The Authority, Government of India, Exim Bank or any representative authorised by the Authority shall have the right to inspect the records and accounts and the submission of the bid of the Contractor relating to the Works.

9.7 Inspection of Works 9.7.1 The Authority's Engineer and its authorised representative shall at all times:
(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
(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.

9.7.2 The Contractor shall give the Authority's Engineer and its authorised agents access, facilities and safety equipment for carrying out their obligations under this Agreement.

9.7.3 The Authority's Engineer shall submit a monthly inspection report (the "Inspection Report") to the Authority and the Contractor bringing out the results of inspections and the remedial action taken by the Contractor in respect of Defects or deficiencies. For the avoidance of doubt, such inspection or submission of Inspection Report by the Authority's Engineer shall not relieve or absolve the Contractor of its obligations and liabilities under this Agreement in any manner whatsoever.

9.8 Monthly Progress Reports 9.8.1 During the Construction Period, the Contractor shall, no later than 10 (ten) days after the close of each month, furnish to the Authority's Engineer a monthly report on the progress of Works and shall promptly give such other relevant information as may be required by the Authority's Engineer. The Contractor agrees that reporting under this Clause shall continue till the date of the Defects Liability Period.

Each report shall, inter alia, include the following:

- (i) An executive summary

- (ii) Charts showing the Status of Contractor's Documents, construction and manufacturing and environmental works
- (iii) details of work subcontracted and the performance of Sub-contractors;
- (iv) for the construction of each main part of the Works, the extent of progress (both quantity and percentage of the whole), the actual or expected dates of commencement, anticipated completion date of the activity, Contractor's inspections and tests;
- (v) records of manpower and Contractor's equipment on the Site;
- (vi) copies for that month of quality assurance documents, test results and certificates, safety statistics, accident data collection including details of any hazardous incidents and activities relating to environmental aspects and public relations;
- (vii) comparisons of actual and planned progress, with details of any aspects which may jeopardise the completion in accordance with this Agreement, likely consequences and the measures being (or to be) adopted to overcome such aspects;
- (viii) details of any unresolved disputes or claims, in relation to the Project;
- (ix) Site Photographs clearly depicting the Physical Progress under the Project with electronic time-stamping and geo-tagging of the coordinates (latitude and longitude);
- (x) details of any revision to the cash flow estimate, together with a copy of the revised cash flow estimate;
- (xi) status of various Applicable Permits, Applicable Permits and compliance of conditions therein;
- (xii) details of various royalty payment and insurances required to be taken by the Contractor; and
- (xiii) such other reports as may be required by the Authority for enabling the Authority to comply with its obligations under the other Project contracts.
- (xiv) declaration towards compliance with Applicable Laws and Applicable Laws including but not limited to environmental and labour legislations.

The Authority's Engineer may suitably modify the format and the details required in the Monthly Progress Reports. However, the format shall substantially include the details required, as above.

9.9 Samples

9.9.1 The Contractor shall submit the following samples of Materials and relevant information to the Authority's Engineer for review:

- (a) manufacturer's test reports and standard samples of manufactured Materials; and
- (b) samples of such other Materials as the Authority's Engineer may require.

9.10 Tests

9.10.1 For determining that the Works conform to the Specifications and Standards, the Authority's Engineer shall require the Contractor to carry out or cause to be carried out tests, at such time and frequency and in such manner as specified in this Agreement, and in accordance with QAP & Good Industry Practice for quality assurance. The Authority may require the Contractor to carry out tests which not provided for in this Agreement at the Contractor's Cost which are reasonably required for determination of conformity with the Specifications and Standards .

9.10.2 The Contractor shall, with due diligence, carry out all the tests in accordance with this Agreement and furnish the results thereof to the Authority's Engineer. Of

the total tests for each category or type to be undertaken by the Contractor, the Authority's Engineer shall (a) carry out or cause to be carried out, test checks equal to about 20% (ten per cent) of the number of the tests required to be undertaken by the Contractor; and (b) witness or participate in at least 25% (ten per cent) of the number of such tests conducted or caused to be conducted by the Contractor. Provided that the Contractor shall give to the Authority's Engineer a reasonable advance notice of such test including the place and time thereof.

9.10.3 In the event that results of any tests conducted under this Sub-Clause 9.10 establish any Defects or deficiencies in the Works, the Contractor shall carry out remedial measures at its own cost and furnish a report to the Authority's Engineer in this behalf. The Authority's Engineer shall require the 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.

9.10.4 The Contractor agrees that neither the execution of a test and/or inspection of Plant or any part of the Facilities, nor the attendance by the Authority or the Project Manager, nor the issue of any test certificate pursuant to Sub-Clause 9.10, shall release the Contractor from any other responsibilities under the Contract.

9.11 Examination of work before covering up

9.11.1 In respect of the work which the Authority's Engineer is entitled to examine, inspect, measure or test before it is covered up or put out of view or any part of the work is placed thereon, the Contractor shall give notice to the Authority's Engineer whenever any such work is ready and before it is covered up by way of a **Request for Inspection (RFI)**. The Authority's Engineer shall then either carry out the examination, inspection or testing without unreasonable delay, or promptly give notice to the Contractor that the Authority's Engineer does not require to do so. Provided, however, that if any work is of a continuous nature where it is not possible or prudent to keep it uncovered or incomplete, the Contractor shall notify the schedule of carrying out such work to give sufficient opportunity, not being less than 3 (three) business days' notice, to the Authority's Engineer to conduct its inspection, measurement or test while the work is continuing. Provided further that in the event the Contractor receives no response from the Authority's Engineer within a period of 3 (three) business days from the date on which the Contractor's notice hereunder is delivered to the Authority's Engineer, the Contractor shall be entitled to assume that the Authority's Engineer would not undertake the said inspection.

9.12 Rejection

9.12.1 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 this Agreement, the Authority's Engineer may reject such Plant, Material, Design or Workmanship by giving notice to the Contractor, with reasons, by way of issuance of **Non-Conformity Reports (NCR)**. The Contractor shall then promptly make good the Defect and ensure that the rejected item complies with the requirements of this Agreement.

9.12.2 If the Authority's Engineer requires a Plant, Material, Design or Workmanship to be retested, the tests shall be repeated on the same terms and conditions, as applicable in each case. If the rejection and retesting cause the Authority to incur any additional costs, such costs shall be recoverable by the Authority from the

Contractor and may be deducted by the Authority from any monies due to be paid to the Contractor.

9.12.3 The Contractor shall not be entitled to any extension of time on account of rectifying any Defect or retesting as specified in this Sub-Clause 9.12 [Rejection].

9.12.4 No examination, inspection, measurement or testing of any Plant, Material, Design or Workmanship by the Authority's Engineer or its failure to convey its observations or to examine, inspect, measure or test shall relieve the Contractor of its obligations and liabilities under this Agreement in any manner nor shall the Authority be liable for the same in any manner.

9.12.5 In case of issuance of any NCR, the payments to the Contractor shall be withheld for the particular item in the IPC for which the examination, inspection, measurement or testing pertains till the Contractor makes good the Defect and ensure that the rejected item complies with the requirements of this Agreement, and to the satisfaction to the Authority's Engineer.

9.13 Remedial Work

9.13.1 Notwithstanding any previous test or certification, the Authority's Engineer may instruct the Contractor to:

- (a) remove from the Site and replace any Plant or Materials which are not in accordance with the provisions of this Agreement;
- (b) remove and re-execute any work which is not in accordance with the provisions of this Agreement and the Specification 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 Sub-Clause 17.6 [Effect of Force Majeure Event on the Agreement] shall apply.

9.13.2 If the Contractor fails to comply with the instructions issued by the Authority's Engineer under Sub-Clause 9.13.1, within the time specified in the Authority's Engineer's notice or as mutually agreed, the Authority's Engineer shall promptly inform the Authority. The Authority, as deemed fit by it, may get the work executed by another agency. The cost so incurred by the Authority for undertaking such work shall, without prejudice to the rights of the Authority to recover Damages in accordance with the provisions of this Agreement, be recoverable from the Contractor and may be deducted by the Authority from any monies due to be paid to the Contractor.

9.14 Delays during Construction

Without prejudice to the provisions of Sub-Clause 7.3.2 [Extension of Time for delay in handing over the Site] , in the event the Contractor does not achieve any of the Project Milestones within the time period stipulated in Schedule – H or the Authority's Engineer shall have reasonably determined that the rate of progress of Works is such that Completion of the Project is not likely to be achieved by the end of the Scheduled Completion Date, it may notify the same to the Contractor, and the Contractor shall, within 15 (fifteen) days of such notice, by a communication inform the Authority's Engineer in reasonable detail about the steps it proposes to take to expedite progress and the period within which it shall achieve the Project Completion Date.

9.15 Quality Control Records and Documents The Contractor shall hand over to the Authority's Engineer a copy of all its quality control records and documents before the Completion Certificate is issued pursuant to Sub-Clause 10.4 [Project Completion Certificate].

9.16 Video Recording 9.16.1 During the Construction Period, the Contractor shall provide to the Authority and Exim Bank for every calendar quarter, a video which shall, inter alia, include recording using cameras or such recording devices mounted on the drones, which will be compiled digital video disc or flash drive or a Digitally Uploaded Secure File in Video Format or any substitute thereof, covering the status and progress of Works in that quarter, and the Project Site. The video recording shall be provided to the Authority no later than 15 (fifteen) days after the close of each quarter after the Appointed Date. The Contractor shall obtain permissions, as required from the Authority for video recording of the Project Site and usage of drones.

9.17 Suspension of unsafe Construction Works 9.17.1 In cases of emergency or urgency arising in connection with and during execution of works, the Contractor shall undertake any protective prevent damages to the Facilities.

9.17.2 The Authority, on its own volition or on the recommendation of Authority's Engineer, may by notice require the Contractor to suspend forthwith the whole or any part of the Works if, in the reasonable opinion of the Authority's Engineer or the Authority, as the case may be, such work threatens the safety of the Users and/or other persons on or about the Project.

9.17.3 The Contractor shall, pursuant to the notice under Sub-Clause 9.17.1, suspend the Works or any part thereof for such time and in such manner as may be specified by the Authority and thereupon carry out remedial measures to secure the safety of suspended works, the Users, other persons and vehicles on or about the Project. The Contractor may by notice require the Authority's Engineer to inspect such remedial measures forthwith and make a report to the Authority recommending whether or not the suspension hereunder may be revoked. Upon receiving the recommendations of the Authority's Engineer, the Authority shall either revoke such suspension or instruct the Contractor to carry out such other and further remedial measures as may be necessary and reasonable, and the procedure set forth in this Sub-Clause 9.17 [Suspension of unsafe Construction Works] shall be repeated until the suspension hereunder is revoked.

9.17.4 Subject to the provisions of Sub-Clause 17.6 [Effect of Force Majeure Event], all reasonable costs incurred for maintaining and protecting the Works or part thereof during the period of suspension (the "**Preservation Costs**"), shall be borne by the Contractor. provided that if the suspension has occurred as a result of any breach of this Agreement by the Authority, the Preservation Costs shall be borne by the Authority.

9.17.5 If suspension of Works is for reasons not attributable to the Contractor, the Authority's Engineer shall determine any Time Extension to which the Contractor is reasonably entitled in accordance with the provisions of Sub-Clause 8.4 [Extension of time for completion].

10. COMPLETION CERTIFICATE

- 10.1 Tests on Completion** 10.1.1 No later than 30 (thirty) days prior to the likely completion of the Project, or a Section thereof, the Contractor shall notify the Authority's Engineer of its intent to subject the Project or a Section thereof, to Tests. The date and time of each of the Tests shall be determined by the Authority's Engineer in consultation with the Contractor, and notified to the Authority who may designate its representative to witness the Tests. The Contractor shall either conduct the Tests as directed by the Authority's Engineer or provide such assistance as the Authority's Engineer may reasonably require for conducting the Tests. For the avoidance of doubt, the Parties agree that in the event of the Contractor and the Authority's Engineer failing to mutually agree on the dates for conducting the Tests, the Contractor shall fix the dates by giving not less than 10 (ten) days' notice to the Authority's Engineer.
- 10.1.2 All Tests shall be conducted in accordance with Schedule-I at the cost and expense of the Contractor. The Authority's Engineer 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 Authority's Engineer 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 Contractor to remedy and rectify any Defect or deficiency. Upon completion of each Test, the Authority's Engineer shall provide to the Contractor and the Authority copies of all Test data including detailed Test results. For the avoidance of doubt, the Parties expressly agree that the Authority's Engineer may require the Contractor to carry out or cause to be carried out additional Tests, in accordance with Good Industry Practice, for determining the compliance of the Project or Section thereof with the Specifications and Standards.
- 10.2 Provisional Certificate** 10.2.1 Subject to the provisions of Sub-Clause 10.2.5, upon completion of all Works forming part of the Project or each section thereof and Tests in respect of the completed Works or section thereof are successful, save and except in case of rescheduling of tests in accordance with Sub-Clause 10.5 [Rescheduling of Tests], the Authority's Engineer shall, at the request of the Contractor, issue a provisional certificate of completion substantially in the form set forth in Appendix-2 (the "**Provisional Certificate**"). The Provisional Certificate shall have appended thereto a list of outstanding items of work (the "**Punch List**") that need to be completed in accordance with the provisions of this Agreement. The Contractor undertakes to complete such outstanding items of works, within a period of 30 days of issuance of Provisional Certificate or any other period as specified in the Punch List, but in any case before the completion of Defects Liability Period in accordance with Sub-Clause 13.1 [Defects Liability Period]. The Parties further agree that Provisional Certificate shall not be issued if the completed Works cannot be safely and reliably placed in service of the Users thereof. For the avoidance of doubt, the Parties agree that the Punch List shall include all Works for which Time Extension has been granted and shall also include any minor outstanding items of work forming part of the completed Sections if such works do not materially affect the use of the completed Sections for their intended purpose.

For the avoidance of doubt, failure to include all pending works for completion of the project as per the agreement shall not relieve or absolve the Contractor of its obligations and liabilities under this Agreement in any manner whatsoever.

10.2.2 Upon issue of Provisional Certificate, the provisions of Clause 13 [Defects Liability] shall apply to the completed parts of the Project and the property and ownership of all such completed Works shall vest in the Authority.

10.2.3 If the Authority's Engineer determines that the Project or any completed part thereof does not conform to the provisions of this Agreement and cannot be safely and reliably placed in operation, it shall forthwith make a report in this behalf and send copies thereof to the Authority and the Contractor and withhold issuance of the Provisional Certificate until the Defects or deficiencies are rectified by the Contractor and Tests are successful in accordance with this Clause 10.

10.2.4 Notwithstanding anything to the contrary contained in Sub-Clause 10.2.3, the Authority may, at any time after receiving a report from the Authority's Engineer, direct the Authority's Engineer to issue a Provisional Certificate under Sub-Clause 10.2.1 and such direction shall be complied forthwith.

10.2.5 No Provisional Certificate shall be issued under the provisions of this Clause 10.2 [Provisional Certificate] until the Contractor has submitted valid claims for payment of at least 90%(ninety per cent) of the amount arrived at after reducing the lump sum price specified in Sub-clause 15.1.1 by the amount attributable to works which have been withdrawn under the provisions of Sub-Clause 7.3.3. It is further agreed that all price adjustments made in pursuance of Sub-Clause 15.10 [Final Payment Statement] shall not be reckoned for computation of the claims for payments referred to in this Sub-Clause 10.2.5. It is also agreed that any Change of Scope effected within 30 (thirty) days of the Appointed Date shall be reckoned for the purposes of determining the Contract Price hereunder.

10.3 Completion of Remaining Works / Punch List All items in the Punch List shall be completed by the Contractor in accordance with the provisions of this Agreement. For any delay in their completion other than for the reasons attributable to the Authority or due to Force Majeure, the Authority shall be entitled to recover Damages from the Contractor in accordance with the provisions of Sub-Clause 7.3.2 of this Agreement.

10.4 Project Completion Certificate 10.4.1 The Authority's Engineer, at the request of the Contractor shall issue to the Contractor and the Authority a certificate substantially in the form set forth in Appendix-2 (the "**Project Completion Certificate**"), upon

- a) receipt of Contractor's request specifying the value of work done in accordance with this Agreement upto the Completion Date of Works and any further sums which the Contractor considers to be due in relation to the Works and under this Agreement;
- b) completion of all Works, including the items specified in the Punch List;
- c) Authority's Engineer determining the Tests to be successful;
- d) Finalisation of the Maintenance Manual in accordance with Sub-Clause 12.1 [Maintenance Manual];
- e) handing over of the as-built drawings and other related documents by the Contractor in accordance with Sub-Clause 8.2.7; and

f) Clearance of Site in accordance with Sub-Clause 3.2.1 [Clearance of Site]

10.4.2 Upon receiving the Project Completion Certificate, the Contractor shall remove its equipment, materials, debris and temporary works from the Site within a period of 30 (thirty) days thereof, failing which the Authority may remove or cause to be removed, such equipment, materials, debris and temporary works and recover from the Contractor an amount equal to 120% (one hundred and twenty per cent) of the actual cost of removal incurred by the Authority. However, the Contractor shall maintain the equipment, materials and manpower at the Project Site for the Defects Liability Period and Maintenance Period to ensure that the Contractor continues to meet its obligations under this Agreement.

10.4.3 Without prejudice to the obligations of the Contractor specified in Clause 13 [Defects Liability], the property and ownership of all the completed Works forming part of the Project shall vest in the Authority.

10.5 Rescheduling of Tests

10.5.1 If the Authority's Engineer certifies to the Authority and the Contractor that it is unable to issue the Project Completion Certificate or Provisional Certificate, as the case may be, because of events or circumstances on account of which the Tests could not be held or had to be suspended, the Contractor shall be entitled to re-schedule the Tests and hold the same as soon as reasonably practicable.

11. CHANGE OF SCOPE

11.1 Change of Scope 11.1.1 The Authority may, notwithstanding anything to the contrary contained in this Agreement, require the Contractor to make modifications or alterations to the Works ("**Change of Scope**") before the issue of the Project Completion Certificate either by giving an instruction or by requesting the Contractor to submit a proposal for Change of Scope involving additional cost or reduction in cost. Any such Change of Scope shall be made and valued in accordance with the provisions of this Clause 11 [Change of Scope].

11.1.2 Change of Scope shall mean:

- a) change in specifications of any item of Works;
- b) omission of any work from the Scope of the Project except under Sub-Sub-Clause 7.3.3; provided that, subject to Sub-Clause 13.5; 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.

11.1.3 If the Contractor determines at any time that a Change of Scope will, if adopted, (i) accelerate completion, (ii) reduce the cost to the Authority of executing, maintaining or operating the Project, (iii) improve the efficiency or value to the Authority of the completed Project, or (iv) otherwise be of benefit to the Authority, it shall prepare a proposal with relevant details as stated in Sub-Clause 11.2.2 at its own cost. The Contractor 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 Clause 11 or reject the proposal and inform the Contractor of its decision.

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

11.2 Procedure for Change of Scope 11.2.1 In the event of the Authority determining that a Change of Scope is necessary, it may issue or direct the Authority's Engineer to issue to the Contractor a notice specifying in reasonable detail the works and services contemplated thereunder (the "**Change of Scope Notice**").

11.2.2 Upon receipt of a Change of Scope Notice, the Contractor shall, with due diligence, provide to the Authority and the Authority's Engineer such information as is necessary, together with preliminary documentation in support of:

- a) the impact, if any, which the Change of Scope is likely to have on the Project Completion Schedule if the works or services are required to be carried out during the Construction Period; and
- b) the options for implementing the proposed Change of Scope and the effect, if any, each such option would have on the costs and time thereof, including the following details:

- (i) break down of the quantities, unit rates and cost for different items of work;
- (ii) proposed design for the Change of Scope; and
- (iii) proposed modifications, if any, to the Project Completion Schedule of the Project.

For the avoidance of doubt, the Parties expressly agree that, subject to the provisions of Sub-Clause 11.4.2, the Contract Price shall be increased or decreased, as the case may be, on account of Change of Scope.

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

- a) For works of similar nature compared to the Works being executed, the quotation shall be based on the rate for the work inclusive of all labour, Materials, equipment, incidentals, overheads and profit derived in accordance with the provisions of Sub-Clause 15.3 [Procedure for Estimating the Payment for Works].
- b) For works not similar in nature to the Works being executed, the cost of work shall be derived on the basis of prevailing market rates as determined by the Authority's Engineer in accordance with Good Industry Practice, in consultation with the Contractor.

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

- a) issue a Change of Scope Order requiring the Contractor to proceed with the performance thereof at the rates and conditions approved by the Authority till the matter is resolved in accordance with Clause 22 [Dispute Resolution]; or
- b) proceed in accordance with Sub-Clause 11.5 [Power of the Authority to undertake works].

11.2.5 The provisions of this Agreement, insofar as they relate to Works and Tests, shall apply *mutatis mutandis* to the works undertaken by the Contractor under this Clause 11.

11.3 Payment for Change of Scope

11.3.1 Payment for Change of Scope shall be made in accordance with the payment schedule specified in the Change of Scope Order.

11.4 Restrictions on Change of Scope

11.4.1 No Change of Scope shall be executed unless the Authority has issued the Change of Scope Order, with the approval of the Exim Bank / Government of India, save and except any Works necessary for meeting any Emergency.

11.4.2 Unless the Parties mutually agree to the contrary, the total value of all Change of Scope Orders shall not exceed percentage of the Contract Price **as specified in the SCC**.

11.4.3 Notwithstanding anything to the contrary in this Clause 11, no payment against change of scope shall be made by Exim Bank unless approved by Exim Bank.

11.5 Power of the Authority to undertake works 11.5.1 In the event the Parties are unable to agree to the proposed Change of Scope Orders in accordance with Sub-Clause 11.2 [Procedure for Change of Scope], the Authority may, after giving notice to the Contractor and considering its reply thereto, award such works or services to any person as the Authority may deem fit. It is agreed that the Contractor shall provide assistance and cooperation to the person who undertakes the works or services hereunder, but shall not be responsible for rectification of any Defects in works carried out by other agencies. The Authority may award such works or services to any person at the discretion of the Authority. The Authority further acknowledges and agrees that it shall not undertake any works or services under this Sub-Clause 11.5.1 if such works or services cause a Material Adverse Effect on the Contractor

11.5.2 The works undertaken in accordance with this Sub-Clause 11.5 shall conform to the Specifications and Standards and shall be carried out in a manner that minimises disruption to the Project. The provisions of this Agreement, insofar as they relate to Works and Tests, shall apply *mutatis mutandis* to the works carried out under this Sub-Clause 11.5.

12. MAINTENANCE OBLIGATIONS

12.1 Maintenance Manual

12.1.1 No later than 60 (sixty) days prior to the Project Completion Date, the Contractor shall, in consultation with the Authority's Engineer, evolve a maintenance manual (the "**Maintenance Manual**") for the regular and preventive maintenance of the Project in conformity with the Specifications and Standards, safety requirements and Good Industry Practice, and shall provide 3 (three) copies thereof to the Authority's Engineer.

12.1.2 The Maintenance Manual shall be in sufficient details for the Authority to:

(a) operate and maintain the Works to ensure that the performance of the Works or part thereof as the case may be, continues to comply with the performance criteria of the Project;

(b) carry out operations, maintenance, dismantling, reassembling, repair the Works, as the case may be;

(c) inventory of spare parts required for Maintenance of the Project;

(d) List of Spare Parts required for as mutually agreed between the Authority and the Contractor.

12.1.3 The Maintenance Manual shall Identify the spare parts (including specifications and quantities) and the terms and conditions relating to the supply thereof, along with the price of such spare parts as mutually decided between Contractor and the Authority before commencement of the Maintenance Period, which shall be separately paid to the Contractor by the Authority. The price of such spare parts shall include the purchase price therefor and other costs and expenses (including the Contractor's fees) relating to the supply of spare parts.

12.1.4 Authority's Engineer shall review the Maintenance Manual within 15 (fifteen) days of its receipt and communicate its comments to the Contractor for necessary modifications, if any.

12.1.5 The conditions of the Contract pertaining to Works shall apply mutatis mutandis to undertaking the Maintenance Obligations.

12.2 Maintenance obligations of the Contractor

12.2.1 The Contractor shall maintain the Project for a period as **specified in the SCC**, commencing from the date of the Project Completion Certificate (the "**Maintenance Period**"). For the performance of its Maintenance obligations, the Contractor shall be paid in accordance with the Payment Milestones outlines in **Schedule-F**. The amount for the performance of the Contractor's Maintenance Obligations shall be inclusive of all taxes.

12.2.2 During the Maintenance Period, the Authority shall facilitate the Contractor access to the Site for Maintenance in accordance with this Agreement. The obligations of the Contractor hereunder shall include:

a) undertaking routine maintenance ;

b) undertaking repairs to Structure(s);

c) informing the Authority of any unauthorised use of the Project; and

d) operation and maintenance of all communication, patrolling, and administrative systems necessary for the efficient maintenance of the Project in accordance with the provisions of this Agreement.

e) maintain requisite staff and materials as may be required for successfully undertaking the maintenance in conformity with the Maintenance Manual

12.2.3 In respect of any Defect or deficiency not specified in this Agreement, the Contractor shall, at its own cost, undertake repair or rectification in accordance with Good Industry Practice, save and except to the extent that such Defect or deficiency shall have arisen on account of any wilful default or neglect of the Authority or a Force Majeure Event.

12.2.4 The Contractor shall remove promptly from the Project Site any waste materials (including hazardous materials and wastewater), rubbish and other debris (including, without limitation, accident debris) and keep the Project in a clean, tidy and orderly condition, and in conformity with the Applicable Laws, Applicable Permits and Good Industry Practice.

12.2.5 The Contractor shall ensure and procure that at all times during the Maintenance Period, the Project conforms to the maintenance requirements set forth in Schedule - M (the “**Maintenance Requirements**”).

12.2.6 The Contractor shall make its claim for maintenance payment at the end of each year of Maintenance Period, with the entity so identified by the Authority for this purpose, and as informed by the Authority from time-to-time, supported with necessary particulars and documents in accordance with this Agreement.

12.2.7 Within 15 (fifteen) days of the receipt of the claim, the Authority’s Agent shall determine and shall deliver to the Authority and the Contractor, an IPC certifying the amount due and payable to the Contractor, after adjusting any dues from the Contractor for the maintenance obligations, including any amount to be claimed under Sub-Clause 12.6 [Breach of Maintenance].

12.3 Maintenance Programme

The Contractor shall prepare a monthly maintenance programme (the “**Maintenance Programme**”) in consultation with the Authority’s Engineer/Authority/Authority’s Agent. The Maintenance Programme shall contain the following (i) the proposed maintenance Works; and (iii) deployment of resources for maintenance Works.

12.4 Safety

The Contractor shall ensure safe conditions for the Users, and in the event of unsafe conditions and accidents, it shall follow the relevant operating procedures for removal of obstruction and debris without delay. Such procedures shall conform to the provisions of this Agreement, Applicable Laws, Applicable Permits and Good Industry Practice.

12.5 Closure

The Contractor shall not close Project for undertaking maintenance works except with the prior written approval of the Authority.

12.6 Breach of Maintenance

12.6.1 In the event that the Contractor fails to repair or rectify any Defect or deficiency set forth in Schedule-M within the period specified therein, it shall be deemed as failure of performance of maintenance obligations by the Contractor and the Authority shall be entitled to reduce the amount payable towards maintenance without prejudice to the rights of the Authority under this

Agreement, including Termination thereof.

12.6.2 If the nature and extent of any Defect justifies more time for its repair or rectification than the time specified in Schedule - M, the Contractor shall be entitled to additional time. Such additional time shall be determined by the Authority / Authority's Engineer and conveyed to the Contractor with reasons thereof.

12.6.3 Any reduction made on account of non-compliance by the Contractor in accordance with Sub-Clause 12.6.1, will not be paid subsequently even after establishing the compliance thereof.

12.7 The Authority's right to take remedial measures

In the event the Contractor does not maintain and/or repair the Project or any part thereof in conformity with the Maintenance Requirements, the Maintenance Manual or the Maintenance Programme, as the case may be, and fails to commence remedial works within 15 (fifteen) days of receipt of the Maintenance Inspection Report or a notice in this behalf from the Authority or the Authority's Engineer, as the case may be, the Authority shall, without prejudice to its rights under this Agreement including Termination thereof, be entitled to undertake such remedial measures at the cost of the Contractor, and to recover its cost from the Contractor. In addition to recovery of the aforesaid cost, a sum equal to 20% (twenty per cent) of such cost shall be paid by the Contractor to the Authority as Damages.

12.8 Restoration of loss or damage to Project

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

12.9 Overriding powers of the Authority

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

(b) In the event that the Contractor, upon notice under the clause above fails to rectify or remove any hardship or danger within a reasonable period, the Authority may exercise overriding powers under this Agreement and take over the performance of any or all the obligations of the Contractor to the extent deemed necessary by it for rectifying or removing such hardship or danger; provided that the exercise of such overriding powers by the Authority shall be of no greater scope and of no longer duration than is reasonably required hereunder; provided further that any costs and expenses incurred by the Authority in discharge of its obligations hereunder shall be recovered by the Authority from the Contractor, and the Authority shall be entitled to deduct any such costs and expenses incurred from the payments due to the Contractor for Maintenance.

12.10 Report of Unusual Occurrence The Contractor shall, during the Maintenance Period, prior to the close of each day, send to the Authority and the Authority's Engineer, a report stating accidents and unusual occurrences on the Project relating to the safety and security of the users and worthiness of the Project. A monthly summary of such reports shall also be sent within 3 (three) business days of the closing of month. For the purposes of this Sub-Clause 12.10, accidents and unusual occurrences shall include: (a) accident, death or severe injury to any person; (b) damaged or dislodged fixed equipment; (c) flooding; and (d) any other unusual occurrence.

12.11 Maintenance Completion Certificate The Maintenance Requirements set forth in **Schedule M** having been duly carried out, Maintenance Period as set forth in Clause 12 [Maintenance Obligations] having been expired and Authority's Engineer determining the Tests on Completion of Maintenance to be successful, the Authority will issue Maintenance Completion Certificate to the Contractor substantially in the format set forth in **Appendix-3**.

13. DEFECTS LIABILITY

13.1 Defects Liability Period 13.1.1 The Contractor shall be responsible for all the Defects and deficiencies, except fair wear and tear in the Project or any Section thereof, from the Completion Date till the expiry of a period **as specified in the SCC (the “Defects Liability Period”)**. For the purpose of this Clause 13 [Defects Liability], Defects shall mean any deviation in the condition of the Works from the condition in which the Works are expected to be delivered to the Authority as required under the Contract Agreement (excluding any fair wear and tear), for the reasons attributable to the Contractor.

13.1.2 In order that the Works shall be in the condition required by the Contract Agreement (excluding any fair wear and tear) by the expiry date of the relevant Defects Liability Period or as soon as practicable, the Contractor shall:

- (a) complete any work which is outstanding on the relevant Completion Date, within such reasonable time as is instructed by the Authority; and
- (b) execute all work required to remedy defects or damage, of which a Notice is given to the Contractor.

13.1.2 Except as provided in this Clause 13 [Defects Liability] and in accordance with the provisions of this Agreement, the Contractor shall be under no liability whatsoever and howsoever arising, in respect of defects and deficiencies in the Facilities or any part thereof, the Plant, design or engineering or work executed that appear after Completion of the Facilities or any part thereof / issuance of Maintenance Completion Certificate, except where such defects and deficiencies are the result of the gross negligence, fraud, or criminal or willful action of the Contractor.

13.2 Remedy and rectification of Defects and deficiencies 13.2.1 The Contractor shall maintain requisite staff and materials and shall repair or rectify all Defects and deficiencies observed by the Authority’s Engineer during the Defects Liability Period within a period of 15 (fifteen) days from the date of notice issued by the Authority / Authority’s Engineer in this behalf, or within such reasonable period as may be determined by the Authority / Authority’s Engineer at the request of the Contractor, in accordance with Good Industry Practice.

13.3 Cost of remedying Defects For the avoidance of doubt, any repair or rectification undertaken in accordance with the provisions of Sub-Clause 13.2 [Remedy and rectification of Defects and deficiencies], including any additional tests, shall be carried out by the Contractor at its own risk and cost, to the extent that such rectification or repair is attributable to:

- a) the design of the Works, other than the part of design for which the Authority is responsible;
- b) Works, Plant, Materials or Workmanship not being in accordance with this Agreement and the Specifications and Standards;
- c) improper maintenance during construction of the Project by the Contractor; or
- d) failure by the Contractor to comply with any other obligation under this Agreement.

13.4 Contractor’s failure to rectify In the event that the Contractor fails to repair or rectify such Defect or deficiency within the period specified in Sub-Clause 13.2 [Remedy and rectification of Defects

Defects

and deficiencies], the Authority shall be entitled to get the same repaired, rectified or remedied at the Contractor's cost so as to make the Project conform to the Specifications and Standards and the provisions of this Agreement. All costs consequent thereon shall, after due consultation with the Authority and the Contractor, be determined by the Authority's Engineer. The cost so determined, and an amount equal to the percentage **as specified in the SCC** of such cost as Damages, shall be recoverable by the Authority from the Contractor and may be deducted by the Authority from any monies due to the Contractor.

13.5 Contractor to search cause

13.5.1 The Authority's Engineer may instruct the Contractor to examine the cause of any Defect in the Works or part thereof before the expiry of the Defects Liability Period.

13.5.2 In the event any Defect identified under Sub-Clause 13.5.1 is attributable to the Contractor, the Contractor shall rectify such Defect within the period specified by the Authority's Engineer, and shall bear the cost of the examination and rectification of such Defect.

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

13.6 Extension of Defects Liability Period

13.6.1 The Defects Liability Period shall be deemed to be extended till the identified Defects under Sub-Clause 13.2 [Remedy and rectification of Defects and deficiencies] have been remedied. The parties agree that the Defects Liability Period shall not be extended for a period of more than 2 years after the end of defects Liability Period in accordance with Sub-Clause 13.1 [Defects Liability Period] above. Provided however that if Works were suspended by the Authority in accordance with Sub-Clause 9.17 [Suspension of unsafe Construction Works] (except where the suspension is on account of failure by the Contractor), the Contractor's obligation under this Clause 13 shall not apply to any defects or damages occurring more than 2 years after the Defects Liability Period for the Works, of which the Works would otherwise have expired.

13.6.2 Any Materials or Works with Defects identified under Sub-Clause 13.2 [Remedy and rectification of Defects and deficiencies] and replaced or repaired during the Defects Liability Period or the extended Defects Liability Period, as the case may be, would be further warranted for a period of twelve (12) months from the Completion Date of such repair or replacement.

13.6.3 The Contractor shall, upon termination or expiry of this Agreement, or upon expiry of the Defects Liability Period, assign any outstanding benefit in respect of any subcontract or any warranty from any sub-contractor, to the Authority or to such other person as the Authority may direct.

14. AUTHORITY'S ENGINEER

14.1 Appointment of the Authority's Engineer

14.1.1 The Authority shall appoint a Authority's representative, who, except otherwise stated in this Contract Agreement, shall be deemed to act on behalf of the Authority under this Agreement (the "**Authority's Engineer**"). The Authority's Engineer can be a legal entity or a natural person.

14.1.2 The appointment of the Authority's Engineer shall be made no later than 15 (fifteen) days from the date of this Agreement. The Authority shall notify the appointment or replacement of the Authority's Engineer to the Contractor forthwith.

14.1.3 The staff of the Authority's Engineer shall include suitably qualified engineers and other professionals who are competent to assist the Authority's Engineer to carry out its duties.

14.1.4 The Authority's Engineer shall, except in cases otherwise stated in this Agreement, deemed to have full authority of the Authority under this Agreement.

14.1.5 The appointment of Authority's Engineer does not in any manner derogate / diminish the power vested in the Authority as per the applicable Laws to issue necessary instructions in relation to the project. The Contractor shall promptly and strictly comply with all such instructions given by the Authority for the project.

14.2 Duties and Functions of the Authority's Engineer

14.2.1 The Authority's Engineer shall perform its duties and discharge its functions in accordance with the provisions of this Agreement, and substantially in accordance with the terms of reference ("**Terms of Reference**" or "**TOR**") set forth in Annex 1 of **Schedule -J**, but subject to obtaining prior written approval of the Authority before determining the following:

- a) any Time Extension;
- b) any additional cost to be paid by the Authority to the Contractor;
- c) Grant of Handing Over of Site; or
- d) the Termination Payment.
- e) any other matter which is not specified in (a), (b) or (c) above and which creates a financial obligation or liability on either Party.
- f) Change of Scope

14.2.2 No decision or communication of the Authority's Engineer shall be effective or valid unless it is accompanied by an attested true copy of the approval of the Authority for and in respect of any matter specified in Sub-Clause 14.2.1.

14.2.3 The Authority's Engineer shall submit regular periodic reports, at least once every month, to the Authority in respect of its duties and functions under this Agreement. Such reports shall be submitted by the Authority's Engineer within 10 (ten) days of the beginning of every month. For the avoidance of doubt, the Authority's Engineer shall include in its report compliance of the recommendations of the Safety Consultant.

14.2.4 After fulfilment of the conditions prescribed under Appointed Date, the Authority's Engineer shall issue notice to the Contractor for Commencement of Works.

14.2.5 The Authority's Engineer, in consultation with the Authority, shall examine the particulars of the sub-contractor and no later than 15 (fifteen) business days from the date of receiving the communication from the Contractor or 15 (fifteen) business days from the date of receipt of last material information in this regard, whichever is later, shall convey its decision on appointment of the sub-contractor. The Authority's Engineer shall provide reasons in case it decides not to proceed with the sub-contract.

14.2.6 Such decision given under Sub-Clause 14.2.5 by the Authority's Engineer shall be in accordance with the qualifications of the sub-contractor as **specified in the SCC** and followed by the Contractor as given under Sub-Clause 3.2.5. Such approval shall be required for appointment of all the sub-contractors, irrespective of the sub-contractor being an equipment supplier, labour or material supplier or any other sub-contractor.

14.3 Authorised Signatories

14.3.1 In case the Authority's Engineer is a Legal entity, the Authority shall require the Authority's Engineer to designate and notify to the Authority and the Contractor up to 2 (two) persons employed in its firm to sign for and on behalf of the Authority's Engineer, and any communication or document required to be signed by the Authority's Engineer shall be valid and effective only if signed by any of the designated persons; provided that the Authority's Engineer may, by notice in writing, substitute any of the designated persons by any of its employees.

14.4 Instructions of the Authority's Engineer

14.4.1 The Authority's Engineer may issue to the Contractor instructions under this agreement, including any instructions for remedying any Defect. The Contractor shall take such instructions from the Authority's Engineer only.

14.4.2 All instructions issued by the Authority's Engineer shall be in writing.

14.5 Determination by the Authority's Engineer

14.5.1 The Authority's Engineer shall consult with each Party in an endeavour to reach agreement wherever this Agreement provides for the determination of any matter by the Authority's Engineer. If such agreement is not achieved, the Authority's Engineer shall make a fair determination in accordance with this Agreement having due regard to all relevant circumstances. The Authority's Engineer shall give notice to both the Parties of each such agreement or determination, with supporting particulars.

14.5.2 Each Party shall give effect to each agreement or determination made by the Authority's Engineer in accordance with the provisions of this Agreement. Provided, however, that if any Party disputes any instruction, decision, direction or determination of the Authority's Engineer, the Dispute shall be resolved in accordance with the Dispute Resolution Procedure set out under this Agreement.

14.6 Remuneration of the Authority's Engineer

14.6.1 The remuneration, cost and expenses of the Authority's Engineer shall be paid by the Authority.

14.7 Termination of appointment of the Authority's Engineer

14.7.1 The Authority at its discretion, replace the Authority's Engineer at any time. The Authority shall notify the Contractor in about such replacement along with the details of the appointed Authority's Engineer along with the date of appointment.

14.7.2 If the Contractor has reasons to believe that the Authority's Engineer is not discharging its duties and functions in accordance with the provisions of this Agreement, it may make a written representation to the Authority and seek termination of the appointment of the Authority's Engineer. Upon receipt of such representation, the Authority shall hold a tripartite meeting with the Contractor and Authority's Engineer and make best efforts for an amicable resolution of the Dispute. In the event that the appointment of the Authority's Engineer is terminated hereunder, the Authority shall appoint forthwith another Authority's Engineer in accordance with Sub-Clause 14.1 [Appointment of the Authority's Engineer].

14.8 Arrangement

14.8.1 In the event that the Authority has not appointed an Authority's Engineer, or the Authority's Engineer so appointed has relinquished its functions or defaulted in discharge thereof, the Authority may, in the interim, designate and authorise any person to discharge the functions of the Authority's Engineer in accordance with the provisions of this Agreement. Provided, however, that nothing contained in this Sub-Clause 14.8 shall in any manner restrict the rights of the Authority to enforce compliance of the provisions of this Agreement.

Financial Covenants

15. PAYMENTS

15.1 Contract Price

15.1.1 The Authority shall make payments to the Contractor for the Works on the basis of the lump sum price accepted by the Authority in consideration of the obligations specified in this Agreement for an amount **as specified in the SCC** (the “**Contract Price**”), which shall be subject to adjustments in accordance with the provisions of this Agreement. The Parties further agree that save and except as provided in this Agreement, the Contract Price shall be valid and effective until issue of Maintenance Completion Certificate.

15.1.2 The Contract Price includes all duties, taxes, royalty and fees that may be levied in accordance with the laws and regulations in force, on the Contractor's equipment, Plant, Materials and supplies acquired for the purpose of this Agreement, on the Works undertaken under this Agreement. Nothing in this Agreement shall relieve the Contractor from its responsibility to pay any tax outside the Authority's Country.

15.1.3 In accordance with the IDEAS Guidelines, the goods and services provided under this contract shall be free from all kinds of taxes and duties of any nature whatsoever levied in the Authority's Country including corporate/ personal/ value added taxes, Import/Custom Duties, Special levies and social security contributions for temporary employees deputed by Contractor in relation to the contract execution in the Authority's country, including tax exemptions if applicable for eligible services to be rendered locally. If the domestic laws/rules of the Authority's Country prohibit exemption of any taxes to bilateral partner/multilateral institution extending development assistance to it, the same have to be paid by the Contractor from its own resources and shall be reimbursed by the Authority to the Contractor. No tax is liable to be paid from the LOC proceeds. Exemption from taxes by way of upfront exemption or by way of reimbursement shall be **as specified in the SCC**.

15.1.4 In case of reimbursement of taxes in accordance with Sub-Clause 15.1.3, the Contractor can issue a notice to Authority to claim the reimbursement of actual amount paid as taxes, after making such payment to the Government Instrumentalities (Notice for tax reimbursement). The Notice for tax reimbursement shall include the following:

- a) details of the claim including the nature of tax and the amount of reimbursement, which shall be the actual amount paid by the Contractor towards the applicable taxes and duties levied in Authority's Country.
- b) documents evidencing the actual amount paid and any other document in support of the claim as may be reasonably required by Authority.

Upon receipt of the Notice for tax reimbursement, the Authority shall promptly but no later than 90 days from the receipt of such notice shall make the payment to the Contractor against the Notice for tax reimbursement.

15.1.5 The Contract Price shall not be adjusted for any change in duties, taxes etc. specified in Sub-Clause 15.1.2 above, save and except as specified in Sub-Clause 15.13 [Change in Law]. The Contract Price shall not be adjusted to take account of any unforeseen difficulties or costs, unless otherwise provided for in this Agreement.

15.1.6 Unless otherwise specified in this Agreement, the Contract Price covers all the Contractor's obligations for the Works under this Agreement and all things necessary for the Construction thereof and for the rectification of any Defects in the Project and all things necessary for performing its Maintenance Obligations for the Maintenance Period under this Agreement.

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

15.1.8 The Contractor shall have satisfied itself as to the correctness and sufficiency of the Contract Price. The Contract Price shall cover all its obligations under this Agreement, in addition to all risks the Contractor has agreed to undertake under this Agreement, including those associated with the performance of its obligations including maintenance obligations under this Agreement and all things necessary for the provision of the Works in a manner satisfactory to the Authority and in accordance with this Agreement Unless otherwise stated in this Agreement, the Contract Price covers all the Contractor's obligations for the Works under this Agreement and all things necessary for the Construction and the remedying of any Defects in the Project and all things necessary for performing its Maintenance Obligations for the Maintenance Period under this Agreement.

15.1.9 If any quantities are specified in a Schedule, they shall not be taken as the actual and correct quantities of the Works which the Contractor is required to execute, and they shall be used only for the purpose(s) stated in the Schedule and for no other purpose(s).

15.1.10 In case of a JV, all the payments to be made under this Agreement shall be made to the account of the JV.

15.2 Advance Payment

15.2.1 The Authority on request of the Contractor shall make an advance payment (the "**Advance Payment**"), equal to the amount **as specified in the SCC**, for mobilisation expenses and for acquisition of equipment. The Advance Payment shall carry simple interest at the rate **as specified in the SCC** and shall be made in two substantially equal instalments.

15.2.2 The Contractor may apply to the Authority for the Advance Payment or part thereof at any time after the Appointed Date along with an irrevocable and unconditional guarantee ("**Advance Payment Guarantee**") from a Bank **as specified under Sub-Clause 6.1.1**, 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 **Annex-II of Appendix 1**, to remain effective till the complete and full repayment of such instalment and any interest thereon. The claim for advance payment can be made in not more than 2 (two) Advance Payment Instalments.

15.2.3 The Instalments of Advance Payment shall be paid by the Authority to the Contractor within 15 (fifteen) days of the receipt of its respective requests in accordance with the provisions of this Sub-Clause 15.2. The payment by the Authority shall be in accordance with Sub-Clause 15.3 [Procedure for Payment by Authority].

15.2.3 The Contractor shall ensure that the Advance Payment Guarantee is valid and enforceable until the advance payment is fully repaid. The Contractor 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 Contractor shall immediately submit evidence of such extension to the Authority, failing which the Authority shall be entitled for claim under the Guarantee.

15.2.4 The Advance Payment shall be recovered through proportionate deductions to be made in the Interim Payments Certificates issued in accordance with the provisions of Sub-Clause 15.3 [Procedure for estimating the payment for the Works]. Deductions of Advance Payment shall commence from the Interim Payment Certificate in which the cumulative interim payments certified shall have reached the percentage of the Contract Price **as specified in the SCC**. The total amount recovered in each Interim Payment Certificate shall not exceed an amount **as specified in the SCC**.

15.2.5 The Parties further agree that no payments in excess of 90% (ninety per cent) of the Contract Price shall be released to the Contractor until the Advance Payment, including interest thereon, has been fully recovered.

15.2.6 If the Advance Payment has not been fully repaid prior to Termination under Sub-Clause 19.6 [Termination Payment] and Chapter 21 [Liability and Indemnity], as the case may be, the whole of the balance then outstanding shall immediately become due and payable by the Contractor to the Authority. In the event of Termination for Contractor Default, the unrecovered Advance Payment shall be deemed to carry interest at an annual rate in accordance with Clause 15.2.1 from the date of Advance Payment to the date of recovery thereof. Submission of a Bank guarantee shall in no way relieve the Contractor from any obligation for repayment of the Advance Payment.

15.2.7 The Advance Payment shall be repaid through percentage deductions from the stage payments determined by the Authority's Engineer, as follows:

- (A) Deduction shall be proportionately at each Stage Payment until such time as the Advance Payment has been repaid provided that the cumulative interim payments certified shall have reached 80% of the Contract Price.
- (B) if total Certified Stage payments (excluding Advance Payments) does not exceed 20% of the Contract Price within 50% of the Scheduled Construction Period from the Appointed Date, for reasons attributable to the Contractor, then the Advance Payment and interest thereon shall be recovered by encashment of Bank Guarantee for the Advance Payment.

15.3 Procedure for estimating the payment for the Works

15.3.1 The Authority shall make interim payments to the Contractor, as certified by the Authority's Engineer on completion of a stage, or as specified, and valued in accordance with the proportion of the Contract Price assigned to each item and its stage and payment procedure in **Schedule-F**.

15.3.2 The Contractor shall make its claim for interim payment for the stages completed till the end of the month for which the payment is claimed, valued in accordance with Sub-Clause 15.3.1, and supported with necessary particulars and documents in accordance with this Agreement.

15.3.3 Any reduction in the Contract Price arising out of Change of Scope or the Works withdrawn under Sub-Clause 7.3 [Damages for delay in handing over the site and Extension of Time], as the case may be, shall not affect the amounts payable for the items or stage payments thereof which are not affected by such Change of Scope or withdrawal. For the avoidance of doubt and by way of illustration, the Parties agree that if the amount assigned to Major Structure is reduced from USD 10 mn to USD 8 mn owing to Change of Scope or withdrawal of Works, as the case may be, the reduction in payment shall be restricted to the relevant payments for Major Structure and the payment due in respect of all other stage payments under the item Major Structure shall not be affected in any manner. The Parties further agree that the adjustments arising out of the aforesaid modifications shall be carried out in a manner that the impact of such modifications is restricted to the said Change of Scope or withdrawal, as the case may be, and does not alter the payments due for and in respect of items or stage payments which do not form part of such Change of Scope or withdrawal.

15.4 Stage Payment Statement for Works

15.4.1 The Contractor shall submit a statement (the “**Stage Payment Statement**”), in 3 copies, to the Authority’s Engineer in the form set forth in **Schedule-K**, showing the amount calculated in accordance with Sub-Clause 15.3 [Procedure for estimating the payment for the Works] to which the Contractor considers itself entitled for the completed stage(s) of Works. The Stage Payment Statement shall be accompanied with the progress reports and any other supporting documents. The Stage Payment Statement shall be prepared for the minimum amount of the Contract Price **as specified in the SC**. The Stage Payment Statement shall be accompanied with the following:

- (a) progress reports;
- (b) Certificate of Indian Origin issued by an agency competent and authorized for issuance of such certificate, for the exports from India for meeting the obligations under Sub-Clause 3.1.10;
- (c) statement of contractor-wise details of amounts of work sub-contracted, amounts paid till date, amounts due to sub-contractor and;
- (d) details of the Contractor’s Bank Account for effecting the payment
- (e) any other supporting documents

15.4.2 The Contractor shall not submit any claim for payment of incomplete stages of work.

15.5 Stage Payment for Works

15.5.1 Within 15 (fifteen) days of receipt of the Stage Payment Statement from the Contractor pursuant to Sub-Clause 15.4 [Stage Payment Statement for Works], the Authority’s Engineer shall determine or seek clarification on the Stage Payment Statement from Contractor as may be reasonably required by the Authority’s Engineer to determine the payments to be made to the Contractor against the Stage Payment Statement. Within 15 days from submission of the last clarification by the Contractor the Authority’s Engineer shall recommend to the Authority and the Contractor, an Interim Payment Certificate (IPC) certifying the amount due, as adjusted by the amount of Advance Payment and Retention Money, and payable

to the Contractor. Within 15 (fifteen) days of the receipt of recommendation of the Authority's Engineer, the Authority shall forward the Stage Payment Statement along with the Payment Authorisation to Exim Bank in accordance with Sub-Clause 15.6 [Procedure for Payments to Contractor] provided that the payment is being made out of proceeds of LOC, or otherwise make the payment to the Contractor.

15.5.2 In cases where there is a difference of opinion as to the value of any stage, the opinion of the Authority's Engineer shall prevail and interim payments shall be made to the Contractor on that basis; provided that the foregoing shall be without prejudice to the Contractor's right to raise a Dispute.

15.5.3 The Authority's Engineer may, for reasons to be recorded, withhold from payment:

- a) the estimated value of work or obligation that the Contractor has failed to perform in accordance with this Agreement and in respect of which the Authority's Engineer had notified the Contractor; and
- b) the estimated cost of rectification of any Works which have not been constructed in accordance with this Agreement.

15.5.4 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 work done.

15.5.5 In the event the amounts released by the Authority under Sub-Clause 15.5.1 exceed the amount finally determined by the Authority's Engineer pursuant to Sub-Clauses 15.5.2 to 15.5.4, the difference thereof shall be accounted for in the next IPC.

15.5.6 The Retention Money withheld in accordance with Sub-Clause 6.5 [Retention Money] shall be construed to be payment made to the Contractor for the purpose of this Sub-Clause 15.5 [Stage Payment of Works].

15.6 Procedure for Payments to Contractor

15.6.1 To the extent that the payment to be made to the Contractor by the Authority in accordance with the Contract Inclusion Letter, the Authority shall submit to Exim Bank the Payment Authorisation Letter (the "**Payment Authorisation**") for making payment to the account of the Contractor in India, on behalf of the Authority. Exim Bank shall make the payment to the Contractor to the extent of the amounts and works approved by Exim Bank in accordance with the Contract Inclusion Letter. Payments outside the scope of the Contract Inclusion Letter, including any damages and interest on delayed payments, shall be made by the Authority directly to the account of the Contractor. The Authority agrees that forwarding the Payment Authorisation to Exim Bank does not relieve the Authority from its obligation to make the payment to the Contractor in accordance with this Agreement.

15.6.2 The Contractor acknowledges that such payments made in accordance with this Sub-Clause 15.6 shall be construed as payment made by the Authority to the Contractor for the purpose of this agreement.

15.6.3 The payments in accordance with Sub-Clause 15.6.1 shall be made to the account of the Contractor **as specified in the SCC**.

- 15.7 Payment of Damages** of The Contractor may claim Damages due and payable to it in accordance with the provisions of this Agreement. The Authority's Engineer shall issue the IPC within 15 (fifteen) days of the receipt of the claim under this Sub-Clause 15.7, after making adjustments in accordance with the provisions of this Agreement. The Authority shall pay to the Contractor the amount due under such IPC electronically.
- 15.8 Time of payment** of 15.8.1 The Authority shall pay to the Contractor any amount due under any payment certificate issued by the Authority's Engineer in accordance with the provisions of this Agreement as follows:
- (a) Payment Authorisation shall be submitted to Exim Bank no later than 30 (thirty) days from the date of submission of the Stage Payment Statement / Clarification on the Stage Payment Statement by the Contractor to the Authority's Engineer for certification in accordance with the provisions of Sub-Clause 15.4 [Stage Payment Statement for Works]; provided, however, that in the event the IPC is not issued by the Authority's Engineer within the aforesaid period of 30 (thirty) days in accordance with Sub-Clause 15.5 [Stage Payment for Works] the Authority may pay the amount shown in the Contractor's Stage Payment Statement and any discrepancy therein shall be adjusted in the next IPC; and
- (b) Payment Authorisation shall be delivered in accordance with Sub-clause 15.12 [Final Payment Certificate].
- 15.9 Restrictions on price adjustment** 15.9.1 The Contract Price shall not be adjusted for any change in the exchange rate or cost of inputs.
- 15.9.2 The Contract Price shall not be adjusted for any change in the duties, taxes etc. specified in Sub-Clause 15.1.2 above, save and except as specified in Sub-Clause 15.13 [Change in Law].
- 15.10 Final Payment Statement** 15.10.1 Within 60 (sixty) days of receiving the Completion Certificate under Sub-Clause 12.11 [Maintenance Completion Certificate], the Contractor shall submit to the Authority's Engineer six copies of a final payment statement (the "**Final Payment Statement**"), with supporting documents, in the form prescribed by the Authority's Engineer in respect of:
- (a) the summary of the Contractor's Stage Payment Statements as submitted in accordance with Clause 15.4 [Stage Payment Statement for Works];
- (b) the amounts received from the Authority against each claim; and
- (c) any further sums which the Contractor considers due to it from the Authority.
- 15.10.2 If the Authority's Engineer disagrees with or cannot verify any part of the Final Payment Statement, the Contractor shall submit such further information as the Authority's Engineer may reasonably require.
- 15.10.3 The Authority's Engineer shall deliver to the Authority:

- (i) an IPC for those parts of the Final Payment Statement which are not in dispute, along with a list of disputed items which shall then be settled in accordance with the provisions of Clause 22 [Dispute Resolution]; or
- (ii) a Final Payment Certificate in accordance with Sub-Clause 15.12 [Final Payment Certificate], if there are no disputed items.

15.11 Discharge

Upon submission of the Final Payment Statement under Sub-Clause 15.10 [Final Payment Statement], the Contractor shall give to the Authority, with a copy to the Authority's Engineer, a written discharge confirming that the total of the Final Payment Statement represents full and final settlement of all monies due to the Contractor in respect of this Agreement for all the Works arising out of this Agreement, except for any monies due to either Party on account of any Defect. Provided that such discharge shall become effective only after the payment due has been made in accordance with the Final Payment Certificate issued pursuant to Sub-Clause 15.12 [Final Payment Certificate].

15.12 Final Payment Certificate

15.12.1 Within 30 (thirty) days after receipt of the Final Payment Statement under Sub-Clause 15.10 [Final Payment Statement], and the written discharge under Sub-Clause 15.11 [Discharge], and there being no disputed items of claim, the Authority's Engineer shall deliver to the Authority, with a copy to the Contractor, a final payment certificate (the "**Final Payment Certificate**") stating the amount which, in the opinion of the Authority's Engineer, is finally due under this Agreement or otherwise. For the avoidance of doubt, before issuing the Final Payment Certificate, the Authority's Engineer shall ascertain from the Authority all amounts previously paid by the Authority, all sums due to the Authority, and the balance, if any, due from the Authority to the Contractor or from the Contractor to the Authority, as the case may be.

15.12.2 The Authority shall, pay to the Contractor the amount which is specified as being finally due in the Final Payment Certificate in accordance with Sub-Clause 15.6 [Procedure for Payment to Contractor].

15.13 Change in law

15.13.1 If as a result of Change in Law, the Contractor suffers any additional costs in the execution of the Works or in relation to the performance of its other obligations under this Agreement, the Contractor shall, within 15 (fifteen) days from the date it becomes reasonably aware of such addition in costs, notify the Authority with a copy to the Authority's Engineer of such additional costs due to Change in Law.

15.13.2 If as a result of Change in Law, the Contractor benefits from any reduction in costs for the execution of this Agreement or in accordance with the provisions of this Agreement, either Party shall, within 15 (fifteen) days from the date it becomes reasonably aware of such reduction in costs, notify the other Party with a copy to the Authority's Engineer of such reduction in costs due to Change in Law.

15.13.3 The Authority's Engineer shall, within 15 (fifteen) days from the date of receipt of notice from the Contractor or the Authority, as the case may be, determine any addition or reduction to the Contract Price, as the case may be, due to the Change in Law.

15.14 Correction of Interim Payment Certificates The Authority's Engineer may by an Interim Payment Certificate make any correction or modification in any previous Interim Payment Certificate issued by it.

15.15 The Authority's claims If the Authority considers itself to be entitled to any payment from the Contractor under any Clause of this Agreement, it shall give notice and particulars to the Contractor, 20 (twenty) days before making the recovery from any amount due to the Contractor, and shall take into consideration the representation, if any, made by the Contractor in this behalf, before making such recovery.

16. INSURANCE

16.1 Insurance for Works

16.1.1 The Contractor shall effect and maintain at its own cost the insurances specified in **Schedule-L** and as per the requirements under Applicable Law and Good Industry Practices. The Contractor shall ensure that its Sub-Contractors also effect and maintain similar insurances as per the requirements under Applicable Laws.

16.1.2 Subject to the provisions of Sub-Clause 17.6 [Effect of Force Majeure Event on the Agreement], the Contractor shall, in accordance with the provisions of this Agreement, be liable to bear the cost of any loss or damage that does not fall within the scope of this Clause 16 or cannot be recovered from the insurers.

16.1.3 Save and except as provided in Sub-Clause 16.1.4, the Contractor shall fully indemnify, hold harmless and defend the Authority from and against any and all losses, damages, costs, charges and/or claims with respect to:

- (a) the death of or injury to any person; or
- (b) the loss of or damage to any property,

that may arise out of or in consequence of any breach by the Contractor of this Agreement during the execution of the Works or the remedying of any Defects therein, and during the performance of the maintenance obligations during Maintenance Period.

16.1.4 Notwithstanding anything in Sub-Clause 16.1.3, the Authority shall fully indemnify the Contractor from and against any and all losses, damages, costs, charges, proceedings and/or claims arising out of or with respect to the damage to property which is the unavoidable result of the execution and completion of the Works, or the remedying of any Defects therein, in accordance with this Agreement.

Provided, however, that in the event of any injury or damage as a result of the contributory negligence of the Contractor, the Authority shall be liable to indemnify the Contractor from and against any and all losses, damages, costs, charges, proceedings and/or claims only to the extent such injury or damage as is attributable solely to the Authority.

16.1.5 Without prejudice to the provisions of Sub-Clauses 16.1.3 and 16.1.4, the Contractor shall maintain or effect such third party insurances as may be required under Applicable Laws and Good Industry Practice.

16.1.6 The Contractor shall provide to the Authority, within 30 days of the Appointed Date, (a) evidence of professional liability insurance maintained by its Design Director and/or consultants to cover the risk of professional negligence in the design of Works; (b) contractor's all risk (CAR) insurance policy obtained by the Contractor; 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.

- 16.2 Notice to the Authority's Engineer** 16.2.1 No later than 15 (fifteen) days after the date of this Agreement, the Contractor shall by notice furnish to the Authority's Engineer, in reasonable detail, information in respect of the insurances that it proposes to effect and maintain in accordance with this Clause 16. Within 15 (fifteen) days of receipt of such notice, the Authority's Engineer may require the Contractor to effect and maintain such other insurances as may be necessary pursuant hereto, and in the event of any difference or disagreement relating to any such insurance, the Dispute Resolution Procedure shall apply.
- 16.3 Evidence of Insurance Cover** 16.3.1 All insurances obtained by the Contractor in accordance with this Clause 16 shall be maintained with insurers on terms consistent with Good Industry Practice. Within 10 (ten) days from the Appointed Date, the Contractor shall furnish to the Authority true copies of the certificate(s) of insurance, copies of insurance policies and premia payment receipts in respect of such insurance, and no such insurance shall be cancelled, modified, or allowed to expire or lapse until the expiration of at least 45 (forty-five) days after notice of such proposed cancellation, modification or non-renewal has been delivered by the Contractor to the Authority.
- 16.3.2 The Contractor shall procure and ensure the adequacy of the insurances at all times in accordance with the provisions of this Agreement.
- 16.4 Remedy for failure to insure** If the Contractor fails to effect and keep in force all insurances for which it is responsible pursuant hereto, the Authority shall have the option to either keep in force any such insurances, and pay such premia and recover the costs thereof from the Contractor, or in the event of computation of a Termination Payment, treat an amount equal to the Insurance Cover as deemed to have been received by the Contractor.
- 16.5 Waiver of subrogation** All insurance policies in respect of the insurance obtained by the Contractor pursuant to this Clause 16 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.
- 16.6 Contractor's waiver** 16.6.1 The Contractor hereby further releases, assigns and waives any and all rights of subrogation or recovery against, inter alia, the Authority and its assigns, undertakings and their subsidiaries, Affiliates, employees, successors, insurers and underwriters, which the Contractor may otherwise have or acquire in or from or in any way connected with any loss, liability or obligation covered by policies of insurance maintained or required to be maintained by the Contractor pursuant to this Agreement (other than third party liability insurance policies) or because of deductible clauses in or inadequacy of limits of any such policies of insurance.
- 16.7 Cross liabilities** Any such insurance maintained or effected in pursuance of this Clause 16 shall include a cross liability clause such that the insurance shall apply to the Contractor and to the Authority as separately insured.

- 16.8 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 Contractor or Sub-contractor save and except as for death or injury resulting from any act, omission or default of the Authority, its agents or servants. The Contractor shall indemnify and keep indemnified the Authority from and against all such claims, proceedings, damages, costs, charges, and expenses whatsoever in respect of the above save and except for those acts, omissions or defaults for which the Authority shall be liable.
- 16.9 Insurance against accident to workmen** The Contractor shall effect and maintain during this Agreement such insurances as may be required to insure the Contractor's personnel and any other persons employed by it on the Project from and against any liability incurred in pursuance of this Clause 16. Provided that for the purposes of this Sub-Clause 16.9, the Contractor's personnel/any person employed by the Contractor shall include the Sub-contractor and its personnel. Provided further that in respect of any persons employed by any Sub-contractor, the Contractor's obligations to insure as aforesaid under this Sub-Clause 16.9 shall be discharged if the Sub-contractor shall have insured against any liability in respect of such persons in such manner that the Authority is indemnified under the policy. The Contractor shall require such Sub-contractor to produce before the Authority, when required, such policy of insurance and the receipt for payment of the current premium within 10 (ten) days of such demand being made by the Authority.
- 16.10 Application of insurance proceeds** The proceeds from all insurance claims, except for life and injury, shall be applied by the Contractor for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or installation of the Project and the provisions of this Agreement in respect of construction of Works shall apply *mutatis mutandis* to the Works undertaken out of the proceeds of insurance.
- 16.11 Compliance with policy conditions** The Contractor hereby expressly agrees to fully indemnify the Authority from and against all losses and claims arising from the Contractor's failure to comply with conditions imposed by the insurance policies effected in accordance with this Agreement.

17. FORCE MAJEURE AND TERMINATION

17.1 Force Majeure 17.1.1 As used in this Agreement, the expression “**Force Majeure**” or “**Force Majeure Event**” shall mean an event / any occurrence in the Authority’s Country that directly or indirectly affects the execution of the Works due to any or all of the Non-Political Events, Indirect Political Events and Political Events, as defined in Sub-Clause 17.2 [Non-Political Event and Indirect Political Event], Sub-Clause 17.3 [Indirect Political Event] and Sub-Clause 17.4 [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 this Contract
- (d) is not substantially attributable to the other Party

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

(a) act of God, pandemic, epidemic, endemic outbreak, unprecedented extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, tsunami, volcanic eruption, chemical or radioactive contamination or ionising radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Site). However, it shall not include ordinary unfavorable weather conditions; and any other cause the effects of which could have been avoided with the exercise of reasonable diligence by the Contractor;

(b) any material disruption of supply chain caused by events included in but not restricted to Sub-Clause 17.2 (a), having effect on transportation, manufacturing and distribution of goods, works, services and manpower in Authority’s country or India by way of any restrictions placed by Applicable laws and causing severe impairment to fulfilment of contractual obligations for supply of goods, works, services and manpower;

(c) strikes or boycotts (other than those involving the Contractor, Sub-contractors or their respective employees/representatives, or attributable to any act or omission of any of them) interrupting supplies and services to the Project for a continuous period of 24 (twenty-four) hours and an aggregate period exceeding 10 (ten) days in an Accounting Year and not being an Indirect Political Event;

(d) any failure or delay of a Sub-contractor but only to the extent caused by another Non-Political Event;

(e) any judgment or order of any court of competent jurisdiction or statutory authority made against the Contractor in any proceedings restraining the performance of the contract for reasons other than

- (i) failure of the Contractor to comply with any Applicable Law, Applicable

Permits, or

(ii) on account of breach of any Applicable Law, Applicable Permits or of any contract, or

(iii) enforcement of this Agreement, or

(iv) exercise of any of its rights under this Agreement by the Authority; or

(v) breach of its obligations by the Contractor under its sub-contracts;

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

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

17.3 Indirect Political Event

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

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

(b) any civil commotion, boycott or political agitation which prevents construction of the Project by the Contractor for an aggregate period exceeding 10 (ten) days in an Accounting Year; or

(c) industry-wide or Country-wide strikes or industrial action for a continuous period of 24 (twenty-four) hours and exceeding an aggregate period of 10 (ten) days in an Accounting Year;

(d) any failure or delay of a sub-contractor to the extent caused by any Indirect Political Event

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

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

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

17.4 Political Event

17.4.1 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 Sub-Clause 15.13 [Change in Law];

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

(c) unlawful or unauthorised or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, licence, permit, authorisation, no objection certificate, consent, approval or exemption required by the

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

(d) any failure or delay of a Sub-contractor but only to the extent caused by another Political Event; or

(e) any event or circumstances of a nature analogous to any of the foregoing;

17.5 Duty to report Force Majeure Event

17.5.1 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 Clause 17 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.

17.5.2 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 10 (ten) 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.

17.5.3 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 Sub-Clause 17.5 [Duty to report Force Majeure Event], and such other information as the other Party may reasonably request the Affected Party to provide.

17.6 Effect of Force Majeure Event on the Agreement

17.6.1 Upon the occurrence of any Force Majeure

(a) prior to the Appointed Date, both Parties shall bear their respective Force Majeure costs.

(b) after the Appointed Date, the costs incurred and attributable to such event and directly relating to this Agreement (the "**Force Majeure costs**") shall be

allocated and paid as follows:

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

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

(iii) upon occurrence of a Political Event, all Force Majeure costs attributable to such Political Event shall be reimbursed by the Authority to the Contractor.

For the avoidance of doubt, Force Majeure costs may include costs directly attributable to the Force Majeure Event, but shall not include debt repayment obligations, if any, of the Contractor.

17.6.2 Save and except as expressly provided in this Clause 17, 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.

17.6.3 Upon the occurrence of any Force Majeure Event during the Construction Period, the Project Completion Schedule for and in respect of the affected Works shall be extended on a day for day basis for such period as performance of the Contractor's obligations is affected on account of the Force Majeure Event or its subsisting effects, as may be determined by the Authority's Engineer.

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

17.6.5 Each Party shall at all times use all reasonable endeavors to minimize any delay in the performance of the Contract as a result of a Force Majeure Event

**17.7 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 Termination Notice to the other Party without being liable in any manner whatsoever, save as provided in this Clause 17, 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

**17.8 Termination
Payment for Force
Majeure Event**

17.8.1 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 Sub-Clause 19.5 [Valuation of Unpaid Works].

17.8.2 If Termination is on account of an Indirect Political Event, the Termination Payment shall include: (a) any sums due and payable under Sub-Clause 19.5 [Valuation of Unpaid Works]; and (b) the reasonable cost, as determined by the Authority's Engineer, of the Plant and Materials procured by the Contractor and transferred to the Authority for use in the Project and only if such Plant and Materials are in conformity with the Specifications and Standards.

17.8.3 If Termination is on account of a Political Event, the Authority shall make a Termination Payment to the Contractor in an amount that would be payable under Sub-Clause 19.6.2 as if it were an Authority Default.

17.8.4 After the date of termination the Contractor shall, as soon as practicable, submit detailed supporting particulars (as reasonably required by the Authority) of the value of the work done, which shall include:

- (a) the amounts payable for any work carried out for which a price is stated in the Contract;
- (b) the Cost of Plant and Materials ordered for the Works which have been delivered to the Contractor, or of which the Contractor is liable to accept delivery. This Plant and Materials shall become the property of (and be at the risk of) the Authority when paid for by the Authority, and the Contractor shall place the same at the Authority's disposal;
- (c) any other Cost or liability which in the circumstances was reasonably incurred by the Contractor in the expectation of completing the Works;
- (d) the Cost of removal of Temporary Works and Contractor's Equipment from the Site and the return of these items to the Contractor's place of business in the Contractor's country (or to any other destination(s) at no greater cost); and
- (e) the Cost of repatriation of the Contractor's staff and labour employed wholly in connection with the Works at the date of termination.

**17.9 Dispute
resolution**

In the event that the Parties are unable to agree in good faith about the occurrence or existence of a Force Majeure Event, such Dispute shall be finally settled in accordance with the Dispute Resolution Procedure in accordance with Clause 22 [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.

**17.10 Excuse from
performance of
obligations**

17.10.1 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.

18. SUSPENSION OF CONTRACTOR'S RIGHTS

- 18.1 Suspension upon Contractor Default** 18.1.1 Upon occurrence of a Contractor Default, the Authority shall be entitled, without prejudice to its other rights and remedies under this Agreement including its rights of Termination hereunder, to (a) suspend carrying out of the Works or any part thereof, and (b) carry out such Works itself or authorise any other person to exercise or perform the same on its behalf during such suspension (the “**Suspension**”). Suspension hereunder shall be effective forthwith upon issue of notice by the Authority’s Engineer to the Contractor and may extend up to a period not exceeding 90 (ninety) days from the date of issue of such notice.
- 18.2 Authority to act on behalf of Contractor** 18.2.1 During the period of Suspension hereunder, all rights and liabilities vested in the Contractor in accordance with the provisions of this Agreement shall continue to vest in the Contractor and all things done or actions taken, including expenditure incurred by the Authority for discharging the obligations of the Contractor under and in accordance with this Agreement shall be deemed to have been done or taken for and on behalf of the Contractor and the Contractor undertakes to indemnify the Authority for all costs incurred during such period. The Contractor hereby licences and sub-licences respectively, the Authority or any other person authorised by it under Sub-Clause 18.1 [Suspension upon Contractor Default] to use during Suspension, all Intellectual Property belonging to or licenced to the Contractor with respect to the Project and its design, engineering, construction, and which is used or created by the Contractor in performing its obligations under this Agreement.
- 18.3 Revocation of Suspension** 18.3.1 In the event that the Authority shall have rectified or removed the cause of Suspension, it shall revoke the Suspension forthwith and restore all rights of the Contractor under this Agreement. For the avoidance of doubt, the Parties expressly agree that the Authority may, in its discretion, revoke the Suspension at any time, whether or not the cause of Suspension has been rectified or removed hereunder.
- 18.3.2 Upon the Contractor having cured the Contractor Default within a period not exceeding 60 (sixty) days from the date of Suspension, the Authority shall revoke the Suspension forthwith and restore all rights of the Contractor under this Agreement.
- 18.4 Termination** 18.4.1 At any time during the period of Suspension under this Chapter 18 [Suspension of Contractor’s Rights] the Contractor may by notice require the Authority to revoke the Suspension and issue a Termination Notice. The Authority shall, terminate this Agreement under and in accordance with Clause 19 [Termination] as if it is a Contractor Default under Sub-Clause 19.1 [Termination for Contractor Default].
- 18.4.2 Notwithstanding anything to the contrary contained in this Agreement, in the event that Suspension is not revoked within 90 (ninety) days from the date of Suspension hereunder, this Agreement shall, upon expiry of the aforesaid period, be deemed to have been terminated by mutual agreement of the Parties and all the provisions of this Agreement shall apply, *mutatis mutandis*, to such

Termination as if a Termination Notice had been issued by the Authority upon occurrence of a Contractor Default.

19. TERMINATION

19.1 Termination for Contractor Default

19.1.1 Save as otherwise provided in this Agreement, in the event that any of the defaults specified below shall have occurred, and the Contractor fails to cure the default within the Cure Period set forth below, or where no Cure Period is specified, then within a Cure Period of 60 (sixty) days, the Contractor shall be deemed to be in default of this Agreement (the “**Contractor 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 Clause 17 [Force Majeure and Termination] . The defaults referred to herein shall include the following:

- (a) The Contractor fails to provide, extend or replenish, as the case may be, the Performance Security in accordance with this Agreement;
- (b) subsequent to the replenishment or furnishing of fresh Performance Security in accordance with Sub-Clause 6.3 [Appropriation of Performance Security], the Contractor fails to cure, within 30 (thirty) days, the Contractor Default for which the whole or part of the Performance Security was appropriated;
- (c) the Contractor does not achieve the latest outstanding Project Milestone due in accordance with the provisions of Schedule-H, subject to any Time Extension, and continues to be in default for 45 (forty five) days for the reasons attributable to the Contractor;
- (d) the Contractor repudiates or abandons or manifests intention to abandon the construction of the Project without the prior written consent of the Authority;
- (e) the Contractor fails to proceed with the Works in accordance with the provisions of Sub-Clause 8.1 [Obligations prior to commencement of Works] or stops Works for 30 (thirty) days without reflecting the same in the current programme and such stoppage has not been authorised by the Authority’s Engineer;
- (f) the Project Completion Date does not occur within the period specified in Schedule-H for the Scheduled Completion Date, or any extension thereof;
- (g) failure to complete the Punch List items within the periods stipulated therefor in Sub-Clause 10.3 [Completion of Remaining Works / Punch List];
- (h) the Contractor 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’s Engineer;
- (i) the Contractor fails to undertake Maintenance of the Project in accordance with Clause 12 [Maintenance Obligations] within the time specified in this Agreement or as directed by the Authority’s Engineer;
- (j) the Contractor subcontracts the Works or any part thereof in violation of this Agreement or assigns any part of the Works or transfers or any right or interest therein without the prior approval of the Authority;
- (k) the Contractor creates any Encumbrance in breach of this Agreement;
- (l) an execution levied on any of the assets of the Contractor has caused a Material Adverse Effect;
- (m) the Contractor is adjudged bankrupt or insolvent, or if a trustee or receiver or interim resolution professional is appointed for the Contractor or for the whole or material part of its assets, or any other analogous event that has a material bearing on the Project; Provided that the if the Contractor has formed a Joint Venture of two or more persons for implementing the

- Project, and one of such persons is adjudged bankrupt or insolvent, or if a trustee or receiver or interim resolution professional is appointed for such person(s) or for the whole or material part of their assets, the Authority shall have the right to substitute such person(s) subject to Sub-Clause 1.5.1 (b) and upon such substitution to the satisfaction of the Authority, the Contractor Default in this Sub Clause will be treated as cured.
- (n) the Contractor has been, or is in the process of being liquidated, dissolved, wound-up, amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of the Authority, a Material Adverse Effect;
 - (o) a resolution for winding up of the Contractor is passed, or any petition for winding up of the Contractor is admitted by a court of competent jurisdiction and a provisional liquidator or receiver or interim resolution professional, as the case may be, is appointed and such order has not been set aside within 90 (ninety) days of the date thereof or such extended date as approved by any judicial order, or Contractor is ordered to be wound up by a court except for the purpose of amalgamation or reconstruction; provided that, as part of such amalgamation or reconstruction, the entire property, assets and undertaking of the Contractor are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Contractor under this Agreement; and provided that:
 - (i) the amalgamated or reconstructed entity has the capability and experience necessary for the performance of its obligations under this Agreement; and
 - (ii) the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and has a credit worthiness at least as good as that of the Contractor as at the Appointed Date;
 - (p) any representation or warranty of the Contractor herein contained which is, as of the date hereof, found to be materially false or the Contractor is at any time hereafter found to be in breach thereof;
 - (q) the Contractor submits to the Authority any statement, notice or other document, in written or electronic form, which has a material effect on the Authority's rights, obligations or interests and which is false in material particulars;
 - (r) the Contractor has failed to fulfil any obligation, for which failure Termination has been specified in this Agreement; or
 - (s) the Contractor has failed to make any payment to the Authority as may be recoverable from the Contractor by the Authority under this Agreement, within the period specified in this Agreement;
 - (t) the Contractor issues a Termination Notice in violation of this Agreement;
 - (u) the Contractor commits a default in complying with any other provision of this Agreement if such a default causes a Material Adverse Effect on the Project or on the Authority; or
 - (v) gives or offers to give (directly or indirectly) to any person any bribe, gift, gratuity, commission or other thing of value, as an inducement or reward:
 - (i) for doing or forbearing to do any action in relation to the Contract, or

- (ii) for showing or forbearing to show favour or disfavour to any person in relation to the Contract or if any of the Contractor's personnel, agents or sub-contractors gives or offers to give (directly or indirectly) to any person any such inducement or reward as is described in this sub-paragraph (u). However, lawful inducements and rewards to Contractor's personnel shall not entitle termination.
- (w) the Contractor, in the judgment of the Authority has engaged in corrupt, collusive, coercive, fraudulent or obstructive practices, in competing for or in executing the Contract.
- (x) The contractor fails to comply with the Applicable Guidelines including but not limited to the commitment to achieve the Indian Content declared by the Contractor at the commencement of the project and selection of the sub-contractors in accordance with the public procurement orders in accordance with the Applicable Guidelines.

19.1.2 Without prejudice to any other rights or remedies which the Authority may have under this Agreement, upon occurrence of a Contractor Default, the Authority may by giving a notice to the Contractor, require the Contractor to make good the failure and to remedy it within a time specified in the Notice ("Notice to Correct Contractor's Default"). The time specified in the Notice to Correct shall not imply any extension of the Time for Completion. The Notice to Correct shall:

- (a) describe the Contractor's failure;
- (b) specify the time within which the Contractor shall remedy the failure, which shall be reasonable, taking due regard of the nature of the failure and the work and/or other action required to remedy it.

The Contractor shall upon receipt of the Notice to Correct Contractor's Default respond to the Authority within 15 (fifteen) days describing the measures the Contractor will take to remedy the failure, and state the date on which such measures will be commenced in order to comply with the time specified in the Notice. The Authority shall be entitled to terminate this Agreement by issuing a Termination Notice to the Contractor if the Contractor fails to respond to the Notice to Correct Contractor's Default within 15 (fifteen) days.

19.1.3 After termination of this Agreement for Contractor Default, the Authority may complete the Works and/or procure its completion through any other entity. The Authority and such entity may, for this purpose, use any Materials, Plant and equipment, Contractor's Documents and other design documents made by or on behalf of the Contractor.

19.2 Termination for the Authority Default

19.2.1 In the event that any of the defaults specified below shall have occurred, and the Authority fails to cure such default within 90 (ninety) days or such longer period as has been expressly provided in this Agreement, the Authority shall be deemed to be in default of this Agreement (the "**Authority Default**") unless the default has occurred as a result of any breach of this Agreement by the Contractor or due to Force Majeure in accordance with Clause 17 [Force Majeure and Termination]. The defaults referred to herein shall include the following:

- (a) the Authority commits a material default and such default has a proven Material Adverse Effect on the Contractor;

- (b) the Authority has failed to provide, within a period of 90 (ninety) days from the Appointed Date, the environmental clearances and forest clearances required for construction of the Project;
- (c) the Authority repudiates this Agreement or otherwise takes any action that amounts to or manifests an irrevocable intention not to be bound by this Agreement; or
- (d) The whole work is suspended by Authority beyond 180 days for any reason which is not attributed to the Contractor.
- (e) The Authority's Engineer fails to issue the Payment Authorisation in accordance with this agreement.
- (f) the Authority is under substantial and proven financial duress likely to have an impact on payments to be made to the Contractor
- (g) the Authority is found, based on reasonable evidence, to have engaged in corrupt, fraudulent, collusive or coercive practice at any time in relation to the Works or to the Contract.

19.2.2 Without prejudice to any other right or remedy which the Contractor may have under this Agreement, upon occurrence of an Authority Default, the Contractor may by giving a notice to the Authority, require the Authority to make good the failure and to remedy ("Notice to Correct Authority's Default"). The Authority shall upon receipt of the Notice to Correct respond to the Contractor within 15 (fifteen) days describing the measures the Authority will take to remedy the failure. The Contractor shall be entitled to terminate this Agreement by issuing a Termination Notice to the Authority if the Authority fails to respond to the Notice to Correct Authority's Default within 15 (fifteen) days.

19.3 Termination for Authority's convenience and failure to achieve Appointed Date

19.3.1 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 by the Long Stop Date in accordance with Sub-Clause 7.3.3. The Authority may issue a notice of such termination to the Contractor under this Clause 19.3. The termination shall take effect 30 (thirty) days from the date of notice provided to the Contractor and shall be deemed to be termination on account of Authority Default.

19.3.2 After giving a Notice to terminate under this Sub-Clause, the Authority shall:

- (a) have no right to further use any of the Contractor's Documents, which shall be returned to the Contractor, except those for which the Contractor has received payment or for which payment is due;
- (b) no right to allow the continued use (if any) of any Contractor's Equipment, Temporary Works, access arrangements and/or other of the Contractor's facilities or services; and
- (c) make arrangements to return the Performance Security to the Contractor and release of Retention money.

19.4 Requirements after Termination

19.4.1 Upon Termination of this Agreement in accordance with the provisions of this Clause 19, the Contractor shall comply with and conform to the following:

- (a) deliver to the Authority all Plant, Works and Materials which shall have become the property of the Authority under this Clause 19 and in accordance with this Agreement;

- (b) deliver all relevant records, reports, Intellectual Property and other licences pertaining to the Works, relevant Contractor's Documents and other design documents and in case of Termination occurring after the Provisional Certificate has been issued, the "as-built" Drawings for the Works;
- (c) transfer and/or deliver all Applicable Permits to the Authority (or to any person nominated by the Authority) to the extent permissible under Applicable Laws; and
- (d) vacate the Site within 15 (fifteen) days in a clean and safe condition.

19.5 Valuation of Unpaid Works

19.5.1 Within a period of 45 (forty-five) days after Termination under Sub-Clause 19.1 [Termination for Contractor Default], Sub-Clause 19.2 [Termination for the Authority Default] or 19.3 [Termination for Authority's convenience and failure to achieve Appointed Date], as the case may be, has taken effect, the Authority's Engineer shall proceed in accordance with Sub-Clause 14.5 [Determination by the Authority's Engineer] to determine as follows the valuation of unpaid Works (the "**Valuation of Unpaid Works**"):

- (a) value of the completed stage of the Works, less payments already made; and
- (b) reasonable value of the partially completed stages of works as on the date of Termination, only if such works conform with the Specifications and Standards.

and shall adjust from the sum thereof any other amounts payable or recoverable, as the case may be, in accordance with the provisions of this Agreement.

19.5.2 The Valuation of Unpaid Works shall be communicated to the Authority, with a copy to the Contractor, within a period of 45 (forty five) days from the date of Termination.

19.6 Termination Payment

19.6.1 Upon Termination on account of Contractor Default under Sub-Clause 19.1 [Termination for Contractor Default], the Authority shall:

- (a) encash and appropriate the Performance Security and in the event the Contractor has failed to replenish or extend the Performance Security, claim the amount stipulated in Sub-Clause 6.1 [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 Contractor; and
- (d) pay to the Contractor, by way of Termination Payment, an amount equivalent to the Valuation of Unpaid Works after adjusting any other sums payable or recoverable, as the case may be, in accordance with the provisions of this Agreement,

and shall adjust from the sum thereof any other amounts payable or recoverable, as the case may be, in accordance with the provisions of this Agreement.

19.6.2 Upon Termination on account of an Authority Default, the Authority shall:

- (a) return the Performance Security forthwith;
- (b) encash and appropriate the bank guarantee, if any, to the extent of the

outstanding Advance Payment, including interest thereon; and

(c) pay to the Contractor, by way of Termination Payment, an amount equal to:

(i) Valuation of Unpaid Works;

(ii) the reasonable cost, as determined by the Authority's Engineer, of the Plant and Materials procured by the Contractor and transferred to the Authority for its use, only if such Plant and Materials are in conformity with the Specifications and Standards;

(iii) the reasonable cost of temporary works, as determined by the Authority's Engineer; and

(iv) 10% (ten per cent) of the cost of the Works that are not commenced or not completed.

and shall adjust from the sum thereof any other amounts payable or recoverable, as the case may be, in accordance with the provisions of this Agreement.

19.6.3 Termination Payment shall become due and payable to the Contractor within 60 (Sixty) days of a demand being made by the Contractor to the Authority with the necessary particulars, after the Valuation of Unpaid Works has been communicated by the Authority's Engineer. For the avoidance of doubt, it is expressly stated that Termination Payment shall constitute full discharge by the Authority of its payment obligations in respect thereof hereunder

19.6.4 The Contractor expressly agrees that Termination Payment under this Clause 19 shall constitute a full and final settlement of all claims of the Contractor on account of Termination of this Agreement and that it shall not have any further right or claim under any law, treaty, convention, contract or otherwise.

19.7 Other rights and obligations of the Parties

19.7.1 Upon Termination for any reason whatsoever

(a) the property and ownership in all Materials, Plant and Works and the Project shall, as between the Contractor and the Authority, vest in the Authority in whole, free from any and all Encumbrances; provided that the foregoing shall be without prejudice to Sub-Clause 19.6 [Termination Payment];

(b) the risk of loss or damage to any Materials, Plant or Works and the care and custody thereof shall pass from the Contractor to the Authority; and

(c) the Authority shall be entitled to restrain the Contractor and any person claiming through or under this Agreement from entering upon the Site or any part of the Project except for taking possession of materials, stores, implements, construction plants and equipment of the Contractor, which have not been vested in the Authority in accordance with the provisions of this Agreement.

19.8 Survival of rights

19.8.1 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

20. ASSIGNMENT AND CHARGES

20.1 Restrictions on assignment and charges 20.1.1 This Agreement shall not be assigned by the Contractor to any person except in unavoidable and exceptional circumstances with the explicit consent of the Authority which consent the Authority shall be entitled to decline without assigning any reason.

20.2 Hypothecation of Materials or Plant 20.1.2 Notwithstanding the provisions of Sub-Clause 21.1 [General indemnity], the Contractor may pledge or hypothecate to its lenders, any Materials or Plant prior to their incorporation in the Works. The Contractor acknowledges that this shall not relieve the Contractor from any obligations, duty or responsibility under this Agreement. For the avoidance of doubt, all Materials and Plants shall, upon their incorporation into Works, be free from any and all Encumbrances without the Authority being required to make any payment to any person on account of any costs, compensation, expenses and charges for such Materials, Plants and Works

21. LIABILITY AND INDEMNITY

21.1 General indemnity 21.1.1 The Contractor shall indemnify, defend, save and hold harmless the Authority and its employees, officers, servants, agents (the “**Authority Indemnified Persons**”) against any and all suits, proceedings, actions, demands and third party claims for any loss, damage, cost and expense of whatever kind and nature, including attorney’s fees and expense, whether arising out of any breach by the Contractor of any of its obligations under this Agreement or from any negligence under this Agreement, including any errors or deficiencies in the design documents, or other Contractor’s Documents, or tort or on any other ground whatsoever, except to the extent that any such suits, proceedings, actions, demands and claims have arisen due to any negligent act or omission, or breach or default of this Agreement on the part of the Authority Indemnified Persons.

21.1.2 The Authority shall indemnify, defend, and hold harmless the Contractor and its employees, officers, servants, agents against any and all suits, proceedings, actions, demands and third party claims for any loss, damage, cost and expense of whatever kind and nature, including attorney’s fees and expense incurred by or imposed upon the Authority or any of its instrumentalities in connection with any third party claims, suits, actions, demands or judgments arising out of any event the occurrence of which was before the execution of this Agreement.

21.2 Indemnity by the Contractor 21.2.1 Without limiting the generality of Sub-Clause 21.1 [General indemnity], the Contractor shall fully indemnify, hold harmless and defend the Authority and the Authority Indemnified Persons from and against any and all loss and/or damages arising out of or with respect to:

- (a) failure of the Contractor to comply with Applicable Laws, Applicable Permits;
- (b) payment of taxes required to be made by the Contractor in respect of the income or other taxes of the Sub-contractors, suppliers and representatives; or
- (c) non-payment of amounts due as a result of Materials or services furnished to the Contractor or any of its Sub-contractors which are payable by the Contractor or any of its Sub-contractors.

21.2.2 Without limiting the generality of the provisions of this Clause 21 [Liability and Indemnity], the Contractor shall fully indemnify, hold harmless and defend the Authority Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which the Authority Indemnified Persons may hereafter suffer, or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement or alleged infringement of any domestic or foreign patent rights, copyrights or other Intellectual Property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the Contractor or by the Sub-contractors in performing the Contractor’s obligations or in any way incorporated in or related to the Project. If in any such suit, action, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the Contractor shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the revocation or suspension of the injunction or restraint order. If, in any such suit, action, claim or

proceedings, the Project, or any part thereof or comprised therein, is held to constitute an infringement and its use is permanently enjoined, the Contractor shall promptly make every reasonable effort to secure for the Authority a licence, at no cost to the Authority, authorising continued use of the infringing work. If the Contractor is unable to secure such licence within a reasonable time, the Contractor shall, at its own expense, and without impairing the Specifications and Standards, either replace the affected work, or part, or process thereof with non-infringing work or part or process, or modify the same so that it becomes non-infringing.

21.3 Notice and contest of claims

21.3.1 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.

21.4 Defence of claims

21.4.1 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.

21.4.2 If the Indemnifying Party has exercised its rights under Sub-Clause 21.3 [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).

21.4.3 If the Indemnifying Party exercises its rights under Sub-Clause 21.3 [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 Sub-Clauses (b), (c) or (d) of this Sub-Clause 21.4.3 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.

21.5 No consequential claims Notwithstanding anything to the contrary contained in this Clause 21, 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.

21.6 Survival on Termination The provisions of this Clause 21 [Liability and Indemnity] shall survive Termination.

22. DISPUTE RESOLUTION

22.1 Amicable Settlement

22.1.1 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.

22.1.2 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.

22.1.3 In the event that the Contractor and the Authority cannot agree on Amicable Settlement any matter relating to a claim, either Party may refer the matter to the Dispute Board in accordance with Sub-Clause 22.2 [Resolution by Dispute Board].

22.2 Resolution by Dispute Board

22.2.1 Disputes shall be referred to a Dispute Resolution Board (DB) for decision in accordance with Sub-Clause 22.1.3. The Parties shall appoint a DB by the date **as specified in the SCC**.

22.2.2 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 Contract and shall be a professional experienced in the type of activities involved in the performance of the Contract 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.

22.2.3 If the Parties have not jointly appointed the DB 21 (twenty one) days before the date in accordance with Sub-Clause 22.2.1, 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.

22.2.4 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.

22.2.5 The appointment of any member may be terminated by mutual agreement of both Parties, but not by the Authority or the Contractor acting alone. Unless otherwise agreed by both Parties, the appointment of the DB (including each member) shall expire upon resolution of the Dispute or upon the Dispute being referred for Arbitration.

22.2.6 Failure to Agree on the Composition of the Dispute Board shall have meant to have occurred in any of the following circumstances:

the Parties fail to agree upon the appointment of the member(s) of the DB by the date stated; or
the Parties fail to agree upon the appointment of a replacement person within 28 days after the date on which the sole member or one of the three members declines to act or is unable to act as a result of death, disability, resignation or termination of appointment,
then the appointing entity or official shall, upon the request of either or both of the Parties and after due consultation with both Parties, appoint member of the DB. This appointment shall be final and conclusive. Each Party shall be responsible for paying one-half of the remuneration of the appointing entity or official.

Obtaining Dispute Board's Decision

22.2.7 If a dispute (of any kind whatsoever) arises between the Parties in connection with the performance of the Contract, including any dispute as to any certificate, determination, instruction, opinion or valuation of Authority's Engineer, either Party may refer the dispute in writing to the DB for its decision, with copies to the other Party and the Authority's Engineer. Such reference shall state that it is given under this Clause. For a DB of three persons, the DB shall be deemed to have received such reference on the date when it is received by the chairman of the DB.
22.2.8 Both Parties shall promptly make available to the DB all such additional information, further access to the Site, and appropriate facilities, as the DB may require for the purposes of making a decision on such dispute. The DB shall be deemed to be not acting as arbitrator(s).

22.2.9 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 22.3 [Arbitration]. Unless the Contract has already been abandoned, repudiated or terminated, the Contractor shall continue with the performance of the Facilities in accordance with the Contract.

22.2.10 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.

22.2.11 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 22.2.13 and 22.2.14, neither Party shall be entitled to commence arbitration of a dispute unless a notice of dissatisfaction has been given in accordance with this Clause.

22.2.12 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

22.2.13 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 22.3 [Arbitration].

22.2.14 If a dispute arises between the Parties in connection with the performance of the Contract, 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 Sub-Clause 22.3 [Arbitration].

22.3 Arbitration

Any dispute which remains unresolved between the parties through the mechanisms available / prescribed under Sub-Clause 22.1[Amicable Settlement] and 22.2 [Resolution by Dispute Board], irrespective of any claim value or which has not been agreed upon / reached settlement by the parties, will be referred for Arbitration to the Arbitral Tribunal.

- (i) Such arbitration shall be held in accordance with the UNCITRAL Arbitration Rules (the "Rules"), The place and seat of such arbitration shall be **as specified in the SCC**, and the language of arbitration proceedings shall be **English**.
- (ii) The Arbitral Tribunal shall make a reasoned award (the "**Award**"). Any Award made in any arbitration held pursuant to this Clause 22 [Dispute Resolution] shall be final and binding on the Parties as from the date it is made, and the Contractor and the Authority agree and undertake to carry out such Award without delay. Unless specifically provided in terms of this Agreement, Contractor waives his right to claim an interest on any disputed amounts, finally granted by the Arbitral Tribunal.]

23. MISCELLANEOUS

- 23.1 Governing law and jurisdiction** This Agreement shall be construed and interpreted in accordance with and governed by the laws of Authority's country.
- 23.2 Waiver of immunity** 23.2.1 The Contractor unconditionally and irrevocably:
- (a) agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;
 - (b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Contractor with respect to its assets;
 - (c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and
 - (d) consents generally in respect of the enforcement of any judgement or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgement that may be made or given in connection therewith).
- 23.3 Delayed payments** 23.3.1 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 Sub-Clause 15.6 [Procedure for Payments to Contractor] and shall be paid directly by the Authority to the Contractor.
- 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.
- 23.4 Waiver** 23.4.1 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.

23.4.2 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.

23.5 Liability for review of Documents and Drawings

23.5.1 Except to the extent expressly provided in this Agreement:

(a) no review, comment or approval by the Authority or the Authority's Engineer or Government Instrumentality of any Document or Drawing submitted by the Contractor nor any observation or inspection of the construction of the Project nor the failure to review, approve, comment, observe or inspect hereunder shall relieve or absolve the Contractor from its obligations, duties and liabilities under this Agreement, Applicable Laws, Applicable Permits; and

(b) the Authority shall not be liable to the Contractor by reason of any review, comment, approval, observation or inspection referred to in Sub-Clause (a) above.

23.6 Exclusion of implied warranties etc.

23.6.1 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.

23.7 Survival

23.7.1 Termination shall:

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

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

23.7.2 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.

23.8 Entire Agreement

23.8.1 This Agreement and the Schedules together constitute a complete and exclusive statement of the terms of the agreement between the Parties on the subject hereof, and no amendment or modification hereto shall be valid and effective unless such modification or amendment is agreed to in writing by the Parties and duly executed by persons especially empowered in this behalf by the respective Parties. All prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement are abrogated and withdrawn. For the avoidance of doubt, the Parties hereto agree that any obligations of the Contractor arising from the Request for Proposal and bid submissions, as the case may be, shall be deemed to form part of this Agreement and treated as such.

- 23.9 Severability** If for any reason whatsoever, any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other 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 Clause 22 [Dispute Resolution] of this Agreement or otherwise.
- 23.10 partnership** **No** 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.
- 23.11 Third parties** This Agreement is intended solely for the benefit of the Parties, and their respective successors and permitted assigns, and nothing in this Agreement shall be construed to create any duty to, standard of care with reference to, or any liability to, any person not a Party to this Agreement.
- 23.12 Successors and assigns** This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns.
- 23.13 Notices**
- 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.
- 23.14 Counterparts** This Agreement may be executed in two counterparts, each of which, when executed and delivered, shall constitute an original of this Agreement.
- 23.15 Confidentiality** The Parties shall treat the details of this Agreement as private and confidential, except to the extent necessary to carry out obligations under it or to comply with Applicable Laws. The Contractor shall not publish, permit to be published, or

disclose any particulars of the Works in any trade or technical paper or elsewhere without the previous consent of the Authority.

23.16 Copyright and Intellectual Property rights

23.16.1 As between the Parties, the Contractor shall retain the copyright and other Intellectual Property rights in the Contractor's Documents and other design documents made by (or on behalf of) the Contractor. The Contractor shall be deemed (by signing this Agreement) to give to the Authority a non-terminable transferable non-exclusive royalty-free licence to copy, use and communicate the Contractor's Documents, including making and using modifications of them. This licence shall:

- (a) apply throughout the actual or intended working life (whichever is longer) of the relevant parts of the Works,
- (b) entitle any person in proper possession of the relevant part of the Works to copy, use and communicate the Contractor's Documents for the purposes of completing, operating, maintaining, altering, adjusting, repairing and demolishing the Works, and
- (c) in the case of Contractor's Documents which are in the form of computer programs and other software, permit their use on any computer on the Site and other places as envisaged by this Agreement, including replacements of any computers supplied by the Contractor:

23.16.2 The Contractor's Documents and other design documents made by (or on behalf of) the Contractor shall not, without the Contractor's consent, be used, copied or communicated to a third party by (or on behalf of) the Authority for purposes other than those permitted under this Clause.

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

23.16.4 The Contractor shall ensure and take all steps promptly to protect the copyright and other Intellectual Property Rights in the Contractor's Documents and other design documents made by (or on behalf of) the Contractor.

23.17 Limitation of Liability

23.17.1 save and except as provided in Clause 19 [Termination] and Clause 23 [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.

23.17.2 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 Clause 19 [Termination] and Clause 21 [Liability and Indemnity], shall not exceed the Contract Price. For the avoidance of doubt, this Clause shall not limit the liability

in any case of gross negligence, criminal or willful action, fraud, deliberate default or reckless misconduct by the defaulting Party.

PART IV. SPECIAL CONDITIONS OF CONTRACT

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	1.1.1	<p>Appointed Date shall mean the date on which all the following precedent conditions have all been fulfilled and after fulfillment of the conditions, the Authority's Engineer issues Notice to the Contractor instructing to commence the work.</p> <p>(a) Contractor has delivered to the Authority the Performance Security in accordance with Clause 6;</p> <p>(b) Issuance of Contract Inclusion Letter by Exim Bank;</p> <p>(c) Authority has handed over the Site or part of the site thereof in conformity with Sub-Clause 4.1.5 together with such permission(s) under of Sub-Clause 4.3.1 [Obligations relating to Environmental and Forest Clearances] as required for the commencement of works.</p> <p>(d) In case of exemption of taxes in accordance with Clause 15.1.3, letter from the concerned Government Instrumentality notifying the exemption of all the taxes for the Contract. In case of tax reimbursement, letter from the Project Authority confirming that all applicable taxes in the Authority's Country shall be reimbursed within 90 days from the Notice for tax reimbursement.</p>
Value of Indian Content to be procured by the Contractor	3.1.10	At least 75% (seventy five percent) of the Contract Price
Limit for Sub-contract Works	3.2.1	Not more than 20% of the Contract Price
Limit for carrying out the Works by the Contractor	3.2.1	At least 80% of the Contract Price
Work to be discharged solely by the Lead Member	3.2.2	At least 40% (forty percent)
Work to be discharged solely by the JV Member	3.2.2	At least 15% (ten percent)
Works for which subcontracting is not permitted	3.2.3	<i>[To be updated for each project, if required based on necessity of the Project]</i>

Conditions	Clause	Data
Qualification Criteria for Sub-contractor	3.2.5 and 14.2.6	a) The appointment of the sub-contractor shall be in compliance with the Applicable Guidelines. [Any other project specific condition to be added]
Handing Over of Site by the Authority with no less than the percentage of the total land required for the Project to be provided	4.1.5	90% (<i>ninety per cent</i>) <i>[To be decided on case to case basis for each Contract with a minimum of 80%]</i>
Time period for obtaining Environmental and Forest Clearances	4.3.1	To be obtained prior to the appointed date for the site being handed over for achieving appointed date or for commencement of work for the section of site handed over after the appointed date.
Bank issuing irrevocable and unconditional bank guarantee	6.1.1	The Contractor shall submit irrevocable and unconditional bank guarantee acceptable to the Authority, obtained through a scheduled public sector or private sector bank India or local bank of the Authority's Country or through local correspondent bank in case of foreign bank
Currency and Amount of Works Performance Security	6.1.1	United States Dollar (\$) 10% (ten percent) of the Contract Price
Validity of Works Performance Security	6.1.1	Until 60 (sixty) days of the expiry of the Defects Liability Period specified in Sub-Clause 13.1.1. or the extended Defects Liability Period under this agreement.
Currency and Amount of Maintenance Performance Security	6.1.3	United States Dollar (\$) 5% (five percent) of the Contract Price
Validity of Maintenance Performance Security	6.1.3	Until 60 (sixty) days of the expiry of the Maintenance Period in accordance with Clause 12.2.1.
Release of Works Performance Security	6.4.1	After 60 (sixty) days of the expiry of the defects liability period or the extended defects liability period under this agreement.
Release of Maintenance Performance Security	6.4.2	After 60 (sixty) days of completion of the Maintenance Period.
Release of Retention Money	6.5.3	Within 15 (fifteen) days of the date of issue of the Works Completion Certificate

Conditions	Clause	Data
Time Limit prescribed to Authority for providing Handing Over of Site / Right of Way for those parts of the Site for which no time has been specified in Schedule-A	7.2.3	180 (One Hundred and Eighty days) of the Appointed Date.
The Authority shall pay to the Contractor if any Works are withdrawn after commencement of Construction of such works	7.3.4	110% (one hundred and ten per cent) of the fair value of the work done, as assessed by the Authority's Engineer
Scheduled Completion Date	8.3.1	_____ days from the Appointed Date <i>[To be specified for each project]</i>
Rate of Damages for Delay	8.3.2	@ 0.05% (zero point zero five per cent) of the Contract Price for delay for each day
Amount and duration of the Latent Defects Guarantee	8.6.3	<i>[Requirement of the Latent Defects Guarantee to be decided on case to case basis depending on the nature of the Project]</i>
Total value of all Change of Scope Orders	11.4.2	Shall not exceed 10% (ten per cent) of the Contract Price
Maintenance Period	12.2.1	<i>[To be decided for each project. 3-5 years as per IDEAS Guidelines.]</i>
Defects Liability Period	13.1.1	<i>[To be decided for each project]</i>
Rate of Damages for Contractor's failure to rectify Defects	13.4	20% (twenty per cent)
The Contract Price	15.1.1	_____ (_____) (in figures and words)
Exemption / Reimbursement of Taxes	15.1.3	<i>To be decided for each project if the taxes are to be exempted upfront or taxes will be reimbursed</i>
Currency of payment	15.1.7	<i>[United States Dollars]</i>
Amount of Advance Payment	15.2.1	<i>Advance Payment percentage to be decided on case to case basis. [Upto 20% as per IDEAS Guidelines]</i>
Interest Rate on Advance Payment	15.2.1	<i>[5% (five per cent) per annum]</i>
Deductions of Advance Payment to commence when cumulative interim payments certified shall have reached	15.2.4	20%

Conditions	Clause	Data
Recovery of Advance Payment from each Interim Payment Certificate shall not exceed	15.2.4	<i>Proportionate amount of Advance Recovery due and payable under such Interim Payment Certificate and accrued Interest on advance payment calculated on the basis of "Actual number of days in the period divided by 365".</i> <i>[To be decided depending on the amount of Advance Payment so that the Advance Payment is recovered by 80% of financial progress]</i>
Minimum Amount of Stage Payment Statement	15.4.1	<i>Minimum Value of Such Statement shall be 5% (five per cent) of the Contract Price.</i>
Account of the Contractor for Payment	15.6.3	<i>Account Details of the Contractor to be specified</i>
Limit of Professional Liability Cover / Insurance	16.1.6	<i>A sum of not less than 100% (One Hundred Percent) of the Contract Price</i>
Date of appointment of Dispute Resolution Board (DB)	22.2.1	
Composition of DB	22.2.2	
Place and Seat of Arbitration	22.3	
Notices to Parties	23.13	<i>a) In case of Contractor, Attention: Designation: Address: Email: b) In the case of the Authority, Attention: Designation: Address: Email: (c) In the case of the Authority's Engineer. {Designation: Address: Fax No: Email: In case the Authority Engineer does not have an office in the same city as the Contractor, it may send such notice by registered acknowledgement due, air mail or by courier</i>

FORM I. ENGINEERING, PROCUREMENT AND CONSTRUCTION AGREEMENT

THIS AGREEMENT is entered into on this the..... day of, 20.....

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}, (hereinafter referred to as the “**Contractor**” which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns) of the **Other Part**.

Whereas:

- A. The Authority [through implementing agency] intends to undertake [Name of Project] (hereinafter called the “Project”).
- B. The Authority resolves to undertake the Project on Engineering, Procurement, and Construction (“EPC”) basis 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 bidders as per the technical and commercial terms and conditions prescribed in the RFP for undertaking the Project.
- D. After evaluation of the bids received, the Authority accepted the bid of the selected bidder and issued its Letter of Acceptance No. {insert details} dated {insert date} (hereinafter called the “**LOA**”) to the selected Bidder for the Project at the Contract Price specified hereinafter, requiring the selected Bidder to, inter alia:
 - (i) Give his consent to enter into this Agreement and the enforceability of the provisions thereof, within 10 (ten) days of the receipt of LOA;
 - (ii) Submit Performance Security as per RFP requirements, and
 - (iii) Execute this Agreement within 30 (Thirty) days of the date of receipt of LOA.
- E. The Contractor has fulfilled the requirements specified in Recital D (i) and D (ii) above.

The Authority and the Contractor agree as follows:

1. In this Agreement, words and expressions shall have the same meanings as are respectively assigned

to them in the Contract documents referred to.

2. The following documents shall be deemed to form and be read and construed as part of this Agreement:

- (i) the Letter of Acceptance (LOA);
- (ii) the Letter comprising the Technical Bid of the Contractor;
- (iii) the Letter comprising the Financial Bid of the Contractor;
- (iv) the minutes of the Pre-Bid Meeting(s);
- (v) the addenda Nos _____(if any);
- (vi) the Special Conditions (as attached with this Form);
- (vii) the General Conditions (as published on <https://www.eximbankindia.in/> on ____, document reference number ____, in case of any inconsistencies or ambiguity in interpretation the document published on __ by Export-Import Bank of India in__ shall be used for reference.);
- (viii) the Specifications and Standards;
- (ix) the Drawings;
- (x) the completed Schedules (as attached with this Form)
- (xi) any appendices (as attached with this Form); and
- (xii) any other documents forming part of the Contract.

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

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

IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DAY, MONTH AND YEAR FIRST ABOVE WRITTEN.

SIGNED, SEALED AND DELIVERED

For and on behalf of THE AUTHORITY by:

(Signature)

(Name)

(Designation)

SIGNED, SEALED AND DELIVERED

For and on behalf of
THE CONTRACTOR by:

(Signature)
(Name)
(Designation)

In the presence of :

Authority's Witness: 1. {1}.

Contractor's Witness: 2. {2}.

{COUNTERSIGNED and accepted by :

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

Schedules

[Content of the Schedules is indicative and should be updated for each project]

SCHEDULE-A: SITE OF THE PROJECT

1 The Site

- 1.1 Site of the Project shall include the land, buildings, structures and road works as described in Annex-I of this Schedule-A.
- 1.2 The dates of providing the Handing Over of Site to the Contractor are specified in Annex-II of this Schedule-A.
- 1.3 An inventory of the Site including the land, buildings, structures, road works, trees and any other immovable property on, or attached to, the Site shall be prepared jointly by the Authority 's Engineer and the Contractor, and such inventory shall form part of the memorandum referred to in sub-clause 7.2 of this Agreement.
- 1.4 The alignment plans of the Project are specified in Annex-III of this Schedule-A. In the case of sections where no modification in the existing alignment of the Project is contemplated, the alignment plan has not been provided. Alignment plans have only been given for sections where the existing alignment is proposed to be modified.
- 1.5 The list of environment clearances to be obtained by the Contractor is given in Annex IV.

Annex - I
(Schedule-A)

Site for Project

[Note: Through suitable drawings and description in words, the land, buildings, structures and works comprising the Site shall be specified briefly but precisely in this Annex-I.]

1. Site

The Site of the Project comprises:

2. Land

The Site of the Project comprises the land described below:

[**DETAILS TO BE ADDED EXHAUSTIVELY AS PER THE PROJECT DPR. THIS IS AN INDICATIVE SCHEDULE]

S. No.	Location		Type	
	From (km)	To (km)	T -junction	Cross road

Annex - II
(Schedule-A)

Dates for providing Handing Over of Site

The dates on which the Authority shall provide Handing Over of Site to the Contractor on the project site or different Sections of the Site, if applicable, are specified below:

Annex - III
(Schedule-A)

Alignment Plans¹

The existing alignment of the Project shall be modified in the following sections as per the alignment plan indicated below:

¹ May be omitted or substituted to reflect project-specific requirements.

Annex - IV
(Schedule-A)

Environmental Clearances

The following environment clearances shall be obtained by the Contractor: [The list of environmental clearances required as per the Detailed Project Report (DPR). The list may not be an exhaustive list of such clearances.]

-

SCHEDULE-B: DEVELOPMENT OF THE PROJECT

1 Development of the Project

Development of the Project shall include design and construction of the Project as described in this Schedule-B and in Schedule-C.

2 Specifications and Standards

The Project shall be designed and constructed in conformity with the Specifications and Standards specified in Annex-I of Schedule-D.

Annex - I
(Schedule-B)

Description of the Project

[Note: Description of the Project shall be given by the Authority in detail together with explanatory drawings (where necessary) to explain the Authority's requirements precisely in order to avoid subsequent changes in the Scope of the Project. In addition to these particulars, all other essential project-specific details, as required, should be provided in order to define the Scope of the Project clearly and precisely.]

SCHEDULE-C: PROJECT FACILITIES¹³

1 Project Facilities

The Contractor shall construct the Project Facilities in accordance with the provisions of this Agreement. Such Project Facilities shall include:

2 Description of Project Facilities

Each of the Project Facilities is described below:

S. No.	Project Facility	Location	Design Requirements	Other essential details

Note: Provide adequate details of each Project Facility to ensure their design and completion in accordance with the project-specific requirements and the provisions of the Manual.

SCHEDULE-D: SPECIFICATIONS AND STANDARDS

1 Construction

The Contractor shall comply with the Specifications and Standards set forth in Annex-I of this Schedule-D for construction of the Project.

2 Design Standards¹⁴

The Project including Project Facilities shall conform to design requirements set out in the following documents:

[Note: Specify the relevant Manual, Specifications and Standards]

Annex - I
(Schedule-D)

Specifications and Standards for Construction¹⁵

1 Specifications and Standards

All Materials, works and construction operations shall conform to the [].
Where the specification for a work is not given, Good Industry Practice shall be adopted to the satisfaction of the Authority's Engineer.

SCHEDULE-E: APPLICABLE PERMITS

1 **Applicable Permits**¹⁶

1.1 The Contractor shall obtain, as required under Applicable Laws, the following Applicable Permits from Local Government Instrumentalities in the Authority's Country:

- (a) Permission for _____;
- (b) Permission for _____;
- (c) Permission for drawing water from river/reservoir;
- (d) Permission for borrow earth; and
- (e) Any other permits or clearances required under Applicable Laws, Applicable Laws of Authority's Country and Good Industry Practice.

1.2 Applicable Permits, as required, relating to environmental protection and conservation shall also be procured by the Contractor in accordance with the provisions of this Agreement. The Authority shall provide reasonable assistance to the Contractor to obtain such Applicable Permits to the extent feasible.

SCHEDULE-F: PROJECT PAYMENT MILESTONE AND WEIGHTAGE

1.1 The Contract Price for this Agreement is Rs. *****

1.2 Proportions of the Contract Price for different stages of Construction of the Project shall be as specified below:

Item	Weightage in percentage to the Contract Price	Stage for Payment	Percentage weightage
1	2	3	4

* The above list is illustrative and may require modification as per the scope of the work.

SCHEDULE-G: DRAWINGS

(See Sub-Clause 8.2)

1 Drawings

In compliance of the obligations set forth in Sub-Clause 8.2 [Design and Drawings] of this Agreement, the Contractor shall furnish to the Authority's Engineer, free of cost, all Drawings listed in Annex-I of this Schedule-G.

2 Additional Drawings

If the Authority's Engineer determines that for discharging its duties and functions under this Agreement, it requires any drawings other than those listed in Annex-I, it may by notice require the Contractor to prepare and furnish such drawings forthwith. Upon receiving a requisition to this effect, the Contractor shall promptly prepare and furnish such drawings to the Authority's Engineer, as if such drawings formed part of Annex-I of this Schedule-G.

Annex - I
(Schedule-G)

List of Drawings

[**Note:** The Authority shall describe in this Annex-I, all the Drawings that the Contractor is required to furnish under Sub-Clause 8.2[Design and Drawings].]

A typical list of drawings -

1. General layout plan
2. Plan of existing features
3. Land acquisition plan
4. Landscaping and plantation plan
5. Plan for the diversion of utilities
6. Profile of existing ground
7. Quality control plan for construction
8. As-built drawings and record drawings
9. Any additional drawings

SCHEDULE-H: PROJECT COMPLETION SCHEDULE

(See Sub-Clause 8.3)

1 Project Completion Schedule

During Construction period, the Contractor shall comply with the requirements set forth in this Schedule-H for each of the Project Milestones and the Scheduled Completion Date. Within 15 (fifteen) days of the date of each Project Milestone, the Contractor shall notify the Authority of such compliance along with necessary particulars thereof.

2 Project Milestone-I

2.1 Project Milestone-I shall occur on the date falling on the 180th (one hundred and eightieth) day from the Appointed Date (the “**Project Milestone-I**”).

2.2 Prior to the occurrence of Project Milestone-I, the Contractor shall have commenced construction of the Project and submitted to the Authority duly and validly prepared Stage Payment Statements for an amount not less than 10% (ten per cent) of the Contract Price.

3 Project Milestone-II

3.1 Project Milestone-II shall occur on the date falling on the 365th (three hundred and sixtyfifth) day from the Appointed Date (the “**Project Milestone-II**”).

3.2 Prior to the occurrence of Project Milestone-II, the Contractor shall have continued with construction of the Project and submitted to the Authority duly and validly prepared Stage Payment Statements for an amount not less than 30% (thirty per cent) of the Contract Price.

4 Project Milestone-III

4.1 Project Milestone-III shall occur on the date falling on the [550th (five hundred and fiftieth)] day from the Appointed Date (the “**Project Milestone-III**”).

4.2 Prior to the occurrence of Project Milestone-III, the Contractor shall have continued with construction of the Project and submitted to the Authority duly and validly prepared Stage Payment Statements for an amount not less than 60% (sixty per cent) of the Contract Price.

5 Scheduled Completion Date

5.1 The Scheduled Completion Date shall be the [650th (six hundred and fiftieth)] day from the Appointed Date.

5.2 On or before the Scheduled Completion Date, the Contractor shall have completed construction in accordance with this Agreement.

6 Extension of time

Upon extension of any or all of the aforesaid Project Milestones or the Scheduled Completion Date, as the case may be, under and in accordance with the provisions of this Agreement, the Project Completion Schedule shall be deemed to have been amended accordingly.

Annex I
(Schedule-H)

Work Plan

- Programme for completion of all stages of construction
- Project Milestones of the Works comprising of:
 - (a) the order in which the Contractor intends to carry out the Works, including the anticipated timing of design and stages of Works;
 - (b) the sequence and timing of inspections and tests specified in this Agreement;
 - (c) Monthly cash flow forecast for the Project along with plan to finance the Project Cash Flow Deficit, if any.

SCHEDULE-I: TESTS ON COMPLETION

(See Sub-Clause 10.1)

1 Schedule for Tests

The Contractor shall, no later than 30 (thirty) days prior to the likely completion of construction, notify the Authority's Engineer and the Authority of its intent to subject the Project to Tests, and no later than 10 (ten) days prior to the actual date of Tests, furnish to the Authority's Engineer and the Authority detailed inventory and particulars of all works and equipment forming part of Works.

The Contractor shall notify the Authority's Engineer of its readiness to subject the Project to Tests at any time after 10 (ten) days from the date of such notice, and upon receipt of such notice, the Authority's Engineer shall, in consultation with the Contractor, determine the date and time for each Test and notify the same to the Authority who may designate its representative to witness the Tests. The Authority's Engineer shall thereupon conduct the Tests itself or cause any of the Tests to be conducted in accordance with Sub-Clause 10 and this Schedule-I.

2 Tests

Visual and physical test: The Authority's Engineer shall conduct a visual and physical check of construction to determine that all works and equipment forming part thereof conform to the provisions of this Agreement. The physical tests shall include [***].

Other tests: The Authority's Engineer may require the Contractor to carry out or cause to be carried additional tests, in accordance with Good Industry Practice, for determining the compliance of the Project with Specifications and Standards.

Environmental audit: The Authority's Engineer shall carry out a check to determine conformity of the Project with the environmental requirements set forth in Applicable Laws and Applicable Permits.

Safety Audit: The Authority's Engineer shall carry out, or cause to be carried out, a safety audit to determine conformity of the Project with the safety requirements and Good Industry Practice.

The Authority's Engineer may require the Contractor to carry out, or cause to be carried out, at Contractor's Cost, third-party tests.

3 Agency for conducting Tests

All Tests set forth in this Schedule-I shall be conducted by the Authority's Engineer or such other agency or person as it may specify in consultation with the Authority.

4 Project Completion Certificate

Upon successful completion of Tests, the Authority's Engineer shall issue the Project Completion Certificate in accordance with the provisions of Clause 10.

SCHEDULE-J: SELECTION OF AUTHORITY'S ENGINEER

(See Clause 14.1)

[THE CONTENTS OF THIS SCHEDULE ARE FOR ILLUSTRATION ONLY AND SHOULD BE UPDATED BASED ON THE AGREEMENT / SCOPE OF THE AUTHORITY ENGINEER]**

1 Selection of Authority's Engineer

1.1 The selection of Authority's Engineer shall be in accordance with Applicable Guidelines) for selection of an experienced firm to discharge the functions and duties of an Authority's Engineer or any other appropriate method as opted by the Authority.

1.2 In the event of termination of the appointee appointed in accordance with the provisions of Paragraph 1.1, the Authority shall appoint another forthwith.

2 Terms of Reference

The Terms of Reference for the Authority's Engineer (the "TOR") shall substantially conform with Annex 1 to this Schedule-J.

3 Appointment of Government entity as Authority's Engineer

Notwithstanding anything to the contrary contained in this Schedule, the Authority may in its discretion appoint a Government of India owned entity as the Authority's Engineer; provided that such entity shall be a body corporate having as one of its primary functions the provision of consulting, advisory and supervisory services for engineering projects.

Terms of reference for Authority's Engineer

1 Scope

- 1.1 These Terms of Reference (the “**TOR**”) for the Authority’s Engineer are being specified pursuant to the EPC Agreement dated (the “**Agreement**), which has been entered into between the (insert name and address of the Authority) (the “**Authority**”) and (the “**Contractor**”) for _____ on _____ Engineering, Procurement, Construction (EPC) basis, and a copy of which is annexed hereto and marked as Annex-A to form part of this TOR.
- 1.2 The TOR shall apply to construction of the Project.

2 Definitions and interpretation

- 2.1 The words and expressions beginning with or in capital letters and not defined herein but defined in the Agreement shall have, unless repugnant to the context, the meaning respectively assigned to them in the Agreement.
- 2.2 References to Clauses and Schedules in this TOR shall, except where the context otherwise requires, be deemed to be references to the Clauses and Schedules of the Agreement, and references to Paragraphs shall be deemed to be references to Paragraphs of this TOR.
- 2.3 The rules of interpretation contained in Clause 1 [Definitions and Interpretation] of the Agreement shall apply, *mutatis mutandis*, to this TOR.

3. General

- 3.1 The Authority’s Engineer shall discharge its duties in a fair, impartial and efficient manner, consistent with the highest standards of professional integrity and Good Industry Practice.
- 3.2 The Authority’s Engineer shall perform the duties and exercise the authority in accordance with the provisions of this Agreement, but subject to obtaining prior written approval of the Authority before determining:
- (a) any Time Extension;
 - (b) any additional cost to be paid by the Authority to the Contractor;
 - (c) the Termination Payment; or
 - (d) any other matter which is not specified in (a), (b) or (c) above and which creates an obligation or liability on either Party.
- 3.3 The Authority’s Engineer shall submit regular periodic reports, h, to the Authority

in respect of its duties and functions under this Agreement. Such reports shall be submitted by the Authority's Engineer within 10 (ten) days of the beginning of every month.

- 3.4 The Authority's Engineer shall inform the Contractor of any delegation of its duties and responsibilities to its suitably qualified and experienced personnel; provided, however, that it shall not delegate the authority to refer any matter for the Authority's prior approval in accordance with the provisions of Sub-clause 18.2 [Authority to act on behalf of Contractor].
- 3.5 The Authority's Engineer shall aid and advise the Authority on any proposal for Change of Scope under Clause 11 [Change of Scope].
- 3.6 In the event of any disagreement between the Parties regarding the meaning, scope and nature of Good Industry Practice, as set forth in any provision of the Agreement, the Authority's Engineer shall specify such meaning, scope and nature by issuing a reasoned written statement relying on good industry practice and authentic literature.

4 Construction Period

- 4.1 During the Construction Period, the Authority's Engineer shall review the Drawings furnished by the Contractor along with supporting data, including the geo-technical and hydrological investigations, characteristics of materials from borrow areas and quarry sites, topographical surveys, and the recommendations of the Safety Consultant. The Authority's Engineer shall complete such review and send its observations to the Authority and the Contractor within 15 (fifteen) days of receipt of such Drawings, provided, however, that in case of a Major Bridge or Structure, the aforesaid period of 15 (fifteen) days may be extended up to 30 (thirty) days. In particular, such comments shall specify the conformity or otherwise of such Drawings with the Scope of the Project and Specifications and Standards.
- 4.2 The Authority's Engineer shall review any revised Drawings sent to it by the Contractor and furnish its comments within 10 (ten) days of receiving such Drawings.
- 4.3 The Authority's Engineer shall review the Quality Assurance Plan submitted by the Contractor and shall convey its comments to the Contractor within a period of 21 (twenty-one) days stating the modifications, if any, required thereto.
- 4.4 The Authority's Engineer shall complete the review of the methodology proposed to be adopted by the Contractor for executing the Works and convey its comments to the Contractor within a period of 10 (ten) days from the date of receipt of the proposed methodology from the Contractor.
- 4.5 The Authority's Engineer shall grant written approval to the Contractor, where necessary, for interruption and diversion of the flow of traffic in the existing lane(s) of the Project for purposes of maintenance during the Construction Period.
- 4.6 The Authority's Engineer shall review the monthly progress report furnished by the

Contractor and send its comments thereon to the Authority and the Contractor within 7 (seven) days of receipt of such report.

- 4.7 The Authority's Engineer shall inspect the Construction Works and the Project and shall submit a monthly Inspection Report bringing out the results of inspections and the remedial action taken by the Contractor in respect of Defects or deficiencies. In particular, the Authority's Engineer shall include in its Inspection Report, the compliance of the recommendations made by the Safety Consultant.
- 4.8 The Authority's Engineer shall conduct the pre-construction review of manufacturer's test reports and standard samples of manufactured Materials, and such other Materials as the Authority's Engineer may require.
- 4.9 For determining that the Works conform to Specifications and Standards, the Authority's Engineer shall require the Contractor to carry out, or cause to be carried out, tests at such time and frequency and in such manner as specified in the Agreement and in accordance with Good Industry Practice for quality assurance.
- 4.10 The Authority's Engineer shall test check at least 50 (fifty) percent of the quantity or number of tests prescribed for each category or type of test for quality control by the Contractor.
- 4.11 The timing of tests referred to in Paragraph 4.9, and the criteria for acceptance/rejection of their results shall be determined by the Authority's Engineer in accordance with the Quality Control Manuals. The tests shall be undertaken on a random sample basis and shall be in addition to, and independent of, the tests that may be carried out by the Contractor for its own quality assurance in accordance with Good Industry Practice.
- 4.12 In the event that results of any tests conducted in accordance with Sub-clause 9.10 [Tests] establish any Defects or deficiencies in the Works, the Authority's Engineer shall require the Contractor to carry out remedial measures.
- 4.13 The Authority's Engineer may instruct the Contractor to execute any work which is urgently required for the safety of the Project, whether because of an accident, unforeseeable event or otherwise; provided that in case of any work required on account of a Force Majeure Event, the provisions of Sub-clause 19.6 [Termination Payment] shall apply.
- 4.14 In the event that the Contractor fails to achieve any of the Milestones, the Authority's Engineer shall undertake a review of the progress of construction and identify potential delays, if any. If the Authority's Engineer shall determine that completion of the Project is not feasible within the time specified in the Agreement, it shall require the Contractor to indicate within 15 (fifteen) days the steps proposed to be taken to expedite progress, and the period within which the Project Completion Date shall be achieved. Upon receipt of a report from the Contractor, the Authority's Engineer shall review the same and send its comments to the Authority and the Contractor forthwith.

- 4.15 The Authority's Engineer shall obtain from the Contractor a copy of all the Contractor's quality control records and documents before the Project Completion Certificate is issued pursuant to Sub-clause 10.4[Project Completion Certificate].
- 4.16 Authority's Engineer may recommend to the Authority suspension of the whole or part of the Works if the work threatens the safety of the Users and pedestrians. After the Contractor has carried out remedial measures, the Authority's Engineer shall inspect such remedial measures forthwith and make a report to the Authority recommending whether or not the suspension hereunder may be revoked.
- 4.17 In the event that the Contractor carries out any remedial measures to secure the safety of suspended works and Users, and requires the Authority's Engineer to inspect such works, the Authority's Engineer shall inspect the suspended works within 3 (three) days of receiving such notice, and make a report to the Authority forthwith, recommending whether or not such suspension may be revoked by the Authority.
- 4.18 The Authority's Engineer shall carry out, or cause to be carried out, all the Tests specified in Schedule-I and issue a Project Completion Certificate or Provisional Certificate, as the case may be. For carrying out its functions under this Paragraph 4.18 and all matters incidental thereto, the Authority's Engineer shall act under and in accordance with the provisions of Clause 10 [Completion Certificate] and Schedule-I.

5 Determination of costs and time

- 5.1 The Authority's Engineer shall determine the costs, and/or their reasonableness, that are required to be determined by it under the Agreement.
- 5.2 The Authority's Engineer shall determine the period of Time Extension that is required to be determined by it under the Agreement.
- 5.3 The Authority's Engineer shall consult each Party in every case of determination in accordance with the provisions of Sub-clause 14.4[Instructions of the Authority's Engineer].

6. Payments

- 6.1 The Authority's Engineer shall withhold payments for the affected works for which the Contractor fails to revise and resubmit the Drawings to the Authority's Engineer in accordance with the provisions of Sub-clause 8.2.4 (d).
- 6.2 Authority's Engineer shall -
- (a) within 10 (ten) days of receipt of the Stage Payment Statement from the Contractor pursuant to Sub-clause 15.4 [Stage Payment Statement for Works], determine the amount due to the Contractor and recommend the release of 90 (ninety) percent of the amount so determined as part payment, pending issue of the Interim Payment Certificate; and

- (b) within 15 (fifteen) days of the receipt of the Stage Payment Statement referred to in Sub-Clause 15.4, deliver to the Authority and the Contractor an Interim Payment Certificate certifying the amount due and payable to the Contractor.

7. Other duties and functions

The Authority's Engineer shall perform all other duties and functions as specified in the Agreement.

8 Miscellaneous

- 8.1 A copy of all communications, comments, instructions, Drawings or Documents sent by the Authority's Engineer to the Contractor pursuant to this TOR, and a copy of all the test results with comments of the Authority's Engineer thereon, shall be furnished by the Authority's Engineer to the Authority forthwith.
- 8.2 The Authority's Engineer shall retain at least one copy each of all Drawings and Documents received by it, including 'as-built' Drawings, and keep them in its safe custody.
- 8.3 Within 90 (ninety) days of the Project Completion Date, the Authority's Engineer shall obtain a complete set of as-built Drawings, in 2 (two) hard copies and in micro film format or in such other medium or manner as may be acceptable to the Authority, reflecting the Project as actually designed, engineered and constructed, including an as-built survey illustrating the layout of the Project and setback lines, if any, of the buildings and structures forming part of Project Facilities; and shall hand them over to the Authority against receipt thereof.
- 8.4 The Authority's Engineer, if called upon by the Authority or the Contractor or both, shall mediate and assist the Parties in arriving at an amicable settlement of any Dispute between the Parties.
- 8.5 The Authority's Engineer shall inform the Authority and the Contractor of any event of Contractor's Default within one week of its occurrence.
- 8.6 The Authority's Engineer shall certify the Indian Content under the Project to the satisfaction of the Authority, and in a format as desired by the Authority.

SCHEDULE-K: FORMS OF PAYMENT STATEMENTS

1. Stage Payment Statement for Works

The Stage Payment Statement for Works shall state:

- (a) the estimated amount for the Works executed in accordance with Sub-Clause 15.3 [Procedure for estimating the payment for the Works] subsequent to the last claim;
- (b) amounts reflecting adjustments in price for the aforesaid claim;
- (c) the estimated amount of each Change of Scope Order executed subsequent to the last claim;
- (d) amounts reflecting adjustment in price, if any, for (c) above in accordance with the provisions of Sub-Clause 11.2.3 (a);
- (e) total of (a), (b), (c) and (d) above;
- (f) Deductions:
 - (i) Amounts to be deducted in accordance with the provisions of the Agreement except taxes;
 - (ii) any amount towards deduction of taxes; and
 - (iii) any amount towards deduction of taxes at source under Applicable Laws;
- (g) Net claim: (e) – (f);
- (h) the amounts received by the Contractor upto the last claim:
 - (i) for the Works executed (excluding Change of Scope orders);
 - (ii) for Change of Scope Orders, and
 - (iii) taxes deducted

2. Contractor's claim for Damages

Note: The Contractor shall submit its claims in a form acceptable to the Authority.

3. Certificate of Indian Origin issued by an agency authorized by the Government of India , for the exports from India, .

4. Latest Monthly Progress Report in accordance with the terms of this Contract

5. Details of Sub contractors

Sr.	Name of Sub-	Value	of	Value	of	Amount Paid till	Amount
-----	--------------	-------	----	-------	----	------------------	--------

No.	contractor	Works Sub-contracted	Works done by the Sub-contractor	date	Payable / Due but not paid as on date

The information sought at point (5) above should be certified by an Independent Chartered Accountant.

SCHEDULE-L: INSURANCE

(See Clause 16)

1. Insurance during Construction Period

1.1 The Contractor shall effect and maintain at its own cost, from the Appointed Date till the date of issue of the Project Completion Certificate, or completion of the Maintenance Period², the following insurances for any loss or damage occurring on account of Non Political Event/Indirect Political Event of Force Majeure, malicious act, accidental damage, explosion, fire and terrorism:

- (a) A contractor's all risk (CAR) insurance policy which shall be for an amount not less than [●]³;
- (b) insurance of Works, Plant and Materials and an additional sum of 15% (fifteen per cent) of such replacement cost to cover any additional costs of and incidental to the rectification of loss or damage including professional fees and the cost of demolishing and removing any part of the Works and of removing debris of whatsoever nature; and
- (c) insurance for the Contractor's equipment brought onto the Site by the Contractor, for a sum sufficient to provide for their replacement at the Site.

1.2 The insurance under paragraph 1.1 (a) and (b) above shall cover the Authority and the Contractor against all loss or damage from any cause arising under paragraph 1.1 other than risks which are not insurable at commercial terms.

2. Insurance for Contractor's Defects Liability

The Contractor shall effect and maintain insurance cover for the Works from the date of issue of the Completion Certificate until the end of the Defects Liability Period for any loss or damage for which the Contractor is liable and which arises from a cause occurring prior to the issue of the Completion Certificate. The Contractor shall also maintain other insurances for maximum sums as may be required under Applicable Laws and in accordance with Good Industry Practice.

3. Insurance against injury to persons and damage to property

3.1 The Contractor shall insure against its liability for any loss, damage, death or bodily injury, or damage to any property (except things insured under Paragraphs 1 and 2 of

² To be confirmed if any insurance is to stipulated during the Maintenance Period, before finalizing the tender document

³ Amount to be specified before finalizing the tender document

this Schedule or to any person (except persons insured under Sub-Clause 16.9), which may arise out of the Contractor's performance of this Agreement. This insurance shall be for a limit per occurrence of not less than the amount specified below with no limit on the number of occurrences.

The insurance cover shall be not less than: Rs. [.....]

3.2 The insurance shall be extended to cover liability for all loss and damage to the Authority's property arising out of the Contractor's performance of this Agreement excluding:

- (a) the Authority's right to have the construction works executed on, over, under, in or through any land, and to occupy this land for the Works; and damage which is an unavoidable result of the Contractor's obligations to execute the Works.

4. Insurance to be in joint names

The insurance under paragraphs 1 to 3 above shall be in the joint names of the Contractor and the Authority.

SCHEDULE-M: MAINTENANCE REQUIREMENTS

(See Sub-Clause 12)

Repair/rectification of Defects and deficiencies The Contractor shall repair and rectify the Defects and deficiencies specified in this Annex-I of Schedule-M within the time limit set forth in the table below.

SCHEDULE-N: SAFETY AND ENVIRONMENTAL REQUIREMENTS

(See Sub-Clause 3.19)

[To be updated based on the Specific Safety requirements of the Project]

Appendix-1: FORM OF BANK GUARANTEE

Annex-I

Form of Guarantee for Performance Security / Design Guarantee

To
Project Authority

, Government of

WHEREAS:

(A) (insert name and address of the contractor**) (hereinafter called the "**Contractor**") has undertaken, in pursuance of Letter of Acceptance (LOA) No. _____ Dated _____ issued by (hereinafter called the "Authority") for construction of _____ [name of the Project** on Engineering, Procurement and Construction (the "EPC") basis] (hereinafter called the "Contract")

[Contractor has executed an agreement (hereinafter called the "Agreement") with the Authority for the Contract, subject to and in accordance with the provisions of the Agreement.**]

(B) The Contract requires the Contractor to furnish Performance Security for due and faithful performance of its obligations, under and in accordance with the Contract, during the (Construction Period and Defects Liability Period (as defined in the Contract Agreement) in a sum of (..... In words) (the "**Guarantee Amount**").

(C) We, through our branch at (the "**Bank**") have agreed to furnish this Bank Guarantee (*hereinafter called the "Guarantee"*) by way of Performance Security.

NOW, THEREFORE, the Bank hereby, unconditionally and irrevocably, guarantees and affirms as follows:

1. The Bank hereby unconditionally and irrevocably guarantees the due and faithful performance of all or any of the Contractor's obligations, under and in accordance with the provisions of the Contract during the [(Construction Period/ Defects Liability Period)], and undertakes to pay to the Authority upon occurrence of any failure or default on its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Contractor, such sum or sums up to an aggregate sum of the Guarantee Amount as the Authority shall claim, without the Authority being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.
2. A letter from the Authority, that the Contractor has committed default in the due and faithful performance of all or any of its obligations under and in accordance with the Contract shall be conclusive, final and binding on the Bank. The Bank further agrees that the Authority shall be the sole judge as to whether the Contractor is in default in due and faithful performance of its obligations during and under the Contract and its decision that the Contractor is in default shall be final and binding on the Bank, notwithstanding any differences between the Authority and the Contractor, or any dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Contractor for any reason whatsoever.
3. In order to give effect to this Guarantee, the Authority shall be entitled to act as if the Bank were the

principal debtor to the extent of the Guarantee Amount and any change in the constitution of the Contractor and/or the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.

4. It shall not be necessary, and the Bank hereby waives any necessity, for the Authority to proceed against the Contractor before presenting to the Bank its demand under this Guarantee.
5. The Authority shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Contract or to extend the time or period for the compliance with, fulfilment and/ or performance of all or any of the obligations of the Contractor contained in the Contract or to postpone for any time, and from time to time, any of the rights and powers exercisable by the Authority against the Contractor, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Contract and/or the securities available to the Authority, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the Authority of the liberty with reference to the matters aforesaid or by reason of time being given to the Contractor or any other forbearance, indulgence, act or omission on the part of the Authority or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law including the waiver of notice of any such change, addition or modification.
6. This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the Authority in respect of or relating to the Contract or for the fulfilment, compliance and/or performance of all or any of the obligations of the Contractor under the Contract.
7. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and this Guarantee will remain in force for the period specified in paragraph 8 below and unless a demand or claim in writing is made by the Authority on the Bank under this Guarantee on or before claim expiry date all rights of the Authority under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.
8. The Guarantee shall cease to be in force and effect on *****. Unless a demand or claim under this Guarantee is made in writing before expiry of the Guarantee, the Bank shall be discharged from its liabilities hereunder. The expiry date of this Guarantee is _____ and the final date of claim lodgment with the Bank is _____, including the Claim Period of one (1) year.
9. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the Authority in writing, and declares and warrants that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.
10. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the Authority that the envelope was so posted shall be conclusive.
11. This Guarantee shall come into force with immediate effect and shall remain in force and effect for up to the date specified in paragraph 8 above or until it is released earlier by the Authority pursuant to the provisions of the Contract Agreement.

12. This Guarantee shall be operatable at our branch office at [_____], from whom, confirmation regarding the issue of this guarantee or extension / renewal thereof shall be made available on demand. In the contingency of this Guarantee being invoked and payment thereunder claimed, the said branch shall accept such invocation letter and make payment of amounts so demanded under the said invocation.
13. This Guarantee is subject to the laws of XXXX and all disputes with respect to this Guarantee shall be subject to jurisdiction of the courts at XXXX.

NOTWITHSTANDING anything contained hereinabove:

- a) Our liability under the Guarantee shall not exceedXXXX (in words).
- b) The Bank Guarantee shall be valid up to XXXXXX, that is, the Expiry Date and
- c) We are liable to pay the Guarantee Amount or any part thereof under this Guarantee only and only if we receive a written claim or demand on or before **** (Claim Expiry Date). Thereafter all your rights under this Guarantee shall be forfeited, and we shall be released from all our liabilities hereunder irrespective of whether the guarantee in original is returned to us or not.

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

SIGNED, SEALED AND DELIVERED

For and on behalf of the Bank by:

(Signature)

(Name)

(Designation)

(Code Number)

(Address)

NOTES:

- (i) The bank guarantee should contain the name, designation and code number of the officer(s) signing the guarantee.
- (ii) The address, telephone number and other details of the head office of the Bank as well as of issuing branch should be mentioned on the covering letter of issuing branch

Annex –II
(Appendix-2)

Form of Guarantee for Advance Payment

To
Project Authorityr

Government of _____

WHEREAS:

- (A) (insert name and address of the contractor) (hereinafter called the “Contractor” has executed an agreement dated _____ (hereinafter called the “Agreement”) with the (insert name and address of the project authority), (hereinafter called the “Authority”) for the construction of the _____ (the “Project”) on Engineering, Procurement and Construction (the “EPC”) basis, subject to and in accordance with the provisions of the Agreement (hereinafter called the “Contract Agreement”)
- (B) In accordance with Sub-Clause 15.2 [Advance Payment] of the Agreement, the Authority shall make to the Contractor an interest bearing advance payment (herein after called “Advance Payment”) equal to 10% (ten per cent) of the Contract Price; and that the Advance Payment shall be made in two instalments subject to the Contractor furnishing an irrevocable and unconditional guarantee for an amount equivalent to 110% (one hundred and ten per cent) of such instalment to remain effective till the complete and full repayment of the instalment of the Advance Payment, as security for compliance with its obligations in accordance with the Agreement. The amount of {first/second} instalment of the Advance Payment is _____ (in words _____) and the amount of this Guarantee is _____ (in words _____) (the “**Guarantee Amount**”)[§].
- (C) We, through our branch at (the “**Bank**”) have agreed to furnish this Bank Guarantee (*hereinafter called the “**Guarantee**”*) for the Guarantee Amount.

NOW, THEREFORE, the Bank hereby, unconditionally and irrevocably, guarantees and affirms as follows:

1. The Bank hereby unconditionally and irrevocably guarantees the due and faithful repayment on time of the aforesaid instalment of the Advance Payment under and in accordance with the Agreement, and agrees and undertakes to pay to the Authority, upon its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Contractor, such sum or sums up to an aggregate sum of the Guarantee Amount as the Authority shall claim, without the Authority being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.

[§] The Guarantee Amount should be equivalent to 110% of the value of the applicable instalment.

2. A letter from the Authority, that the Contractor has committed default in the due and faithful performance of all or any of its obligations for the repayment of the instalment of the Advance Payment under and in accordance with the Contract Agreement shall be conclusive, final and binding on the Bank. The Bank further agrees that the Authority shall be the sole judge as to whether the Contractor is in default in due and faithful performance of its obligations during and under the Contract Agreement and its decision that the Contractor is in default shall be final and binding on the Bank, notwithstanding any differences between the Authority and the Contractor, or any dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Contractor for any reason whatsoever.
3. In order to give effect to this Guarantee, the Authority shall be entitled to act as if the Bank were the principal debtor to the extent of the Guarantee Amount and any change in the constitution of the Contractor and/or the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.
4. It shall not be necessary, and the Bank hereby waives any necessity, for the Authority to proceed against the Contractor before presenting to the Bank its demand under this Guarantee.
5. The Authority shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Advance Payment under the Contract Agreement or to extend the time or period of its repayment or to postpone for any time, and from time to time, any of the rights and powers exercisable by the Authority against the Contractor, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Contract Agreement and/or the securities available to the Authority, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the Authority of the liberty with reference to the matters aforesaid or by reason of time being given to the Contractor or any other forbearance, indulgence, act or omission on the part of the Authority or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law including the waiver of notice of any such change, addition or modification.
6. This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the Authority in respect of or relating to the Advance Payment.
7. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and this Guarantee will remain in force for the period specified in paragraph 8 below and unless a demand or claim in writing is made by the Authority on the Bank under this Guarantee on or before claim expiry date all rights of the Authority under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.
8. The Guarantee shall cease to be in force and effect on *****. Unless a demand or claim under this Guarantee is made in writing on or before expiry of the Guarantee, the Bank shall be discharged from its liabilities hereunder. The expiry date of this Guarantee is _____ and the final date of claim lodgment with the Bank is _____, including the Claim Period of one (1) year.
9. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the Authority in writing, and declares and warrants that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.

10. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the Authority that the envelope was so posted shall be conclusive.
11. This Guarantee shall come into force with immediate effect and shall remain in force and effect for up to the date specified in paragraph 8 above or until it is released earlier by the Authority pursuant to the provisions of the Contract Agreement.
12. This Guarantee shall be operatable at our branch office at [_____], New Delhi, from whom, confirmation regarding the issue of this guarantee or extension / renewal thereof shall be made available on demand. In the contingency of this Guarantee being invoked and payment thereunder claimed, the said branch shall accept such invocation letter and make payment of amounts so demanded under the said invocation.
13. This Guarantee is subject to the laws of XXXX and all disputes with respect to this Guarantee shall be subject to jurisdiction of the courts at XXXXh

NOTWITHSTANDING anything contained hereinabove:

- a) Our liability under the Guarantee shall not exceed Rs. XXXX (Rupees XXXXXXXX Only).
- b) The Bank Guarantee shall be valid up to XXXXXX, that is, the Expiry Date and
- c) We are liable to pay the Guarantee Amount or any part thereof under this Guarantee only and only if we receive a written claim or demand on or before **** (Claim Expiry Date). Thereafter all your rights under this Guarantee shall be forfeited, and we shall be released from all our liabilities hereunder irrespective of whether the guarantee in original is returned to us or not.

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

SIGNED, SEALED AND DELIVERED

For and on behalf of the Bank by:(Signature)

(Name)

(Designation)

(Code Number)

(Address) NOTES:

- (i) The bank guarantee should contain the name, designation and code number of the officer(s) signing the guarantee.
- (ii) The address, telephone number and other details of the head office of the Bank as well as of issuing branch should be mentioned on the covering letter of issuing branch.

Appendix-2: PROVISIONAL AND COMPLETION CERTIFICATE

(See Sub-Clause 10.2 and 10.4)

PROVISIONAL CERTIFICATE

- 1 I/We, (Name of the Authority's Engineer), acting as the Authority's Engineer, under and in accordance with the Agreement dated (the "Agreement"), for construction of the _____ (the "Project") on Engineering, Procurement and Construction (EPC) basis through (Name of Contractor), hereby certify that the Tests in accordance with Clause 10 [Completion Certificate] of the Agreement have been undertaken to determine compliance of the Project with the provisions of the Agreement.
- 2 The Contractor has agreed and accepted that as a condition of this Provisional Certificate, it shall complete minor works within 30 (thirty) days hereof. These minor works have been specified in the Punch List.
- 3 In view of the foregoing, I/We am/are satisfied that the Project can be safely and reliably placed in service of the Users thereof, and in terms of the Agreement, the Project is hereby provisionally declared fit for entry into operation on this the day of 20.....

ACCEPTED, SIGNED, SEALED
AND DELIVERED

For and on behalf of
CONTRACTOR by:

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

SIGNED, SEALED AND
DELIVERED

For and on behalf of
AUTHORITY'S ENGINEER by:

(Signature)
(Name and Designation)

SIGNED on behalf of
the Authority by:

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

PROJECT COMPLETION CERTIFICATE

- 1 I/We, (Name of the Authority's Engineer), acting as the Authority's Engineer, under and in accordance with the Agreement dated (the "**Agreement**"), for construction of the (the "**Project**") on Engineering, Procurement and Construction (EPC) basis through (Name of Contractor), hereby certify that the Tests in accordance with Clause 10[Completion Certificate] of the Agreement have been successfully undertaken to determine compliance of the Project with the provisions of the Agreement, and I/We am/are satisfied that the Project can be safely and reliably placed in service of the Users thereof.

- 2 It is certified that, in terms of the aforesaid Agreement, all works forming part of the Project have been completed, and the Project is hereby declared fit for entry into operation on this the day of 20.....

SIGNED, SEALED AND DELIVERED

For and on behalf of
the Authority's Engineer by:

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

SIGNED, SEALED AND DELIVERED

For and on behalf of
the Authority by:

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

Appendix-3: MAINTENANCE COMPLETION CERTIFICATE

(See Sub-Clause 12.10)

I, (Name and designation of the Authority's Engineer) under and in accordance with the Agreement dated (the "Agreement"), for [construction of the _____] (the "Project") on Engineering, Procurement and Construction (EPC) basis through (Name of Contractor), hereby certify that the Tests on completion of Maintenance Period in accordance with Clause __ of the Agreement have been successfully undertaken to determine compliance of the Project with the provisions of the Agreement and I hereby certify that the Authority has taken over the Project from the Contractor on this day.....

