



**TAMILNADU INDUSTRIAL DEVELOPMENT CORPORATION LTD
(TIDCO)**

DRAFT CONTRACT AGREEMENT

VOLUME. II

**DEVELOPMENT, OPERATION AND MAINTENANCE OF DEFENCE
TESTING INFRASTRUCTURE (DTI) FOR UNMANNED AERIAL
SYSTEMS (UAS) UNDER THE DEFENCE TESTING INFRASTRUCTURE
SCHEME (DTIS)**

Reference No. * TIDCO/DIC/DTIS01/2022-23

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TABLE OF CONTENTS

TABLE OF CONTENTS	2
ARTICLE 1 - DEFINITIONS AND INTERPRETATION	5
ARTICLE 2 - SCOPE OF THE PROJECT	8
ARTICLE 3 - CONDITIONS PRECEDENT	9
ARTICLE 4 - OBLIGATIONS OF THE IMPLEMENTATION AGENCY	12
ARTICLE 5 - OBLIGATIONS OF THE AUTHORITY	18
ARTICLE 6 - REPRESENTATION AND WARRANTIES	19
ARTICLE 7 - DISCLAIMER.....	22
ARTICLE 8 - PERFORMANCE SECURITY	23
ARTICLE 9 - PROJECT SITE.....	25
ARTICLE 10 - DESIGN AND CONSTRUCTION OF THE PROJECT	26
ARTICLE 11 - MONITORING OF CONSTRUCTION	28
ARTICLE 12 - COMPLETION OF PROJECT CONSTRUCTION	29
ARTICLE 13 - ENTRY INTO COMMERCIAL SERVICE.....	30
ARTICLE 14 - OPERATION AND MAINTENANCE (O&M).....	31
ARTICLE 15 - MONITORING OF O&M	32
ARTICLE 16 - FINANCIAL CLOSE	33
ARTICLE 17 - GRANT-IN-AID.....	34
ARTICLE 18 - USER FEE.....	36
ARTICLE 19 - ESCROW ACCOUNT	37
ARTICLE 20 - INSURANCE	39
ARTICLE 21 - ACCOUNTS AND AUDIT	41
ARTICLE 22 - FORCE MAJEURE.....	43
ARTICLE 23 - TERMINATION	47
ARTICLE 24 - ASSIGNMENT AND CHARGES.....	50
ARTICLE 25 - LIABILITY AND INDEMNITY	51
ARTICLE 26 - DISPUTE RESOLUTION	54
ARTICLE 27 - REDRESSAL OF PUBLIC GRIEVANCES	56
ARTICLE 28 - MISCELLANEOUS	57
ARTICLE 29 – DEFINITIONS.....	61
SCHEDULE - A	71
SCHEDULE - B	72
SCHEDULE - C	73
SCHEDULE - D	83
SCHEDULE - E.....	86
SCHEDULE - F.....	87
SCHEDULE - G	88
SCHEDULE - H	90
SCHEDULE - I.....	91
SCHEDULE - J.....	93

CONTRACT AGREEMENT

(To be executed on non-judicial stamp paper of appropriate value as per Stamp Act and duly notarized)

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

BETWEEN:

1. Tamil Nadu Industrial Corporation Ltd. (TIDCO) and having its office at 19-A, Rukmini Lakshmipathi Salai, Egmore, Chennai – 600 008, India (hereinafter referred to as the “**Authority**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) of the One Part;

AND

2. *****[£], a Section 8 company incorporated under the provisions of the Companies Act, 2013 with CIN ***** and having its registered office at ***** (hereinafter referred to as the “**Implementation Agency**” which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns and substitutes) of the Other Part

As the context may require, the Authority and the Implementation Agency will hereinafter be referred to individually as a “**Party**” and collectively as the “**Parties**”.

WHEREAS:

- (A) The Government of India (GOI) has established Defence Testing Infrastructure Scheme (DTIS or the “Scheme”) with an aim to promote setting up of Defence Testing Infrastructure (DTI) across various identified domains, required for Aerospace & Defence (A&D) related production, by providing financial assistance to various implementation agencies in the form of grant-in-aid. The Scheme plans to enhance defence manufacturing industry in India by creating DTIs and addressing quality and certification requirements for development and growth of the A&D industry in the country;
- (B) For the aforesaid purpose, the GOI has entrusted the responsibility to implement the DTIS to the Authority. One of the key shortlisted testing domains for which development of the DTI facility under the DTIS is proposed to be undertaken is Unmanned Aerial Systems (UAS) and the Authority has agreed to support the Implementation Agency by providing grant-in-aid in accordance with the terms and conditions to be set forth in a Contract Agreement to be entered into;
- (C) The Authority had prescribed the technical and commercial terms and conditions, and invited Bids (“the **Request for Proposal**” or “**RFP**”) by its Request for Proposal No. TIDCO/DIC/DTIS01/2022–23 dated 01.08.2022 for development, operation and maintenance of greenfield DTI facility for

[£] Instruction to Bidders

Note 1: Asterisk are to be retained in the draft Contract Agreement and shall be suitably filled by the selected Bidder after the issue of LOA in order to reflect Bid-specific particulars in the Contract Agreement. However, asterisk shall be retained in all the Schedules which contain formats that are to be used after the Contract Agreement is executed.

Note 2: The provisions in curly brackets are to be retained in the draft Contract Agreement forming part of the RFP document and shall be suitably modified by the selected Bidder after the issue of LOA in order to reflect the Bid-specific particulars in the Contract Agreement.

Note 3: Footnotes marked “£” are to be retained in the draft Contract Agreement. These footnotes are for guidance of the selected Bidder and shall be omitted before executing the Contract Agreement. However, footnotes marked “\$” shall be retained in the Contract Agreement as a part thereof.

Unmanned Aerial Systems (UAS) under the DTIS, as amended from time to time (collectively, “Request for Proposal” or “RFP”);

- (D) After evaluation of the Bids received, the Authority had accepted the Bid of the {selected Bidder/Consortium}, *inter alia*, the {the selected Bidder/Consortium} comprising *****, *****, *****, ***** and ***** (individually referred to as “Consortium Member” and collectively the “Consortium”) with ***** as its lead member (the “Lead Member”). The Authority issued its Letter of Award No. ***** dated ***** (hereinafter called the “LOA”) to the {selected Bidder/Consortium} requiring, *inter alia*, the execution of this Contract Agreement within 45 (forty five) days of the date of issue thereof;
- (E) {The selected Bidder/Consortium has since promoted and incorporated the Implementation Agency as a Section 8 company under the Companies Act 2013 with CIN *****, and} has requested the Authority to accept the Implementation Agency as the entity which shall undertake and perform the obligations and exercise the rights of the {selected Bidder/Consortium under the LOA} including the obligation to enter into this Contract Agreement pursuant to the LOA for undertaking the Project;
- (F) {By its letter dated *****, the Implementation Agency has also joined in the said request of the selected Bidder/Consortium to the Authority to accept it as the entity which shall undertake and perform the obligations and exercise the rights of the selected Bidder/Consortium including the obligation to enter into this Contract Agreement pursuant to the LOA. The Implementation Agency has further represented to the effect that it has been promoted by the selected Bidder/Consortium for the purposes hereof}; and
- (G) The Authority has {agreed to the said request of the selected Bidder/Consortium and the Implementation Agency, and has} accordingly agreed to enter into this Contract Agreement with the Implementation Agency for undertaking the Project, subject to and on the terms and conditions set forth hereinafter.

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

ARTICLE 1 - DEFINITIONS AND INTERPRETATION

1.1 Definitions

The words and expressions beginning with capital letters and defined in this Agreement (including those in Article 31) shall, unless the context otherwise requires, have the meaning ascribed thereto herein, and the words and expressions defined in the Schedules and used therein shall have the meaning ascribed thereto in the Schedules.

1.2 Interpretations

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 laws of the State, laws of India or Indian law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications which have the force of law in the territory of India and as from time to time may be amended, modified, supplemented, extended or re-enacted;
- (c) references to a “**person**” and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and shall include successors and assigns;
- (d) the table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- (e) the words “**include**” and “**including**” are to be construed without limitation and shall be deemed to be followed by “**without limitation**” or “**but not limited to**” whether or not they are followed by such phrases;
- (f) references to “**construction**” or “**building**” include, unless the context otherwise requires, investigation, design, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction, and “**construct**” or “**build**” shall be construed accordingly;
- (g) references to “**development**” include, unless the context otherwise requires, construction, renovation, refurbishing, augmentation, upgradation and other activities incidental thereto, and “**develop**” shall be construed accordingly;
- (h) any reference to any period of time shall mean a reference to that according to Indian Standard Time (IST);
- (i) any reference to “**hour**” shall mean a period of 60 (sixty) minutes commencing either on the hour or on the half hour of the clock, which by way of illustration means 5.00 (five), 6.00 (six), 7.00 (seven) and so on being hours on the hour of the clock and 5.30 (five thirty), 6.30 (six thirty), 7.30 (seven thirty) and so on being hours on the half hour of the clock;
- (j) any reference to **day** shall mean a reference to a calendar day;
- (k) reference to a “**business day**” shall be construed as a reference to a day (other than a Sunday) on which banks in the State are generally open for business;

- (l) any reference to “**month**” shall mean a reference to a calendar month as per the Gregorian calendar;
- (m) references to any date, period or Project Milestone shall mean and include such date, period or Project Milestone as may be extended pursuant to this Agreement;
- (n) 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;
- (o) the words importing singular shall include plural and vice versa;
- (p) references to any gender shall include the other and the neutral gender;
- (q) “**lakh**” means a 100,000 (hundred thousand) and “**crore**” means 10,000,000 (ten million);
- (r) “**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;
- (s) references to the “**winding-up**”, “**dissolution**”, “**insolvency**”, or “**reorganization**” of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganization, dissolution, arrangement, protection or relief of debtors;
- (t) 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 (t) shall not operate so as to increase liabilities or obligations of the Authority hereunder or pursuant hereto in any manner whatsoever;
- (u) any agreement, consent, approval, authorization, notice, communication, information or report required under or pursuant to this Agreement from or by any Party or the Project Monitoring Committee or the Project Consultant shall be valid and effective only if it is in writing under the hand of a duly authorised representative of such Party or the Project Monitoring Committee or the Project Consultant, as the case may be, in this behalf and not otherwise;
- (v) 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;
- (w) references to Recitals, Articles, Clauses, Sub-clauses, Provisos or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-clauses, Provisos and Schedules of or to this Agreement; 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 in which such reference appears;
- (x) 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

- (y) time shall be of the essence in the performance of the Parties' respective obligations. If any time period specified herein is extended, such extended time shall also be of the essence.
- 1.2.2 Unless expressly provided otherwise in this Agreement, any Documentation required to be provided or furnished by the Implementation Agency to the Authority and/or the Department of Defence Production/Directorate General of Quality Assurance, Ministry of Defence (“**DDP/DGQA, MOD**”) and/or the Project Monitoring Committee and/or the Project Consultant shall be provided free of cost and in 3 (three) copies, and if the Authority and/or the Project Monitoring Committee and/or the Project Consultant is required to return any such Documentation with their comments and/or approval, they shall be entitled to retain 2 (two) copies thereof.
- 1.2.3 The rule of construction, if any, that a contract should be interpreted against the 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 and, for these purposes, the General Clauses Act 1897 shall not apply.
- 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 3rd (third) digit of 5 (five) or above being rounded up and below 5 (five) being rounded down.
- 1.4 **Priority of agreements, clauses and schedules**
- 1.4.1 This Agreement, and all other agreements and documents forming part of or referred to in this Agreement are to be taken as mutually explanatory and, unless otherwise expressly provided elsewhere in this Agreement, the priority of this Agreement and other documents and agreements forming part hereof or referred to herein shall, in the event of any conflict between them, be in the following order:
- (a) this Agreement; and
- (b) all other agreements and documents forming part hereof or referred to herein,
- i.e. the Agreement at (a) above shall prevail over the agreements and documents at (b)(b) above.
- 1.4.2 Subject to the provisions of Clause 1.4.11.4.1, in case of ambiguities or discrepancies within this Agreement, the following shall apply:
- (a) between 2 (two) or more Clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in other Clauses;
- (b) between the Clauses of this Agreement and the Schedules, the Clauses shall prevail;
- (c) between any 2 (two) Schedules, the Schedule relevant to the issue shall prevail; and
- (d) between any value written in numerals and that in words, the latter shall prevail

ARTICLE 2 - SCOPE OF THE PROJECT

2.1 Scope of the Project

The scope of the Project (the “**Scope of the Project**”) shall mean and include:

- (a) planning, designing, construction, development and expansion of the Project on the Site set forth in Article 9 together with provision of respective Project Facilities as specified in **Schedule A**, and in conformity with the Detailed Project Report set forth in **Schedule B**, Applicable Standards, Good Industry Practices and other provisions of this Agreement;
- (b) procurement of the equipment and all other material required for development of the Project and Project Facilities in conformity with the Detailed Project Report, Applicable Standards, Good Industry Practices and other provisions of this Agreement;
- (c) procurement and maintenance of testing equipment, software and technology to be used for providing the Services in accordance with the Detailed Project Report, Applicable Standards, Good Industry Practices and other provisions of this Agreement;
- (d) operation, maintenance and management of the Project in accordance with the provisions of this Agreement; and
- (e) performance and fulfilment of all other obligations of the Implementation Agency 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 Implementation Agency under this Agreement

ARTICLE 3 - CONDITIONS PRECEDENT

3.1 Conditions Precedent

- 3.1.1 Save and except as expressly provided in Articles 3, 4, 5, 6, 7, 8, 9, 16, 22, 26 and 28, or unless the context otherwise requires, the respective rights and obligations of the Parties under this Agreement shall be subject to the satisfaction in full of the conditions precedent specified in this Clause 3.1 (the “**Conditions Precedent**”). Provided, however, that a Party may grant waiver from satisfaction of any Condition Precedent by the other Party in accordance with the provisions of Clauses 3.1.2 or 3.1.3, as the case may be, and to the extent of such waiver, that Condition Precedent shall be deemed to be fulfilled for the purposes of this Clause 3.1.1.
- 3.1.2 The Implementation Agency may, upon providing the Performance Security to the Authority in accordance with Article 8, at any time after 60 (sixty) days from the date of this Agreement or on an earlier day acceptable to the Authority, by notice require the Authority to satisfy any or all of the Conditions Precedent set forth in this Clause 3.1.2 within a period of 15 (fifteen) days of the notice, or such longer period not exceeding an additional 15 (fifteen) days, and the Conditions Precedent required to be satisfied by the Authority shall be deemed to have been fulfilled when the Authority shall have:
- (a) caused the execution of the Escrow agreement in the form provided in **Schedule C**, by itself, GOI or other Government Instrumentalities upon receiving its duly executed copy from the Implementation Agency and compliance of all the terms thereunder respectively, which may be necessary for the execution thereof.
- 3.1.3 The Conditions Precedent required to be satisfied by the Implementation Agency within a period of 90 (ninety) days from the date of this Agreement shall be deemed to have been fulfilled when the Implementation Agency shall have:
- (a) furnished to the Authority details on Project Facilities, Detailed Project Report, Project Site and Project Completion Schedule including Project Milestones in the forms provided in Schedule A, B, E and F;
 - (b) furnished to the Authority the schedule for disbursement of instalments of Grant and their respective percentage of Grant in accordance with the provisions of Article 17;
 - (c) provided Performance Security to the Authority in accordance with Article 8;
 - (d) executed and procured execution of the Escrow Agreement in the form provided in Schedule C;
 - (e) arranged land for development of the DTI facility at {Details given in RFP} in accordance with the provisions of Article 9};
 - (f) procured all Applicable Permits relating to environmental clearance, and other statutory requirement in respect of the Project;
 - (g) furnished copies (certified as true copies by a Director of the Implementation Agency) of the constituent documents of the Implementation Agency;
 - (h) furnished all resolutions adopted by the Board of Directors of the Implementation Agency (certified as true copies by a Director of the Implementation Agency) authorizing the execution, delivery and performance by the Implementation Agency;
 - (i) furnished a certificate from its Principal Officer/Director on the shareholding pattern of the Implementation Agency;

- (j) procured all the Applicable Permits pertaining to Government Authorities and the associated departments unconditionally, or if subject to conditions, then all such conditions required to be fulfilled by the date specified therein shall have been satisfied in full, and such Applicable Permits are in full force and effect. The Implementation Agency shall intimate to the Authority, within 15 (fifteen) days of receiving the LOA, about any clearance or permit required from the Government;
 - (k) executed the financing agreements, if any, and delivered to the Authority 3 (three) true copies thereof, duly attested by a Director of the Implementation Agency;
 - (l) delivered to the Authority {from the selected Bidder/Consortium Members, their/its respective Associates} confirmation of the correctness of the representations and warranties set forth in Sub-clauses (k), (l) and (m) of Clause 6.1 of this Agreement; and
 - (m) delivered to the Authority a legal opinion from the legal counsel of the Implementation Agency with respect to the authority of the Implementation Agency to enter into this Agreement and the enforceability of the provisions thereof
- 3.1.4 Any of the Conditions Precedent set forth in Articles 3.1.3 may be waived fully or partially by the Authority at any time in its sole discretion or the Authority may grant additional time for compliance with these conditions and the Implementing Agency shall be bound to ensure compliance within such additional time as may be specified by the Authority.
- 3.1.5 Each Party shall make all reasonable endeavors to satisfy the Conditions Precedent within the time stipulated and shall provide the other Party with such reasonable cooperation as may be required to assist that Party in satisfying the Conditions Precedent for which that Party is responsible.
- 3.1.6 The Parties shall notify each other in writing at least once in a month on the progress made in satisfying the Conditions Precedent. Each Party shall promptly inform the other Party when any Condition Precedent for which it is responsible has been satisfied.

3.2 **Damages for delay by the Implementation Agency**

In the event that (i) the Implementation Agency does not procure fulfilment or waiver of any or all of the Conditions Precedent set forth in Clause 3.1.3 within the period specified in that Clause, and (ii) the delay has not occurred as a result of failure to fulfil the obligations under Clause 3.1.2 or other breach of this Agreement by the Authority or due to Force Majeure, the Implementation Agency shall pay to the Authority Damages in an amount calculated at the rate of 0.3% (zero point three per cent) of the Performance Security for each day's delay until the fulfilment of such Conditions Precedent, subject to a maximum amount equal to 25% of the Performance Security, and upon reaching such maximum limit, the Authority may, in its sole discretion and subject to the provisions of Clause 8.2, terminate the Agreement. Provided further that such Damages for delay by the Implementation Agency for non-fulfillment of Conditions Precedent shall be payable within 15 (fifteen) days of achievement of fulfillment of Conditions Precedent.

Provided further that in the event of delay by the Authority in procuring fulfilment of the Conditions Precedent specified in Clause 3.1.2, no Damages shall be due or payable by the Implementation Agency under this Clause 3.3 until the date on which the Authority shall have procured fulfilment of the Conditions Precedent specified in Clause 3.1.2.

3.3 **Deemed Termination upon delay**

Without prejudice to the provisions of Clauses 3.2, and subject to the provisions of Clause 8.2, the Parties expressly agree that in the event the Appointed Date does not occur, for any reason

whatsoever, before 180 (one hundred eighty) days from the date of this Agreement or the extended period provided in accordance with this Agreement, all rights, privileges, claims and entitlements of the Implementation Agency under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Implementation Agency, and the Contract Agreement shall be deemed to have been terminated by mutual agreement of the Parties. Provided, however, that in the event the delay in occurrence of the Appointed Date is for reasons attributable to the Implementation Agency, the Performance Security of the Implementation Agency shall be encashed and appropriated by the Authority as Damages thereof.

ARTICLE 4 - OBLIGATIONS OF THE IMPLEMENTATION AGENCY

4.1 General obligations of the Implementation Agency

- 4.1.1 Subject to and on the terms and conditions of this Agreement, the Implementation Agency shall, at its own cost and expense, procure finance for and undertake the survey, investigation, design, procurement, construction, operation and maintenance of the Project, in accordance with the provisions of this Agreement and observe, fulfil, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 4.1.2 The Implementation Agency shall comply with all Applicable Laws and Applicable Permits (including renewals as required) in the performance of its obligations under this Agreement.
- 4.1.3 The Implementation Agency shall, at all times during the subsistence of this Agreement, comply with all the conditions stipulated in the Applicable Permits or any substitute and/or consequential approvals necessary to fulfil its obligations under this Agreement.
- 4.1.4 Subject to the provisions of Clauses 4.1.1 and 4.1.2, the Implementation Agency shall discharge its obligations in accordance with Good Industry Practices and as a reasonable and prudent person.
- 4.1.5 The Implementation Agency shall, at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out in this Agreement:
- (a) make, or cause to be made, necessary applications to the relevant Governmental Instrumentalities with such particulars and details as may be required for obtaining Applicable Permits, other than those set forth in Clause 3.1.3, and obtain and keep in force and effect such Applicable Permits in conformity with Applicable Laws;
 - (b) procure, as required, the appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes, know-how and systems used or incorporated into the Project;
 - (c) perform and fulfil its obligations under the financing agreements;
 - (d) procure the Site in accordance with the provisions of Article 9 and undertake utility shifting and rehabilitation and resettlement of persons affected by construction of the Project and bear all costs and expense in respect thereof, save and except as otherwise provided in this Agreement;
 - (e) procure the Site for setting up of water pipes and electric cables and necessary utilities to the Site;
 - (f) make reasonable efforts to maintain harmony and good industrial relations among the personnel employed by it or its Contractors in connection with the performance of its obligations under this Agreement;
 - (g) ensure and procure that its Contractors comply with all Applicable Permits and Applicable Laws in the performance by them of any of the Implementation Agency's obligations under this Agreement;
 - (h) 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 or Applicable laws;
 - (i) procure that all facilities and amenities within the Project are operated and maintained in accordance with Good Industry Practices and the Users have non-discriminatory access for use of the same in accordance with the provisions of this Agreement and Applicable Laws;
 - (j) procure, as required, the appropriate utilities and services required or used at the Project;

- (k) ensure that the Implementation Agency and its Contractor(s)/Sub-Contractor(s), if any, comply with the safety and welfare measures for labour in accordance with the Applicable Laws and Good Industry Practice;
 - (l) keep, on the Site, a copy of this Agreement, documents relating to the Project, and other communications given under this Agreement. The Authority Representative and its authorised personnel shall have the right of access to all these documents at all reasonable times;
 - (m) cooperate with authorized representative of the Authority and personnel of any public Authority;
 - (n) undertake all necessary superintendence to plan, arrange, direct, manage, inspect and test the Project Assets;
 - (o) construct and make alterations or additions to the building/structure/installations on the Site at its own cost in accordance with Good Industry Practices;
 - (p) at its own cost, provide and install the, furniture equipment, fixtures and things necessary for implementing the Project;
 - (q) all the existing and future rates, Taxes, levies, duties (including stamp duties), cess and charges of whatsoever nature in respect of the Project shall be borne and paid by the Implementation Agency, if any;
 - (r) maintain and operate the Project in accordance with Good Industry Standards and as may be required by the Authority;
 - (s) maintain the Site and structure/installations/fixtures in good conditions and order to the satisfaction of the Authority and as per the terms of this Agreement and also abide by the directions given by the relevant departments as may be entrusted with the enforcement of rule and regulation regarding labour safety, health sanitation, cleanliness and hygiene;
 - (t) not store any hazardous or explosive substance on the Site. The Implementation Agency shall provide and maintain necessary fire-fighting and fire protection systems in the Site as per the Applicable Law;
 - (u) observe and perform all the terms, covenants, conditions and stipulations contained herein and shall not do, omit or suffer to be done any act, deed or thing whereby Authority's rights with respect to the Project in any way are prejudiced, affected or extinguished;
 - (v) use the Project for the exclusive purpose of providing the Services to the users of the Project Facility (“**Users**”) and bonafide visitors to the Site. Failure to provide the desired level of the Project to the Users shall be a sufficient ground for forfeiture of the Performance Security and for Termination of this Agreement; and
 - (w) maintain a complaint register at a conspicuous place in the Site for recording complaints, if any, of the Users of the Project. Within one (1) week following the close of each calendar quarter, the Implementation Agency shall send to the Authority, a true photocopy of such pages of the complaint register on which any entries have been recorded of any complaint during the course of such month along with details of the action taken by the Implementation Agency on such complaints. The Authority may in its discretion direct the Implementation Agency to take such further reasonable action as the Authority may deem appropriate for a fair and just redressed of any grievance.
- 4.1.6 The Authority reserves the right to inspect and conduct checks to observe/witness the fulfilment of the obligations by the Implementation under this Agreement. If in the opinion of the Authority, the

Project Facilities required to be provided under this Agreement are not being provided or are not being properly maintained or the level of services is below the Applicable Standards, the Implementation Agency shall take such corrective measures upon being served with a notice to the said effect by the Authority. Failure of the Implementation Agency to comply with the requirements of the notice within the time period stipulated therein would be considered a breach of the terms of this Agreement by the Implementation Agency.

4.2 **Obligations relating to Project Agreements**

- 4.2.1 The Implementation Agency shall procure that each of the Project Agreements contains provisions that entitle the Authority to step into such agreement, in its sole discretion, in substitution of the Implementation Agency in the event of Termination (the “**Covenant**”). The Implementation Agency expressly agrees to include the Covenant in all its Project Agreements and undertakes that it shall, in respect of each of the Project Agreements, procure and deliver to the Authority an acknowledgment and undertaking, in a form acceptable to the Authority, from the counter party(ies) of each of the Project Agreements, where under such counter party(ies) shall acknowledge and accept the Covenant and undertake to be bound by the same and not to seek any relief or remedy whatsoever from the Authority in the event of Termination.
- 4.2.2 Notwithstanding anything to the contrary contained in the Agreement, the Implementation Agency agrees and acknowledges that selection or replacement of all Contractors and execution of all Contracts shall be subject to the prior approval of the Authority from national security and public interest perspective, the decision of the Authority in this behalf being final, conclusive and binding on the Implementation Agency, and undertakes that it shall not give effect to any such selection or contract without prior approval of the Authority. For the avoidance of doubt, it is expressly agreed that approval of the Authority hereunder shall be limited to national security and public interest perspective, and the Authority shall endeavour to convey its decision thereon expeditiously. It is also agreed that the Authority shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the Implementation Agency or its Contractors from any liability or obligation under this Agreement.
- 4.2.3 Notwithstanding anything to the contrary contained in this Agreement, the Implementing Agency agrees and acknowledge that it will not assign any work to any Contractor/sub- contractor/vendor from a country which shares a land border with India unless such Contractor/sub-contractor/vendor is registered with the competent authority. The Implementing Agency will ensure that such Contractor/sub-contractor/vendor fulfils all requirements in this regard and is eligible to be considered (where applicable, evidence of valid registration by the competent authority). The competent authority for registration will be the registration committee constituted by the Department for Promotion of Industry and Internal Trade (DPIIT), India. Political and security clearance from the Ministries of External and Home Affairs respectively will be mandatory for this purpose. For interpretation of this clause, Department of Expenditure, Ministry of Finance, GOI letter no. F.No.6/18/2019-PPD dated 23rd July 2020 or subsequent guidelines issued by the GOI shall be referred.

4.3 **Obligations relating to Change in Ownership**

- 4.3.1 The Implementation Agency shall not undertake or permit any Change in Ownership, except with the prior written approval of the Authority and DGQA/DDP.
- 4.3.2 Notwithstanding anything to the contrary contained in this Agreement, the Implementation Agency agrees and acknowledges that:
- (a) all acquisitions of Equity by an acquirer, either by himself or with any person acting in concert, directly or indirectly, including by transfer of the direct or indirect legal or beneficial

ownership or control of any Equity, in aggregate of 25% (twenty-five per cent) or more of the total Equity of the Implementation Agency; or

- (b) acquisition of any control directly or indirectly of the Board of Directors of the Implementation Agency by any person either by himself or together with any person or persons acting in concert with him,

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

For the purposes of this Clause 4.3.2:

- (a) the expression “acquirer”, “control” and “person acting in concert” shall have the meaning ascribed thereto in the Security and Exchange Board of India (Substantial Acquisition of Shares and Takeover) Regulations, 2011 or any statutory re-enactment thereof as in force as on the date of acquisition of Equity, or the control of the Board of Directors, as the case may be, of the Implementation Agency;
- (b) the indirect transfer or control of legal or beneficial ownership of Equity shall mean transfer of the direct or indirect beneficial ownership or control of any company or companies whether in India or abroad which results in the acquirer acquiring control over the shares or voting rights of shares of the Implementation Agency; and
- (c) power to appoint, whether by contract or by virtue of control or acquisition of shares of any company holding directly or through one or more companies (whether situate in India or abroad) the Equity of the Implementation Agency, not less than half of the directors on the Board of Directors of the Implementation Agency or of any company, directly or indirectly whether situated in India or abroad, having ultimate control of 25% (twenty five per cent) or more of the Equity of the Implementation Agency shall constitute acquisition of control, directly or indirectly, of the Board of Directors of the Implementation Agency.

4.4 Obligations relating to non-discriminatory access

The Implementation Agency shall manage and operate the Project on a common user basis and provide non-discriminatory access to all Users in accordance with the provisions of this Agreement and shall refrain from adopting any unfair or discriminatory practice against any User or potential user thereof. The Implementation Agency shall ensure that the Services at the Project are extended to the Users on non-discriminatory basis. However, preference shall be given to testing for aerospace and defence sector over other sectors.

4.5 Obligations relating to security clearance

Notwithstanding anything to the contrary contained in this Agreement, the engagement of employees, staff and personnel of the Implementation Agency and of its Contractors and Sub-contractors shall always be subject to security clearance by the delegated GOI agency and only persons having a valid security clearance shall be permitted on the Site. For the avoidance of doubt, it is agreed that refusal of or inability to obtain any such permits and approvals by the Implementation Agency or any of its Contractors or Sub-contractors shall not constitute a Force

Majeure Event, and shall not in any manner excuse the Implementation Agency from the performance and discharge of its obligations and liabilities under this Agreement.

4.6 Obligations relating to procurement of goods and services

The Implementation Agency agrees and undertakes that it shall procure contracts, goods and services for the construction and operation of the Project in a fair, transparent and efficient manner, and without any undue favour or discrimination in this behalf. In pursuance hereof, it shall frame a procurement policy specifying the principles and procedures that it shall follow in awarding contracts for supply of goods and services, and shall place the policy on its website for the information of general public and all interested parties.

The Implementation Agency shall invite offers through open competitive bidding and shall select the awardees in accordance with the policy specified above. For the avoidance of doubt, the Parties agree that the Implementation Agency may, in its discretion, pre-qualify and short-list the applicants in a fair and transparent manner for ensuring that only experienced and qualified applicants are finally selected in a manner that is commercially prudent and protects the interests of the Users.

4.7 Obligations relating to management of the Implementation Agency

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

- (a) to alter or add to the provisions of the memorandum of association of the Implementation Agency;
- (b) to alter or add to the articles of association of the Implementation Agency;
- (c) to change the name of the Implementation Agency and reduce the constitution of minimum 5 (five) number of Consortium Members forming part of the Implementation Agency;
- (d) to reduce the share capital of the Implementation Agency;
- (e) to commence any new lines of business;
- (f) to keep registers and returns at any other place than within city, town or village in which the registered office is situated;
- (g) to relocate the registered office of the Implementation Agency outside the limits of the State;
- (h) to enter into any contract or agreement with a related party with respect to such related party's appointed to any office or place of profit in the company, its subsidiary company or associate company;
- (i) to apply for corporate insolvency proceedings under the Insolvency and Bankruptcy code, 2016;
- (j) to apply to a court to wind-up the Company;
- (k) to wind-up the Company voluntarily;
- (l) to change the name of the Project;
- (m) for various other matters pertaining to the winding up of the Implementation Agency; and

- (n) any other matter which is required by the Companies Act, 2013 (or the relevant Act in force) or any statutory re-enactment thereof to be passed by a special resolution of the shareholders of the Implementation Agency

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

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

The Implementation Agency acknowledges, agrees and undertakes that employment of foreign personnel by the Implementation Agency and/or its Contractors and their Sub-contractors shall be subject to grant of requisite regulatory permits and approvals 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 Implementation Agency and, notwithstanding anything to the contrary contained in this Agreement, refusal of or inability to obtain any such permits and approvals by the Implementation Agency or any of its Contractors or Sub-contractors shall not constitute Force Majeure Event, and shall not in any manner excuse the Implementation Agency from the performance and discharge of its obligations and liabilities under this Agreement.

4.9 **Auditing the Project**

- (a) The Implementation Agency shall maintain books recording the procedure followed at the Project.
- (b) The Implementation Agency expressly agrees to furnish to its Statutory Auditor, the details of the records maintained in furtherance of Clause 4.9(a)
- (c) On or before the 31st (thirty-first) day of May each Year, the Implementation Agency shall provide to the Authority, for the preceding Accounting Year, a statement duly audited by its Statutory Auditors giving summarized information on (a) the procedure undertaken at the Project; and (b) details of the Users availing the Services with the type of Service availed.
- (d) The Authority shall have the right to inspect the records of the Implementation Agency during office hours and obtain copies of such records duly certified by the Statutory Auditors, for verification.

4.10 **Risks and Responsibility for the Project**

The Implementation Agency shall bear full risk and take full responsibility for the care of the Project, and of the materials, goods and equipment for incorporation therein, save and except to the extent that any such loss or damage shall have arisen from any default or neglect of the Authority.

4.11 **Disclaimer for responsibility of Project**

Except as otherwise stated in this Agreement, the Implementation Agency accepts complete responsibility for having foreseen all difficulties and costs of successfully completing the Project; and the Scheduled Completion Date shall not be adjusted to take account of any unforeseen difficulties or costs.

4.12 **Sole purpose of the Implementation Agency**

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

ARTICLE 5 - OBLIGATIONS OF THE AUTHORITY

5.1 General obligations of the Authority

The Authority agrees to provide support to the Implementation Agency 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) make arrangements for the Project Site in accordance with Article 9
- (b) upon written request from the Implementation Agency, and subject to the Implementation Agency complying with Applicable Laws, provide reasonable support and assistance to the Implementation Agency in procuring Applicable Permits required from any Government Instrumentality for construction of the Project, at the cost and expense of the Implementation Agency; and
- (c) timely release the Grants to the Implementation Agency for construction of the Project depending upon the financial and physical progress of the Project and recommendations of the Project Consultant, as set out in this Agreement

ARTICLE 6 - REPRESENTATION AND WARRANTIES

6.1 Representation and warranties of the Implementation Agency

The Implementation Agency represents and warrants to the Authority that:

- (a) it is duly organized 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 authorize 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 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 there under including any obligation, liability or responsibility hereunder;
- (e) the information furnished in the Bid 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, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of its Memorandum and Articles of Association {or those of any member of the Consortium} 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 legal binding order of any Government Instrumentality which may result in any Material Adverse Effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would have a Material Adverse Effect or 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) it shall at no time undertake or permit any Change in Ownership except in accordance with the provisions of Clause 4.3 and that the {selected Bidder/Consortium Members}, together with {its/their} Associates, hold not less than 51% (fifty one per cent) of its issued and paid up Equity as on the date of this Agreement; during the Construction Period, and 2 (two) years thereafter.

At any time, after expiry of the aforesaid shareholding period, the Implementation Agency can approach the Authority for approval proposing a new Consortium/Consortium Member. The Authority may at its sole discretion consider and approve it subject to the Consortium/Consortium Members meeting the eligibility criteria as prescribed in Request for Proposal for the Project. Provided further that the Implementation Agency shall at no time reduce the constitution of minimum 5 (five) number of Consortium Members forming part of the Implementation Agency; and

- (k) {the selected Bidder/Consortium Members and its/their} Associates have the financial standing and resources to fund the required Equity and to raise the debt necessary for undertaking and implementing the Project in accordance with this Agreement;
- (l) {the selected Bidder/each Consortium Member} is duly organized and validly existing under the laws of the jurisdiction of its incorporation or registration, as the case may be, and has requested the Authority to enter into this Agreement with {itself/the Implementation Agency} pursuant to the LOA, and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;
- (m) no representation or warranty by it contained herein or in any other document furnished by it to the Authority or to any Government Instrumentality in relation to Applicable Permits 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;
- (n) 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 entering into this Agreement or for influencing or attempting to influence any officer or employee of the Authority in connection therewith;
- (o) all information provided by the {selected Bidder/Consortium Members} in response to the Request for Proposal or otherwise, is to the best of its knowledge and belief, true and accurate in all material respects;
- (p) all undertakings and obligations of the Implementation Agency arising from the Request for Proposal or otherwise shall be binding on the Implementation Agency as if they form part of this Agreement;
- (q) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute default under, or accelerate performance required by any of the terms of its Memorandum and Articles of Association (or those of any member of the Consortium) 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;
- (r) it shall remain solely liable to perform its obligations under this Agreement as well as ensure performance of obligations by its Contractors/Sub-Contractors, designers, consultants or agents and nothing contained in this Agreement shall create any contractual relationship or obligation between the Authority and Implementation Agency's Contractors/Sub-Contractors, designers, consultants or agents in any manner whatsoever;
- (s) it has arranged land in accordance with Article 9 and has good and valid right to the Site, and has power and authority such that the Construction Works can commence forthwith;
- (t) all its rights and interests in the Project shall vest in the Implementation Agency on the COD free and clear of all liens, claims and Encumbrances, without any further act or deed on its part or that of the Authority, and that none of the Project Assets shall be acquired by the Authority, subject to any agreement under which a security interest or other lien or

Encumbrance is retained by any person, save and except as expressly provided in this Agreement; and

- (u) it shall indemnify and hold the Authority harmless from all costs, damages and expenses arising out of any claim, action or suit brought against the Authority by third parties in respect of any infringement of any patent, registered designs or Intellectual Property Rights (IPRs) resulting from use of any technical information, data or process or design belonging to or used by the Implementation Agency and/or furnished to the Authority.

6.2 **Representation and warranties of the Authority**

The Authority represents and warrants to the Implementation Agency 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 authorize the execution, delivery and performance of this Agreement;
- (c) it has the financial standing and capacity to perform its obligations under this Agreement;
- (d) this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- (e) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Instrumentality which may result in any Material Adverse Effect on the Authority's ability to perform its obligations under this Agreement; and
- (f) it has complied with Applicable Laws in all material respects

6.3 **Disclosure**

In the event that any occurrence or circumstance comes to the attention of either Party that renders any of its aforesaid representations or warranties untrue or incorrect, such Party shall immediately notify the other Party of the same. Such notification shall not have the effect of remedying any breach of the representation or warranty that has been found to be untrue or incorrect nor shall it adversely affect or waive any right, remedy or obligation of either Party under this Agreement.

ARTICLE 7 - DISCLAIMER

7.1 Disclaimer

- 7.1.1 The Implementation Agency acknowledges on its behalf and on behalf of their Associates that prior to the execution of this Agreement, the Implementation Agency has, after a complete and careful examination, made an independent evaluation of the Request for Proposal, Scope of the Project, Applicable Standards and all information provided by the Authority or obtained, procured or gathered otherwise, and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder. The Authority makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy, adequacy, correctness, reliability and/or completeness of any assessment, assumptions, statement or information provided by it herein or under the Applicable Laws and the Implementation Agency confirms on its behalf and on behalf of the selected Bidder/Consortium that they shall have no claim whatsoever against the Authority in this regard.
- 7.1.2 The Implementation Agency acknowledges and hereby accepts on its behalf and on behalf of their Associates, the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Clause 7.1.1 above and hereby acknowledges and agrees that the Authority shall not be liable for the same in any manner whatsoever to the Implementation Agency, the selected Bidder/Consortium members and their Associates or any person claiming through or under any of them.
- 7.1.3 The Parties including their Associates agree that any mistake or error in or relating to any of the matters set forth in Clause 7.1.1 above shall not vitiate this Agreement or render it voidable.
- 7.1.4 In the event that either Party including their Associates becomes aware of any mistake or error relating to any of the matters set forth in Clause 7.1.1 above, that Party shall immediately notify the other Party, specifying the mistake or error; provided, however, that a failure on part of the Authority to give any notice pursuant to this Clause 7.1.4 shall not prejudice the disclaimer of the Authority contained in Clause 7.1.1 and shall not in any manner shift to the Authority any risks assumed by the Implementation Agency pursuant to this Agreement.
- 7.1.5 Except as otherwise provided in this Agreement, all risks relating to the Project shall be borne by the Implementation Agency and the Authority shall not be liable in any manner for such risks or the consequences thereof.

ARTICLE 8 - PERFORMANCE SECURITY

8.1 Performance Security

8.1.1 The Implementation Agency shall, for the performance of its obligations hereunder, provide to the Authority no later than 60 (sixty) days from the date of this Agreement, an irrevocable and unconditional guarantee from a Bank for a sum equivalent to 5% of the project cost quoted by the consortium Rs. *****[£] (Rupees *****[£]) in the form set forth in **Schedule D** (the “**Performance Security**”).

8.1.2 Notwithstanding anything to the contrary contained in this Agreement, in the event Performance Security is not provided by the Implementation Agency within a period of 30 (thirty) days from the date of this Agreement, all rights, privileges, claims and entitlements of the Implementation Agency under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Implementation Agency, and the Authority shall have the right to terminate the Agreement. Further, the Implementation Agency and the selected Bidder/Consortium members and their Associates will be blacklisted for participation in the tendering process for the works of the Authority and works under other Centrally Sponsored Schemes, for a period of two (2) years from the bid due date of this Project.

8.2 Appropriation of Performance Security

Upon occurrence of an Implementation Agency’s Default or failure to meet any Condition Precedent, 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 for and in respect of such Implementation Agency’s Default or for failure to meet any Condition Precedent. Upon such encashment and appropriation from the Performance Security, the Implementation Agency shall, within 15 (fifteen) days thereof, replenish, in case of partial appropriation, to the original level of the Performance Security, and in case of appropriation of the entire Performance Security provide a fresh Performance Security, as the case may be, failing which the Authority shall be entitled to terminate this Agreement in accordance with Article 24. Upon such replenishment or furnishing of a fresh Performance Security, as the case may be, the Implementation Agency shall be entitled to an additional Cure Period of 90 (ninety) days for remedying the Implementation Agency’s Default or for satisfying any Condition Precedent, and in the event of the Implementation Agency not curing its default or meeting such Condition Precedent within such Cure Period, the Authority shall be entitled to encash and appropriate such Performance Security as Damages, and to terminate this Agreement in accordance with Article 24.

8.3 Release of Performance Security

The Performance Security shall remain in force and effect for a period of 180 (one hundred and eighty) days from COD of the Project; provided, however, that the Performance Security shall not be released if the Implementation Agency is in breach of this Agreement. Upon request made by the Implementation Agency for release of the Performance Security along with the particulars which establish satisfaction of the requirements specified under this Clause 8.3, the Authority shall release the Performance Security forthwith.

8.4 References to Performance Security

References to Performance Security occurring in this Agreement for and in respect of any period prior to the delivery of the Performance Security by the Implementation Agency to the Authority, or in respect of any period subsequent to the expiry or release thereof, as the case may be, shall be

[£] 5% of the estimated Total Project Cost set forth in the Detailed Project Report

construed solely for the purposes of calculating the amount of Damages payable by the Implementation Agency, and the amount so determined shall be appropriated from the Performance Security.

ARTICLE 9 - PROJECT SITE

9.1 The Site

The Project i.e., Development, Operation and Maintenance of Defence Testing Facility for Unmanned Aerial Systems (UAS) is to be developed at {.....} (the “Site”). The total land area for undertaking the development work is {.....Sqm} and the Detailed Project Report has been prepared considering the proposed location and as mentioned in **Schedule E** which shall be provided by the Implementation Agency under and in accordance with this Agreement (the “Site”) for the development of the Project. For the avoidance of doubt, it is hereby acknowledged and agreed that references to the Site shall be construed as references to the land area for the Project as set forth in the Schedule E and shall include use of the Site for development of the Project.

9.2 Procurement of the Site

9.2.1 The Implementation Agency acknowledges and agrees that prior to the Appointed Date, it shall have entered into a leasing agreement of the land for a period of at least 30 years from the Appointed Date and procured issuance of the statutory notification under Applicable Laws for vesting of all land comprising the Project and has taken possession of the total area thereof. Implementation Agency shall submit necessary Documentation in this regard as part of Conditions Precedent as per Clause 3.1.3.

9.2.2 All property taxes and any other charges or payments towards the Site including any stamp duty charges shall be payable by the Implementation Agency in accordance with Applicable Laws.

9.3 Site to be free from Encumbrances

The Site made available by the Implementation Agency pursuant hereto shall be free from all Encumbrances and occupations. The Authority shall not make any payment to the Implementation Agency on account of any costs, compensation, expenses and charges for the acquisition and use of such Site under the Grant. It is further agreed that the Implementation Agency accepts and undertakes to bear any and all risks arising out of the inadequacy or physical condition of the Site.

9.4 Access rights of the Authority and others

The Implementation Agency shall allow free access to the Site at all times for the authorized representatives and vehicles of the Authority, DGQA/ DDP, Project Monitoring Committee and the Project Consultant, and for the persons and vehicles duly authorized by any Government Instrumentality or designated GOI agency to inspect the Project and to investigate any matter within their authority, and upon reasonable notice, the Implementation Agency shall provide to such persons reasonable assistance necessary to carry out their respective duties and functions.

ARTICLE 10 - DESIGN AND CONSTRUCTION OF THE PROJECT

10.1 Obligations prior to commencement of construction

Prior to commencement of Construction Works, the Implementation Agency shall:

- (a) submit to the Authority, DGQA/DDP and the Project Consultant its detailed architectural and engineering drawings (as required for proper execution and completion of the Project), construction methodology, quality assurance procedures, and the procurement, engineering and construction time schedule for completion of the Project in accordance with the Project Completion Schedule as set forth in the Detailed Project Report and **Schedule F**;
- (b) appoint its representative duly authorised to deal with the Authority, DGQA/DDP and the Project Consultant in respect of all matters under or arising out of or relating to this Agreement;
- (c) undertake, do and perform all such acts, deeds and things as may be necessary or required before commencement of construction under and in accordance with this Agreement, Applicable Standards, Applicable Laws and Applicable Permits; and
- (d) make its own arrangements for procurement of materials needed for the Project under and in accordance with Applicable Laws and Applicable Permits

10.2 Construction of the Project

10.2.1 On or after the Appointed Date, the Implementation Agency shall undertake construction of the Project in conformity with the Detailed Project Report and Applicable Standards. The *****[£] day from the Appointed Date shall be the scheduled date for completion of the Project (the “**Scheduled Completion Date**”) and the Implementation Agency agrees and undertakes that construction of the Project shall be completed on or before the Scheduled Completion Date.

10.2.2 The Implementation Agency shall construct the Project in accordance with the Project Completion Schedule set forth in the Detailed Project Report and Schedule F. In the event that the Implementation Agency fails to achieve any Project Milestone within a period of 90 (ninety) days from the date set forth for such Project Milestone, 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 of 0.1% (zero point one per cent) of the amount of Performance Security for delay of each day until such Project Milestone is achieved; provided that if any or all Project Milestones or the Scheduled Completion Date are extended in accordance with the provisions of this Agreement, the dates set forth in the Schedule F shall be deemed to be modified accordingly and the provisions of this Agreement shall apply as if the Project Milestones has been amended as above; provided further that in the event COD is achieved on or before the Scheduled Completion Date, the Damages paid under this Clause 10.2.2 shall be refunded by the Authority to the Implementation Agency, but without any interest thereon. For the avoidance of doubt, it is agreed that recovery of Damages under this Clause 10.2.2 shall be without prejudice to the rights of the Authority under this Agreement, including the right of Termination thereof.

10.2.3 In the event that the Project is not completed and COD does not occur within 120 (one hundred and twenty) days from the Scheduled Completion Date, unless the delay is on account of reasons attributable to the Authority or due to Force Majeure, the Authority shall be entitled to Terminate this Agreement.

[£] Scheduled Completion Date as set forth in the Detailed Project Report

10.3 **Extension of Time**

10.3.1 Without prejudice to any other provision of this Agreement for and in respect of extension of time, the Implementation Agency 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 reasons, namely:

- (a) occurrence of a Force Majeure event in accordance with Article 22;
- (b) any delay, impediment or prevention caused by or attributable to the Authority and the Authority's personnel but does not include the inspection time/review time by the Authority or its representative/personnel; and
- (c) any other cause or delay which entitles the Implementation Agency to Time Extension in accordance with the provisions of this Agreement

10.3.2 The Implementation Agency shall, no later than 15 (fifteen) business days from the occurrence of an event or circumstance specified in Clause 10.3.1, inform the Authority by notice in writing, stating in reasonable detail with supporting particulars, the event or circumstances giving rise to the claim for Time Extension in accordance with the provisions of this Agreement. Provided that the period of 15 (fifteen) business days shall be calculated from the date on which the Implementation Agency 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 Project Facilities 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 Project Facilities which are not affected hereunder.

10.3.3 In the event of the failure of the Implementation Agency to issue to the Authority a notice in accordance with the provisions of Clause 10.3.1 within the time specified therein, the Implementation Agency shall not be entitled to any Time Extension and its right for any such claims in future shall be forfeited. For the avoidance of doubt, in the event of failure of the Implementation Agency to issue notice as specified in this Clause 10.3.2, the Authority shall be discharged from any and all liabilities in connection with such claim.

10.3.4 The Authority shall, on receipt of the claim in accordance with the provisions of Clause 10.3.2, examine the claim expeditiously within the time frame specified herein. In the event the Authority requires any clarifications to examine the claim, the Authority shall seek the same within 15 (fifteen) days from the date of receiving such claim. The Implementation Agency shall, on receipt of the communication of the Authority requesting for clarification, furnish the same to the Authority Representative within 10 (ten) days thereof. The Authority shall, within a period of 30 (thirty) days from the date of receipt of such clarifications, forward in writing to the Implementation Agency its determination of Time Extension. Provided that when determining each extension of time under this Clause 10.3, the Authority shall review previous determinations and may increase but shall not decrease the total Time Extension.

10.4 **Compliance with Applicable Laws**

The Implementation Agency agrees and undertakes that it shall, in respect of the Project, at all times conform to Applicable Laws and the rules, regulations or by-laws made there under relating to buildings, structures, test equipment, road works, open spaces, electric supply, water supply, sewerage and other like matters.

ARTICLE 11 - MONITORING OF CONSTRUCTION

11.1 Monthly progress reports

During the Construction Period, the Implementation Agency shall, no later than 7 (seven) days after the close of each month, furnish to the Authority and the Project Consultant a monthly report on progress (both physical and financial) of the Construction Works executed and next month's construction plan along with other relevant information as may be required by the Project Consultant or the Authority.

11.2 Quarterly Inspection

During the Construction Period, the Project Consultant shall inspect the Project works, at least once in a quarter and make a report of such inspection (the “**Inspection Report**”) with particular reference to physical and financial progress, funds flow to the Project, quality of work, variation, scrutinising contractual orders made with original equipment manufacturers (OEMs) and status of statutory approvals/ clearances, compliance to statutes. It shall send a copy of the Inspection Report to the Authority and the Implementation Agency and upon receipt thereof, the Implementation Agency shall undertake remedial actions, if any, against the observations stated in the Inspection Report. Such inspection or submission of Inspection Report by the Project Consultant shall not relieve or absolve the Implementation Agency of its obligations and liabilities hereunder in any manner whatsoever.

11.3 Delays during construction

Without prejudice to the provisions of Clause 10.2.2, if the Implementation Agency does not achieve any of the Project Milestones or the Project Consultant or the Authority shall have reasonably determined that the rate of progress of Construction Works is such that the Project is not likely to be completed by the Scheduled Completion Date, notify the Implementation Agency to this effect, and the Implementation Agency shall, within 15 (fifteen) days of such notice, by a communication inform the Authority and the Project Consultant in reasonable detail about the steps it proposes to take to expedite progress and the period within which it shall achieve COD.

ARTICLE 12 - COMPLETION OF PROJECT CONSTRUCTION

12.1 Tests

All tests prior to completion of the Project shall be conducted in accordance with the Construction Standards, Good Industry Practice and as required for necessary accreditations at the cost and expense of the Implementation Agency. Upon completion of each test, the Implementation Agency shall provide to the Authority copies of all test data including detailed test results. For the avoidance of doubt, it is expressly agreed that the Authority and DGQA/DDP may require the Implementation Agency to carry out or cause to be carried out additional tests, in accordance with Good Industry Practice, for determining the compliance of the Project with Applicable Standards, Applicable Laws, Applicable Permits and terms of this Agreement.

12.2 Completion of Construction

Upon completion of the Construction Works, the determining of the tests to be successful and the demonstration of the readiness by the Implementation Agency for commencement of Services to the satisfaction of the Authority and DGQA/DDP, the Authority shall forthwith issue to the Implementation Agency a certificate substantially in the form set forth in Schedule J (the "**Completion Certificate**").

ARTICLE 13 - ENTRY INTO COMMERCIAL SERVICE

13.1 Commercial Operation Date (COD)

The Project construction and commissioning shall be deemed to be complete, upon the Authority issuing a certificate to the Implementation Agency in accordance with Clause 12.2 and accordingly the commercial operation date of the Project shall be the date on which such certificate is issued and the Implementation Agency shall have obtained the Applicable Permits to operate the Project (“the COD”). The Project shall enter into commercial service on COD whereupon the Implementation Agency shall be entitled to demand and collect Fee in accordance with the provisions of Article 18.

13.2 Damages for delay

Subject to the provisions of Clause 10.2, if COD does not occur prior to the 91st (ninety first) day after the Scheduled Completion Date, unless the delay is on account of reasons attributable to the Authority or due to Force Majeure, the Implementation Agency shall pay Damages to the Authority in a sum calculated at the rate of 0.1% (zero point one per cent) of the amount of Performance Security for delay of each day until COD is achieved.

ARTICLE 14 - OPERATION AND MAINTENANCE (O&M)

14.1 O&M obligations of the Implementation Agency

14.1.1 During the Operation Period, the Implementation Agency shall operate and maintain the Project in accordance with this Agreement, Good Industry Practice, Applicable Laws and Applicable Permits at its own cost and expense. In the event any modification, repair or otherwise improvements are required to the Project, the Implementation Agency will, at its own cost and expense, to comply with the provisions of this Agreement, Applicable Laws and Applicable Permits, Detailed Project Report and conform to Applicable Standards and Good Industry Practice. The obligations of the Implementation Agency hereunder shall include:

- (a) ensuring to provide the Services, as are required as per the terms of this Agreement and Good Industry Practice;
- (b) permitting safe, smooth and services for the Users, including prevention of loss or damage thereto, during normal operating conditions;
- (c) collecting and appropriating the Fee;
- (d) carrying out periodic routine and preventive maintenance of the Project;
- (e) adhere to the provisions of all laws of the land including municipal laws and by-laws and rules in connection with display of advertisement. The Implementation Agency shall also pay/ensure payment of advertisement tax, service tax, other taxes and levies (if any), in respect of the advertisements displayed;
- (f) operation and maintenance of all Project Assets diligently and efficiently and in accordance with Good Industry Practice;
- (g) obtain certification/accreditation from appropriate National/International Agencies;
- (h) follow all labour laws and regulations and pay the wages, deposit PF and ESI contributions and other dues to its workers in time. The Implementation Agency shall indemnify the Authority from any claims in this regard;
- (i) taking all measures relating to fire precautions in accordance with Applicable Laws, Applicable Permits and Good Industry Practice; and
- (j) providing all the requisite information, data, operating statistics, etc., as may be required by the Authority and DGQA/DDP, any of the Government Instrumentality or GOI, from time to time.

ARTICLE 15 - MONITORING OF O&M

15.1 Half yearly status reports

At all times during the Operation Period, the Implementation Agency shall, no later than 7 (seven) days after the close of each half year, furnish to the Authority a half yearly management report, in a form acceptable to the Authority, stating in reasonable detail:

- (a) key performance indicators achieved in the half year period, along with an analysis of reasons for failures, if any, and proposals to remedy the same;
- (b) key operational hurdles and deliverables expected in the succeeding half year period along with strategies for addressing the same and for otherwise improving the Project's operational performance; and
- (c) key financial parameters for the half year period, as benchmarked against the half year budget, the reasons for shortfall, if any, and proposals to remedy the same

ARTICLE 16 - FINANCIAL CLOSE

16.1 Financial Close

Subject to the provisions of Clause 3.1.3 and 3.3, the Implementation Agency hereby agrees and undertakes that it shall achieve Financial Close within 90 (ninety) days from the date of this Agreement and in the event, the Implementation Agency has failed to achieve Financial Close within the said time period, it shall be liable to pay Damages as specified in Clause 3.2.

ARTICLE 17 - GRANT-IN-AID

17.1 Grant-in-Aid

- 17.1.1 The Authority agrees to provide to the Implementation Agency financial support by way of an outright grant equal to the sum set forth in the Bid, namely, Rs. ***** (Rupees in words ******) in accordance with the provisions of this Article 17 (the “Grant”); provided further that such Grant shall be limited to lowest of (a) Grant set forth in the Bid; and (b) 75% (seventy five percent) of the Total Project Cost. The Grant shall be utilised for the 2 (two) components of the Total Project Cost in the following manner:
- (i) the Grant to be utilised for meeting up to 20% (twenty percent) of the Total Project Cost towards Civil Cost; and
 - (ii) the Grant to be utilised for meeting up to 80% of the Total Project Cost towards Equipment Cost.
- 17.1.2 Subject to the conditions specified in this Clause 17.1, the Grant shall be credited to the Escrow Account and shall be applied by the Implementation Agency for meeting the Total Project Cost.
- 17.1.3 The Grant shall be disbursed to the Implementation Agency subject to the Implementation Agency achieving Financial Closure in accordance with Article 16 and shall not exceed the sum specified in Clause 17.1.1 and as accepted by the Authority and subject to the conditions of this Article 17.
- 17.1.4 The Grant shall be disbursed in instalments as per the schedule submitted in accordance with Clause 3.1.3 and as approved by the Authority and DTISC. The number of instalments shall not exceed 5 (five) for the entire Project.
- 17.1.5 The first instalment of Grant will be released against Bank Guarantee as per Schedule D and such instalment shall not exceed more than 20% (twenty percent) of the Grant.
- 17.1.6 For every subsequent instalment,
- 17.1.6.1 the Implementing Agency shall submit a bond/ Bank Guarantee as per Schedule D for an amount equivalent to such instalment. The Bank Guarantee shall remain in force and effect for a period of 90 days or till such time as the Implementing Agency fulfils the requirements set forth in Clause 17.1.7 for the said instalment, whichever later.
- 17.1.6.2 In the event the subsequent instalment is of the same value as of previous instalment, the validity of the existing Bank Guarantee shall be extended on similar lines with existing terms and conditions as mentioned at Clause 17.1.6.1 above.
- 17.1.6.3 In the event the value of the subsequent instalment is more than the previous instalment, the said Bank Guarantee will be supplement by an additional Bank Guarantee of the necessary additional amount with the existing terms and conditions as mentioned at Clause 17.1.6.1 above such that the sum of the amount of the Bank Guarantees is equivalent to the amount of the instalment,
- 17.1.7 In the event of any default by the Implementing Agency, the Authority may instruct the Implementing Agency to extend the validity of such Bank Guarantee till such time as event of default has been rectified/ resolved by the Implementing Agency However, that the Bank Guarantee shall not be released if the Implementation Agency is in breach of this Agreement. The release of instalments by the Authority shall be subject to:
- (a) submission of Utilisation Certificate (UC) as per **Schedule G** by a Statutory Auditor for the amounts utilised and confirmation that these are in compliance of the terms and conditions of Clause 17.1;

- (b) submission of pre-receipt bills for the funds to be disbursed along with a certificate that the Implementation Agency has not indulged in corrupt practices;
 - (c) a report from Project Consultant including certification of physical and financial progress of the Project; and
 - (d) proof of matching contribution of the funds having been invested by the Implementation Agency which shall be duly certified by a Statutory Auditor.
- 17.1.8 The Implementation Agency would be required to maintain subsidiary accounts of the Grant and furnish to the Project Consultant a set of audited statement of accounts after utilization of the Grant or whenever called for.
- 17.1.9 In the event, at the completion of the Project, the actual Total Project Cost is lower than the estimated Total project Cost, then the Implementing Agency shall return to the Authority the amount of Grant that has been disbursed in excess of amounts as per provisions of Clause 17.1.1.
- 17.1.10 The Implementation Agency shall not utilize the interest earned on the recurring/nonrecurring Grant, released to it for any purpose. The interest earned shall be indicated in the Utilisation Certificate which shall be refunded to the Authority on a quarterly basis, after sanctioned Grant is utilized.
- 17.1.11 The Grant should not be a source of profit. If after examination of the audited accounts, the Authority comes to the conclusion that the Grant has been a source of profit, then the Implementation Agency shall forthwith refund the amount of Grant to the Authority with interest rate equal to 3% (three percent) above the Bank Rate.
- 17.1.12 In the event of occurrence of an Implementation Agency's Default, disbursement of Grant shall be suspended till such Implementation Agency's Default has been cured by the Implementation Agency. In the event any amount disbursed is in default of the terms and conditions of this Clause 17.1.10, the Authority shall have the right to recover the same from the Performance Guarantee and other Bank Guarantees as specified in Clause 17.1.6 or deduct in the subsequent instalment with interest rate equal to 3% (three percent) above the Bank Rate.
- 17.1.13 The Project Assets acquired / created by the Implementation Agency out of the Authority's financial assistance shall not be disposed, encumbered or utilized for purposes other than those for which funds have been released.

ARTICLE 18 - USER FEE

18.1 Collection of Fee by the Implementation Agency

18.1.1 On and from COD, the Implementation Agency has the right to demand, collect and appropriate fees from the Users (the “**Fee**”) for the Services set forth in **Schedule H**. The Implementation Agency shall fix the Fee based on market conditions and on such other conditions, if any, as may be notified and made applicable by a competent authority.

18.1.2 The Implementation Agency acknowledges and agrees that it shall provide the Services in a transparent and non-discriminatory manner to the Users and it shall not place, or cause to be placed, any restriction on such use, except to the extent specified in any Applicable Laws, Applicable Permits or the provisions of this Agreement.

18.2 Display of Fee

The Implementation Agency shall, at all entry points of the Project and near the Fee counters at the Project, prominently display the applicable rates of Fee for information of the Users.

ARTICLE 19 - ESCROW ACCOUNT

19.1 Escrow Account

19.1.1 The Implementation Agency shall, prior to the Appointed Date, open and establish an Escrow Account with a Bank (the “**Escrow Bank**”) in accordance with this Agreement read with the Escrow Agreement.

19.1.2 The nature and scope of the Escrow Account are fully described in the agreement (the “**Escrow Agreement**”) to be entered into amongst the Implementation Agency, the Authority and the Escrow Bank, which shall be substantially in the form set forth in Schedule C.

19.2 Deposits into Escrow Account

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

- (a) all monies received in relation to the Project from Banks, other lenders, shareholders and insurance companies;
- (b) all Fee and any other revenues from or in respect of the Project, including the proceeds of any rentals, deposits, capital receipts or insurance claims;
- (c) all payment by the Authority, after deduction of any outstanding payments: and
- (d) Termination Payment

19.3 Withdrawals during Construction Period

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

- (a) all taxes due and payable by the Implementation Agency for and in respect of the Project;
- (b) any amount due on account of appropriation of the Performance Security under Article 8 of the Agreement;
- (c) all payments relating to construction of the Project;
- (d) all payments and Damages certified by the Authority as due and payable to it by the Implementation Agency. The Implementation Agency hereby agrees to give irrevocable instructions to the Escrow Bank to make payment from the Escrow Account in accordance with the instructions of the Authority; and
- (e) balance, if any, in accordance with the instructions of the Implementation Agency towards Project implementation and as part of the Total Project Cost

19.3.2 The Implementation Agency shall not in any manner modify the order of payment specified in Clause 19.3.1, except with the prior written approval of the Authority.

19.4 Withdrawals upon Termination

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

- (a) all taxes due and payable by the Implementation Agency for and in respect of the Project;
- (b) any amount due on account of appropriation of the Performance Security under Article 8 of this Agreement;

- (c) all payments and Damages certified by the Authority as due and payable to it by the Implementation Agency. The Implementation Agency hereby agrees to give irrevocable instructions to the Escrow Bank to make payment from the Escrow Account in accordance with the instructions of the Authority; and
- (d) any other payments required to be made under this Agreement

The provisions of this Article 19 and the instructions contained in the Escrow Agreement shall remain in full force and effect until the obligations set forth in Clause 19.4 have been discharged.

ARTICLE 20 - INSURANCE

20.1 Insurance during Construction and Operation Period

The Implementation Agency shall effect and maintain at its own cost, during the Construction Period and the Operation Period, such insurances for such maximum sums as may be required under the Applicable Laws, and such insurances as may be necessary or prudent in accordance with Good Industry Practice. The Implementation Agency shall also effect and maintain such insurances as may be necessary for mitigating the risks that may devolve on the Authority as a consequence of any act or omission of the Implementation Agency during the Construction Period. The Implementation Agency shall procure that in each insurance policy, the Authority shall be a co-insured and that the insurer shall pay the proceeds of insurance into the Escrow Account.

20.2 Insurance Cover

Without prejudice to the provisions contained in Clause 20.1, the Implementation Agency shall, during the Operation Period, procure and maintain Insurance Cover including but not limited to the following:

- (a) loss, damage or destruction of the Project Assets;
- (b) comprehensive third party liability insurance including injury to or death of personnel of the Authority or others who may enter the Project;
- (c) the Implementation Agency's general liability arising out of the Contract;
- (d) liability to third parties for goods or property damage;
- (e) workmen's compensation insurance; and
- (f) any other insurance that may be necessary to protect the Implementation Agency and its employees, including all Force Majeure Events that are insurable at commercially reasonable premiums and not otherwise covered in items (a) to (e) above

20.3 Notice to the Authority

No later than 30 (thirty) days prior to commencement of the Construction Period and the COD, as the case may be, the Implementation Agency shall by notice furnish to the Authority, in reasonable detail, information in respect of the insurances that it proposes to effect and maintain in accordance with this Article 20. Within 30 (thirty) days of receipt of such notice, the Authority may require the Implementation Agency 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.

20.4 Evidence of Insurance Cover

All insurances obtained by the Implementation Agency in accordance with this Article 20 shall be maintained with insurers on terms consistent with Good Industry Practice. Within 15 (fifteen) days of obtaining any insurance cover, the Implementation Agency shall furnish to the Authority, notarized 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 Implementation Agency to the Authority.

20.5 Remedy for failure to insure

If the Implementation Agency shall fail 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 Implementation Agency, 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 Implementation Agency.

20.6 Waiver of subrogation

All insurance policies in respect of the insurance obtained by the Implementation Agency pursuant to this Article 20 shall include a waiver of any and all rights of subrogation or recovery of the insurers there under 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 insurances.

20.7 Implementation Agency's waiver

The Implementation Agency 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, employee, successors, insurers and underwriters, which the Implementation Agency 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 Implementation Agency 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.

20.8 Application of insurance proceeds

The proceeds from all insurance claims, except life and injury, shall be paid to the Implementation Agency by credit to the Escrow Account and it shall, notwithstanding anything to the contrary contained in Clause 20.3, apply such proceeds for any necessary repair, reconstruction, reinstatement, replacement, improvement or delivery of the Project.

20.9 Compliance with conditions of insurance policies

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

ARTICLE 21 - ACCOUNTS AND AUDIT

21.1 Audited Accounts

- 21.1.1 The Implementation Agency shall maintain books of accounts recording all its receipts (including all revenues derived/collected by it from or on account of the Project and/or its use), income, expenditure, payments (including payments from the Escrow Account), assets and liabilities, in accordance with this Agreement, Good Industry Practice, Applicable Laws and Applicable Permits. The Implementation Agency shall provide 2 (two) copies of its Balance Sheet, Cash Flow Statement, Profit and loss Account, along with a report thereon by its Statutory Auditors, within 180 (one hundred and eighty) days of the close of the Accounting Year to which they pertain and such audited accounts, save and except where expressly provided to the contrary, shall form the basis of payments by either Party under this Agreement. The Authority shall have the right either through itself or through any of its authorised representatives, to inspect the records of the Implementation Agency during office hours and require copies of relevant extracts of books of Accounts, duly certified by the Statutory Auditors, to be provided to the Authority for verification of basis of payments, and in the event of any discrepancy or error being found, the same shall be rectified and such rectified account shall form the basis of payments by either party under this Agreement.
- 21.1.2 The Implementation Agency shall, within 30 (thirty) days of the close of each quarter of an Accounting Year, furnish to the Authority its unaudited financial results in respect of the preceding quarter, giving summarized information on the conducted tests count for each category of Users using the Project and liable for payment of Fee therefore, and any other information, in the manner and form prescribed by the Securities and Exchange Board of India.
- 21.1.3 On or before the 31st (thirty-first) day of May each Year, the Implementation Agency shall provide to the Authority, for the preceding Accounting Year, a statement duly audited by its Statutory Auditors giving summarized information on revenues derived from the Project, and such other information as the Authority may reasonably require.

21.2 Appointment of Auditors

- 21.2.1 The Implementation Agency shall appoint, and have during the subsistence of this Agreement as its Statutory Auditors (the “**Statutory Auditors**”), a firm chosen by it from the mutually agreed list of 5 (five) reputable firms of chartered accountants (the “**Panel of Chartered Accountants**”), such list to be prepared substantially in accordance with the criteria set forth in **Schedule I**. All fees and expenses of the Statutory Auditors shall be borne by the Implementation Agency.
- 21.2.2 The Implementation Agency may terminate the appointment of its Statutory Auditors after a notice of 45 (forty five) days to the Authority, subject to the replacement Statutory Auditors being appointed from the Panel of Chartered Accountants.
- 21.2.3 Notwithstanding anything to the contrary contained in this Agreement, the Authority shall have the right, but not the obligation, to appoint at its cost from time to time and at any time, another firm (the “**Additional Auditors**”) from the Panel of Chartered Accountants as may be decided by the Authority to audit and verify all those matters, expenses, costs, realisations and things which the Statutory Auditors are required to do, undertake or certify pursuant to this Agreement.
- 21.2.4 The Authority shall have the right, but not the obligation, to appoint at its cost, for the duration of the Construction Period, another firm (the “**Concurrent Auditors**”) from the Panel of Chartered Accountants to undertake concurrent audit of the Implementation Agency’s accounts as may be decided by the Authority to undertake concurrent audit of the Implementation Agency’s accounts.

21.3 Certification of claims by Statutory Auditors

Any claim or document provided by the Implementation Agency to the Authority in connection with or relating to receipts, income, payments, costs, expenses, accounts or audit, and any matter incidental thereto shall be valid and effective only if certified by its Statutory Auditors. For the avoidance of doubt, such certification shall not be required for exchange of information in the normal course of business including the submission of any periodic information in pursuance of the provisions of this Agreement, save and except where such certification is expressly provided.

21.4 Set-off

In the event any amount is due and payable by the Authority to the Implementation Agency, it may set-off any sums payable to it by the Implementation Agency and pay the balance remaining. Any exercise by the Authority of its rights under this Clause 21.4 shall be without prejudice to any other rights or remedies available to it under this Agreement or otherwise.

21.5 Dispute Resolution

In the event of there being any difference between the findings of the Additional Auditors or the Concurrent Auditors, as the case may be, and the certification provided by the Statutory Auditors, such Auditors shall meet to resolve the differences and if they are unable to resolve the same, such Dispute shall be resolved by the Authority by recourse to the Dispute Resolution Procedure as set out under Clause 26.

ARTICLE 22 - FORCE MAJEURE

22.1 Force Majeure

As used in this Agreement, the expression “**Force Majeure**” or “**Force Majeure Event**” shall, save and except as expressly provided otherwise, mean occurrence in India of any or all of Non-Political Event, Indirect Political Event and Political Event, as defined in Clauses 22.2, 22.3 and 22.4 respectively, if it affects the performance by the Party claiming the benefit of Force Majeure (the “**Affected Party**”) of its obligations under this Agreement and which act or event (a) is beyond the reasonable control of the Affected Party, and (b) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice, and (c) has Material Adverse Effect on the Affected Party.

22.2 Non-Political Event

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

- (a) act of God, epidemic, pandemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionising radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Site);
- (b) strikes or boycotts (other than those involving the Implementation Agency, Contractors or their respective employees/representatives, or attributable to any act or omission of any of them) interrupting supplies and services to the Project for a continuous period of 24 (twenty four) hours and an aggregate period exceeding 7 (seven) days in an Accounting Year, and not being an Indirect Political Event set forth in Clause 22.3;
- (c) any failure or delay of a Contractor but only to the extent caused by another Non-Political Event and which does not result in any offsetting compensation being payable to the Implementation Agency by or on behalf of such Contractor;
- (d) any judgement or order of any court of competent jurisdiction or statutory authority made against the Implementation Agency in any proceedings for reasons other than (i) failure of the Implementation Agency to comply with any Applicable Law or Applicable Permit, or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or (iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by the Authority; or
- (e) any event or circumstances of a nature analogous to any of the foregoing.

22.3 Indirect Political Event

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

- (a) an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;
- (b) industry-wide or state-wide strikes or industrial action for a continuous period of 24 (twenty four) hours and exceeding an aggregate period of 7 (seven) days in an Accounting Year;
- (c) any civil commotion, boycott or political agitation which prevents operations by the Implementation Agency for an aggregate period exceeding 7 (seven) days in an Accounting Year;

- (d) any failure or delay of a Contractor to the extent caused by any Indirect Political Event and which does not result in any offsetting compensation being payable to the Implementation Agency by or on behalf of such Contractor;
- (e) any Indirect Political Event that causes a Non-Political Event;
- (f) any event or circumstance of a nature analogous to any of the foregoing; or
- (g) any political or economic upheaval, disturbance, movement, struggle or similar occurrence which could not have been anticipated or foreseen by a prudent person and which causes the construction or operation of the Project to be financially unviable or otherwise not feasible

22.4 **Political Event**

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

- (a) compulsory acquisition in national interest or expropriation of any Project Assets or rights of the Implementation Agency or of the Contractors;
- (b) unlawful or unauthorized or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, license, permit, authorization, no objection certificate, consent, approval or exemption required by the Implementation Agency or any of the Contractors to perform their respective obligations under this Agreement and the Project Agreements; provided that such delay, modification, denial, refusal or revocation did not result from the Implementation Agency's or any Contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, license, authorization, no objection certificate, exemption, consent, approval or permit;
- (c) any failure or delay of a Contractor but only to the extent caused by another Political Event and which does not result in any offsetting compensation being payable to the Implementation Agency by or on behalf of such Contractor; or
- (d) any event or circumstance of a nature analogous to any the foregoing

22.5 **Duty to report Force Majeure Events**

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

- (a) the nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Article 22 with evidence in support thereof;
- (b) the estimated duration and the effect or probable effects which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Agreement;
- (c) the measurement which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Events; and
- (d) any other information relevant to the Affected Party's claim

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

22.5.3 For so long as the Affected Party continues to claim to be materially affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) reports containing information as required by Clause 22.5.1, and such other information as the other Party may reasonably request the Affected Party to provide.

22.6 **Effect of Force Majeure Event on the Agreement**

22.6.1 Upon the occurrence of any Force Majeure Event prior to the Appointed Date, the period set forth in Clause 3.1 for fulfilment of Conditions Precedent and in Clause 16.1.1 for achieving Financial Close shall be extended by a period equal in length to the duration of the Force Majeure Event.

22.6.2 At any time after the Appointed Date but prior to COD, if any Force Majeure Event occurs, the Scheduled Completion Date and the dates set forth in the Project Completion Schedule shall be extended by a period, equal in length to the duration for which such Force Majeure Events subsists

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

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

22.7.2 Upon occurrence of a Force Majeure Event after the Appointed Date but prior to COD, the costs incurred and attributable to such event and directly relating to the Project (the “**Force Majeure Costs**”) shall be allocated and paid as follows;

- (a) upon occurrence of a Non-Political Event, the Parties shall bear their respective Force Majeure Costs and neither Party shall be required to pay to the other Party any costs thereof; and
- (b) upon occurrence of an Indirect Political Event and Political Event, all Force Majeure Costs attributable to such Political Event shall be reimbursed by the Authority to the Implementation

For the avoidance of doubt, Force Majeure Costs may include payments on any increase in the cost of Construction Works on account of inflation and all other costs directly attributable to the Force Majeure Event, but shall not include loss of revenues, debt, O&M expenses, costs which are expressly covered under any provision of this Agreement. Provided further that the Parties hereby acknowledge that no Force Majeure Costs shall be due or payable by either of the Parties on account of Force Majeure Event occurring during the Operation Period.

22.7.3 Save and except as expressly provided in this Article 22, neither Party shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant hereto.

22.8 **Termination Notice for Force Majeure Event**

If a Force Majeure Event subsists for a period of 180 (one hundred and eighty) days or more within a continuous period of 365 (three hundred and sixty five) days occurring prior to COD, either Party may in its discretion terminate this Agreement by issuing a Termination Notice to the other Party without being liable in any manner whatsoever, save as provided in this Article 22, and upon issue of such Termination Notice, this Agreement shall, notwithstanding anything to the contrary contained herein, stand terminated forthwith; provided that before issuing such Termination Notice, the Party intending to issue the Termination Notice shall inform the other Party of such intention and grant 15 (fifteen) days’ time to make a representation, and may after the expiry of such 15 (fifteen) days period, whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice.

22.9 Termination Payment for Force Majeure Event

22.9.1 Upon Termination on account of Force Majeure Event occurring prior to COD, no further disbursement of Grant shall be made by the Authority and the Implementation Agency shall be liable to return immediately:

- (a) the amount of Grant already availed from the Authority for the Civil Costs minus the expenditure made on the Civil Cost, as shall be certified by the Statutory Auditor; and
- (b) the equipment / machinery purchased under the Grant amount of book value, as shall be certified by the Statutory Auditor. The remaining amount of Grant after deducting the book value of equipment / machinery shall be returned to the Authority.

Provided further that the Parties hereby acknowledge that they shall not be entitled to terminate this Agreement on account of Force Majeure Event during the Operation Period.

22.9.2 Termination Payment shall become due and payable to the Authority within 30 (thirty) days of a demand being made by the Authority to the Implementation Agency with the necessary particulars, and in the event of any delay, the Implementation Agency shall pay interest at a rate equal to 3% (three per cent) above the Bank Rate on the amount of Termination Payment remaining unpaid; provided that such delay shall not exceed 90 (ninety) days. For the avoidance of doubt, it is expressly agreed that Termination Payment shall constitute full discharge by the Implementation Agency of its payment obligations in respect thereof hereunder.

22.10 Dispute Resolution

In the event that the Parties are unable to agree in good faith about the occurrence or existence of a Force Majeure Event, such Dispute shall be finally settled in accordance with the Dispute Resolution Procedure as set out under Clause 26; provided that the burden of proof as to the occurrence or existence of such Force Majeure Event shall be upon the Party claiming relief and/or excuse on account of such Force Majeure Event.

22.11 Excuse from performance of obligations

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

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

ARTICLE 23 - TERMINATION

23.1 Termination for Implementation Agency' Default

23.1.1 Save as otherwise provided in this Agreement, in the event that default by the Implementation Agency under this Agreement and as specified below, and the Implementation Agency 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 Implementation Agency shall be deemed to be in default of this Agreement (the “**Implementation Agency’s Default**”), unless the default has occurred solely as a result of any breach of this Agreement by the Authority or due to Force Majeure. The defaults referred to herein shall include but not limited to:

- (a) the Performance Security has been encashed and appropriated in accordance with Clause 8.2 and the Implementation Agency fails to replenish or provide fresh Performance Security within a Cure Period of 15 (fifteen) days;
- (b) subsequent to the replenishment or furnishing of fresh Performance Security in accordance with Clause 8.2, the Implementation Agency fails to meet any Condition Precedent or cure the Implementation Agency’s Default, as the case may be, for which whole or part of the Performance Security was appropriated, within a Cure Period of 90 (ninety) days;
- (c) the Implementation Agency abandons or manifests intention to abandon the construction or operation of the Project without the prior written consent of the Authority;
- (d) unsatisfactory use of the Grant by the Implementation Agency including compromise with the quality of work envisaged, or partial/incomplete implementation of the Project;
- (e) COD does not occur within the period specified in Clause 10.2.3;
- (f) the Implementation Agency has failed to make any payment to the Authority within the period specified in this Agreement;
- (g) an Escrow Default has occurred and the Implementation Agency fails to cure the default within a Cure Period of 15 (fifteen) days;
- (h) a breach of any of the Project Agreements by the Implementation Agency has caused a Material Adverse Effect;
- (i) the Implementation Agency creates any Encumbrance in breach of this Agreement;
- (j) the Implementation Agency repudiates this Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by the Agreement;
- (k) a Change in Ownership has occurred in breach of the provisions of Clause 4.3;
- (l) there is a transfer, pursuant to law either of (i) the rights and/or obligations of the Implementation Agency under any of the Project Agreements, or of (ii) all or part of the assets or undertaking of the Implementation Agency, and such transfer causes a Material Adverse Effect;
- (m) an execution levied on any of the assets of the Implementation Agency has caused a Material Adverse Effect;
- (n) the Implementation Agency is adjudged bankrupt or insolvent, or if a trustee or receiver is appointed for the Implementation Agency or for the whole or material part of its assets that has a material bearing on the Project;

- (o) the Implementation Agency 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;
- (p) a resolution for winding up of the Implementation Agency is passed, or any petition for winding up of the Implementation Agency is admitted by a court of competent jurisdiction and a provisional liquidator or receiver is appointed and such order has not been set aside within 90 (ninety) days of the date thereof or the Implementation Agency 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 Implementation Agency are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Implementation Agency under this Agreement and the Project Agreements; and provided that:
 - (i) the amalgamated or reconstructed entity has the capability and operating experience necessary for the performance of its obligations under this Agreement and the Project Agreements;
 - (ii) the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and the Project Agreements and has a credit worthiness at least as good as that of the Implementation Agency as at the Appointed Date; and
 - (iii) each of the Project Agreements remains in full force and effect;
- (q) any representation or warranty of the Implementation Agency herein contained which is, as of the date hereof, found to be materially false, incorrect or misleading or the Implementation Agency is at any time hereafter found to be in breach thereof;
- (r) the Implementation Agency 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;
- (s) the Implementation Agency has failed to fulfil any obligation, for which failure Termination has been specified in this Agreement;
- (t) the Implementation Agency issues a Termination Notice in violation of the provisions of this Agreement;
- (u) the Implementation Agency commits a default in complying with any other provision of this Agreement if such default causes a Material Adverse Effect on the Authority; and
- (v) the Implementation Agency fails to submit the Performance Security as per provisions of Article 8

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

23.2 Termination Payment during Construction Period

Upon Termination on account of Implementation Agency's Default during the Construction Period, no further disbursement shall be made by the Authority and the Implementation Agency shall be liable to return the amount of Grant already availed from the Authority. Further, the Authority will be entitled to encash and appropriate from the Performance Security and other Bank Guarantees, the amounts due to it for and in respect of such Implementation Agency's Default.

23.3 Termination Payment during Operation Period

23.3.1 Upon Termination on account of Implementation Agency's Default during the Operation Period, the Implementation Agency shall be liable to return the amount of Grant already availed from the Authority.

23.3.2 Termination Payment shall become due and payable to the Authority within 30 (thirty) days of a demand being made by the Authority to the Implementation Agency with the necessary particulars, and in the event of any delay, the Implementation Agency shall pay interest at a rate equal to 3% (three per cent) above the Bank Rate on the amount of Termination Payment remaining unpaid; provided that such delay shall not exceed 90 (ninety) days. For the avoidance of doubt, it is expressly agreed that Termination Payment shall constitute full discharge by the Implementation Agency of its payment obligations in respect thereof hereunder.

23.3.3 The Parties expressly agrees that Termination Payment under this Article 23 shall constitute a full and final settlement of all claims of the Parties on account of Termination of this Agreement for any reason whatsoever and that the Parties thereof shall not have any further right or claim under any law, treaty, convention, contract or otherwise.

23.4 Survival of rights

Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 23.3.4, any Termination pursuant to the provisions of this Agreement shall be without prejudice to the accrued rights of either Party including its right to claim and recover money damages, insurance proceeds, security deposits, and other rights and remedies, which it may have in law or contract. All rights and obligations of either Party under this Agreement, including Termination Payments, shall survive the Termination to the extent such survival is necessary for giving effect to such rights and obligations.

ARTICLE 24 - ASSIGNMENT AND CHARGES

24.1 Restrictions on assignment and charges

24.1.1 This Agreement shall not be assigned by the Implementation Agency to any person, save and except with the prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.

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

24.2 Assignment by the Authority

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

ARTICLE 25 - LIABILITY AND INDEMNITY

25.1 General indemnity

25.1.1 The Implementation Agency shall indemnify, defend, save and hold harmless the Authority and its officers, servants, agents, Government Instrumentalities, designated GOI Agencies and Authority owned and/or controlled entities/enterprises, (the “**Government Indemnified Persons**”) against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature, whether arising out of any breach by the Implementation Agency of any of its obligations under this Agreement or any related agreement or on account of any defect or deficiency in the provision of services by the Implementation Agency to the Authority or any User or from any negligence of the Implementation Agency under contract 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 Government Indemnified Persons.

25.1.2 The Authority shall indemnify, defend, save and hold harmless the Implementation Agency against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature arising out of breach by the Authority of any of its obligations under this Agreement or any related agreement, which materially and adversely affect the performance by the Implementation Agency of its obligations under this Agreement, save and except that where any such claim, suit, proceedings, action, and/or demand has arisen due to a negligent act or omission, or breach of any of its obligations under any provision of this Agreement or any related agreement and/or breach of its statutory duty on the part of the Implementation Agency, its subsidiaries, assigns, affiliates, contractors, servants or agents, the same shall be the liability of the Implementation Agency.

25.2 Indemnity by the Implementation Agency

25.2.1 Without limiting the generality of Clause 25.1, the Implementation Agency shall fully indemnify, hold harmless and defend the Authority and the Government Indemnified Persons from and against any and all loss and/or damages arising out of or with respect to:

- (a) failure of the Implementation Agency to comply with Applicable Laws and Applicable Permits;
- (b) payment of taxes required to be made by the Implementation Agency, its subsidiaries, assigns or affiliates in respect of the income or other taxes of the Implementation Agency’s Contractors, suppliers and representatives; or
- (c) non-payment of amounts due as a result of materials or services furnished to the Implementation Agency or any of its contractors which are payable by the Implementation Agency or any of its contractors.

25.2.2 Without limiting the generality of the provisions of this Article 25, the Implementation Agency shall fully indemnify, hold harmless and defend the Government Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which the Government Indemnified Persons may hereafter suffer, or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other intellectual property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the Implementation Agency or by the Implementation Agency’s Contractors in performing the Implementation Agency’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 Implementation Agency 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 Implementation Agency shall promptly make every reasonable effort to secure for the Authority a license, at no cost to the Authority, authorizing continued use of the infringing work. If the Implementation Agency is unable to secure such license within a reasonable time, the Implementation Agency 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.

25.3 Notice and contest of claims

In the event that either Party receives a claim or demand from a third party in respect of which it is entitled to the benefit of an indemnity under this Article 25 (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.

25.4 Defence of claims

- 25.4.1 The Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and reasonable costs and expenses thereof shall be indemnified by the Indemnifying Party. If the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party in respect of loss to the full extent provided by this Article 27, 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.
- 25.4.2 If the Indemnifying Party has exercised its rights under Clause 25.3, the Indemnified Party shall not be entitled to settle or compromise any claim, action, suit or proceeding without the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).
- 25.4.3 If the Indemnifying Party exercises its rights under Clause 25.3, the Indemnified Party shall nevertheless have the right to employ its own counsel, and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party, when and as incurred, unless:
- (a) the employment of counsel by such party has been authorized in writing by the Indemnifying Party; or
 - (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; or

- (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 Clause 25.4.3 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.

25.5 No consequential claims

Notwithstanding anything to the contrary contained in this Article 25, 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.

25.6 Survival on Termination

The provisions of this Article 25 shall survive Termination.

ARTICLE 26 - DISPUTE RESOLUTION

26.1 Dispute resolution

- 26.1.1 Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the “**Dispute**”) shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 26.2.
- 26.1.2 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.

26.2 Conciliation

In the event of any Dispute between the Parties, either Party may call upon the mutually agreed and appointed 3rd (third) party to mediate and assist the Parties in arriving at an amicable settlement thereof. Failing mediation by the 3rd (third) party or without the intervention of the 3rd (third) party, either Party may require such Dispute to be referred to the Competent Authority of the Authority and the Chairman of the Board of Directors of the Implementation Agency for amicable settlement, and upon such reference, the said persons shall meet no later than 7 (seven) days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 7 (seven) days period or the Dispute is not amicably settled within 15 (fifteen) days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within 30 (thirty) days of the notice in writing referred to in Clause 26.1.1 or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to Arbitration in accordance with the provisions of Clause 26.3.

26.3 Arbitration

- 26.3.1 Any Dispute which is not resolved amicably by conciliation, as provided in Clause 26.2, shall be finally decided by reference to arbitration by an arbitral tribunal appointed in accordance with Clause 26.3.2. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the “**Rules**”), or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996 or any subsequent amendment or re-enactment thereof (“**Act**”). The venue of such arbitration shall be Delhi, and the language of arbitration proceedings shall be English.
- 26.3.2 There shall be an arbitral tribunal comprising 3 (three) arbitrators, of whom each Party shall select one, and the third arbitrator shall be appointed by the 2 (two) arbitrators so selected, and in the event of disagreement between the 2 (two) arbitrators, the appointment shall be made in accordance with the Rules.
- 26.3.3 The arbitral tribunal shall make a reasoned award (the “**Award**”). Any Award made in any arbitration held pursuant to this Article 26 shall be final and binding on the Parties as from the date it is made, and the Implementation Agency and the Authority agree and undertake to carry out such Award without delay.
- 26.3.4 The Implementation Agency and the Authority agree that an Award may be enforced against the Implementation Agency and/or the Authority, as the case may be, and their respective assets wherever situated. The Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.

26.3.5 The expenses incurred by each Party in connection with the preparation, presentation, etc., of arbitral proceedings shall be shared by each Party itself.

26.4 **Adjudication by Regulatory Commission or Authority**

In the event of constitution of a statutory tribunal or other forum with powers to adjudicate upon disputes between the Implementation Agency and the Authority, all Disputes arising after such constitution shall, instead of reference to arbitration under Clause 26.3, be adjudicated upon by such tribunal or other forum in accordance with the Applicable Law and all references to Dispute Resolution Procedure as set out under Clause 26 shall be construed accordingly. For the avoidance of doubt, the Parties hereto agree that the adjudication hereunder shall not be final and binding until an appeal against such adjudication has been decided by an appellate tribunal or High Court, as the case may be, or no such appeal has been preferred within the time specified in the Applicable Law.

ARTICLE 27 - REDRESSAL OF PUBLIC GRIEVANCES

27.1 Complaints Register

- 27.1.1 The Implementation Agency shall maintain a public relations office at the Project where it shall keep a register (the “**Complaint Register**”) open to public access at all times for recording of complaints by any person (the “**Complainant**”). Information relating to the availability of and access to the Complaint Register shall be prominently displayed by the Implementation Agency at the Project so as to bring it to the attention of all Users.
- 27.1.2 The Complaint Register shall be securely bound and each page thereof shall be duly numbered. It shall have appropriate columns including the complaint number, date, name and address of the Complainant, substance of the complaint and the action taken by the Implementation Agency. Immediately after a complaint is registered, the Implementation Agency shall give a receipt to the Complainant stating the date and complaint number.
- 27.1.3 Without prejudice to the provisions of Clauses 27.1.1 and 27.1.2, the Authority may, in consultation with the Implementation Agency, specify the procedure for making complaints in electronic form and for responses thereto.

27.2 Redressal of complaints

- 27.2.1 The Implementation Agency shall inspect the Complaint Register every day and take prompt and reasonable action for redressal of each complaint. The action taken shall be briefly noted in the Complaint Register and a reply stating the particulars thereof shall be sent by the Implementation Agency to the Complainant under a certificate of posting.
- 27.2.2 Within 7 (seven) days of the close of each quarter, the Implementation Agency shall send to the Authority a true photocopy each of all the pages of the Complaint Register on which any entry has been recorded during the course of such quarter, and upon perusal thereof, the Authority may, in its discretion, advise the Implementation Agency to take such further action as the Authority may deem appropriate for a fair and just redressal of any grievance. The Implementation Agency shall consider such advice and inform the Authority of its decision thereon, and if the Authority is of the opinion that the Complainant is entitled to further relief, it may refer the matter to the competent forum for its disposal under the Consumer Protection Act, 1986, and advise the Complainant to pursue the complaint at his own risk and cost.

ARTICLE 28 - MISCELLANEOUS

28.1 Governing law and jurisdiction

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

28.2 Waiver of immunity

Each Party unconditionally and irrevocably:

- (a) agrees that 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 asset, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Party with respect to its assets;
- (c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to its in any jurisdiction; and
- (d) consents generally in respect of the enforcement of any judgment or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgment that may be made or given in connection therewith).

28.3 Delayed payments

28.3.1 The Parties hereto agree that payments due from one Party to the other Party under the provisions of this Agreement shall be made within the period set forth therein, and if no such period is specified, within 30 (thirty) days of receiving a demand along with the necessary particulars. Unless otherwise specified in this Agreement, 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 per cent) above the Bank Rate, and recovery thereof shall be without prejudice to the rights of the Parties under this Agreement including Termination thereof.

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

28.4 Waiver

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

- (a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;
- (b) shall not be effective unless it is in writing and executed by a duly authorized representative of the Party; and
- (c) shall not affect the validity or enforceability of this Agreement in any manner.

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

28.5 Exclusion of implied warranties etc.

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

28.6 Survival

28.6.1 Termination shall:

- (a) not relieve the Implementation Agency or the Authority, as the case may be, of any obligations hereunder which expressly or by implication survive Termination hereof; and
- (b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of, or caused by, acts or omissions of such Party prior to the effectiveness of such Termination or arising out of such Termination.

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

28.7 Debarment

The Implementation Agency or any of its constituents shall be debarred if:

- (a) it has been convicted of an offence under the Prevention of Corruption Act, 1988;
- (b) it has been convicted for an offence under the Indian Penal Code or any other law for the time being in force, for causing any loss of life or property or causing a threat to public health as part of execution of a public procurement contract;
- (c) proceedings against any of its constituents are running under Insolvency and Bankruptcy code (IBC); and
- (d) the constituents of Implementation Agency are blacklisted by GOI / State Government

The Implementation Agency or any of its constituents debarred under any of the provisions mentioned in this Clause 28.7 or any successor of the Implementation Agency / its constituents shall not be eligible to participate in a procurement process of any procuring entity for a period not exceeding 3 (three) years commencing from the date of debarment.

28.8 Entire Agreement

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

28.9 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 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 this Agreement under Clause 27 or otherwise.

28.10 No partnership

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

28.11 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.

28.12 Successors and assigns

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

28.13 Notices

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

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

{ Attention:

Designation:

Address: Fax No: Email: }

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

{ Attention:

Designation:

Address: Fax No: Email: }; and

- (c) any notice or communication by a Party to the other Party, given in accordance herewith, shall be deemed to have been delivered when in the normal course of post it ought to have been delivered and in all other cases, it shall be deemed to have been delivered on the actual date

and time of delivery; provided that in the case of facsimile or email, it shall be deemed to have been delivered on the working day following the date of its delivery.

28.14 Language

All notices required to be given by one Party to the other Party and all other communications, Documentation and proceedings which are in any way relevant to this Agreement shall be in writing and in English language.

28.15 Counterparts

This Agreement may be executed in 2 (two) counterparts, each of which, when executed and delivered, shall constitute and original of this Agreement.

ARTICLE 29 – ASSETS: OWNERSHIP AND PERMITTED CHARGE

29.1 Ownership of Assets

(a) Land Area

The ownership of the Project Site shall always remain vested with the Authority. The rights of the Implementation Agency in the Project Site shall only be that of a bare licensee of such Project Site area and the Implementation Agency shall neither assign, transfer, sublet, create any charge or Encumbrance, nor shall the Implementation Agency create or permit creation of any third party rights whatsoever, on whole or any part of the Project Site. Further, any such rights of the Implementation Agency shall always be subject to existing rights of way. It is expressly agreed that the Implementation Agency rights in the Project Site shall cease without the need for any action to be taken by the Authority upon the termination of this Agreement for any reason whatsoever.

(b) Assets created or provided by the Concessionaire

The ownership of all infrastructure assets, buildings, structures, equipment and other immovable and movable assets constructed, installed, located, created or provided by the Implementation Agency at the Project Site pursuant to this Agreement shall, until expiry of this Agreement or transfer to the Authority on Termination in accordance with this Agreement, be with the Implementation Agency. However, such ownership of buildings etc. erected by the Implementation Agency at the Project Site shall not be construed as and shall not confer any rights in the Project Site upon the Implementation Agency, save as that of a bare licensee as provided for in this Agreement.

ARTICLE 31 – DEFINITIONS

31.1 Definitions

In this Agreement, the following words and expressions shall, unless repugnant to the context or meaning thereof, have the meaning hereinafter respectively assigned to them:

“**Accounting Year**” means the financial year commencing from the 1st (first) day of April of any calendar year and ending on the 31st (thirty-first) day of March of the next calendar year;

“**Affected Party**” shall have the meaning as set forth in Clause 22.1;

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

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

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

“**Appointed Date**” means the date on which every Condition Precedent shall have been satisfied or waived prior to the Appointed Date and shall be deemed to be the date of commencement of the Construction Period. For the avoidance of doubt the Appointed Date shall be not later than 180 days from date of the Agreement;

“**Arbitration Act**” means the Arbitration and Conciliation Act, 1996 and shall include modifications to or any re-enactment thereof, as in force from time to time;

“**Associate**” or “**Affiliate**” means, in relation to either Party {and/or Consortium Members}, a person who controls, is controlled by, or is under the common control with such Party {or Consortium Member} (as used in this definition, the expression “control” means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person, whether by operation of law or by contract or otherwise);

“**Authority Representative**” means such person or persons as may be authorised in writing by the Authority to act on its behalf under this Agreement and shall include any person or persons having Authority to exercise any rights or perform and fulfill any obligations of the Authority under this Agreement;

“**Bank**” means a bank incorporated in India and having a minimum net worth of Rs. 1,000 Crore (Rupees one thousand Crore)

“**Bank Rate**” means the rate of interest specified by the Reserve Bank of India from time to time in pursuance of section 49 of the Reserve Bank of India Act, 1934 or any replacement of such Bank Rate for the time being in effect;

“**Bid**” means the documents in their entirety comprised in the bid submitted by the {selected Bidder/Consortium} in response to the Request for Proposals in accordance with the provisions thereof

“**COD**” or “**Commercial Operation Date**” shall have the meaning as set forth in Clause 13.1;

“**Change in Ownership**” means a transfer of the direct and/or indirect legal or beneficial ownership of any shares, or securities convertible into shares, that causes the aggregate holding of the {selected Bidder/Consortium Members}, together with {its/their} Associates, in the total Equity to decline below 51% (fifty one per cent) thereof during Construction Period and two years thereafter; provided that any material variation (as compared to the representations made by the Implementation Agency during the bidding process for the purposes of meeting the minimum conditions of eligibility or for evaluation of its application or Bid, as the case may be,) in the proportion of the equity holding of {the selected bidder/ any Consortium Member} to the total Equity, if it occurs prior to completion of a period two years after COD, shall constitute Change in Ownership;

“**Civil Cost**” shall mean cost towards design procurement, construction and commissioning of the Project including civil, electrical, plumbing, mechanical, environmental, safety and waste disposal and management works;

“**Company**” means the company acting as the Implementation Agency under this Agreement;

“**Conditions Precedent**” shall have the meaning as set forth in Clause 3.1;

“**Consortium**” shall have the meaning as set forth in Recital (D);

“**Consortium Member**” means a company specified in Recital (D) as a member of the Consortium;

“**Construction Period**” means the period beginning from the Appointed Date and ending on COD;

“**Construction Works**” means all works and things necessary to complete the Project in accordance with this Agreement;

“**Contractor**” means the person or persons, as the case may be, with whom the Implementation Agency has entered into any contract any other material agreement or contract for construction, operation and/or maintenance of the Project or matters incidental thereto, but does not include a person who has entered into an agreement for providing financial assistance to the Implementation Agency;

“**Completion Certificate**” shall have the meaning set forth in Clause 12.2;

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

“**Defence Testing Infrastructure Screening Committee (DTISC)**” means the committee constituted by the Authority who shall be responsible for according final decision on the proposals submitted by the Implementation Agency and disbursement of Grants in installments to the Implementation Agency;

“**Damages**” shall have the meaning as set forth in Sub-clause (w) of Clause 1.2.1;

“**Development Period**” means the period from the date of this Agreement until the Appointed Date;

“**Detailed Project Report**” means the Detailed Project Report submitted by the selected Bidder/Consortium at the time of bidding and any revisions thereof and forming part hereof as Schedule B

“**Dispute**” shall have the meaning as set forth in Clause 26;

“**Dispute Resolution Procedure**” means the procedure for resolution of Disputes as set forth in Article 26;

“**Document**” or “**Documentation**” means documentation in printed or written form, or in tapes, discs, drawings, computer programmes, writings, reports, photographs, films, cassettes, or expressed in any other written, electronic, audio or visual form;

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

“**Equity**” means the sum expressed in Indian Rupees representing the paid up equity share capital of the Implementation Agency for meeting the equity component of the Total Project Cost, and for the purposes of this Agreement shall include convertible instruments or other similar forms of capital, which shall compulsorily convert into equity share capital of the Company, and any interest-free funds advanced by any shareholder of the Company for meeting such equity component, but does not include equity support by the Authority;

“**Equipment Cost**” means cost towards procurement, installation and commissioning of testing equipment only that are required for the providing the Services under the Project;

“**Escrow Account**” means an Account which the Implementation Agency shall open and maintain with a Bank in which all inflows and outflows of cash on account of capital and revenue receipts and expenditures shall be credited and debited, as the case may be, in accordance with the provisions of this Agreement, and includes the Sub-Accounts of such Escrow Account;

“**Escrow Agreement**” shall have the meaning as set forth in Clause 19.1.2;

“**Escrow Bank**” shall have the meaning as set forth in Clause 19.1.1;

“**Escrow Default**” shall have the meaning as set forth in Schedule C;

“**Financial Close**” means the fulfillment of all conditions precedent to the initial availability of funds under the financing agreements;

“**Force Majeure**” or “**Force Majeure Event**” shall have the meaning ascribed to it in Clause 22.1;

“**GOI**” or “**Government**” means the Government of India;

“**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 operator engaged in the same type of undertaking as envisaged

under this Agreement and which would be expected to result in the performance of its obligations by the Implementation Agency in accordance with this Agreement, Applicable Laws and Applicable Permits in reliable, safe, economical and efficient manner and for providing safe, economical, reliable and efficient manner;

“Government Instrumentality” means any department, division or sub-division of the Government of India or the State Government and includes any commission, board, Authority, agency or municipal and other local Authority or statutory body, including Panchayat, under the control of the Government of India or the 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 Implementation Agency under or pursuant to this Agreement;

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

“Implementation Agency’s Default” shall have the meaning as set forth in Clause 23.1;

“Indemnified Party” means the Party entitled to the benefit of an indemnity pursuant to Article 26;

“Indemnifying Party” means the Party obligated to indemnify the other Party pursuant to Article 26;

“Indirect Political Event” shall have the meaning as set forth in Clause 22.2;

“Insurance Cover” means the aggregate of the maximum sums insured under the insurances taken out by the Implementation Agency pursuant to Article 20, and includes all insurances required to be taken out by the Implementation Agency under Clause 20.1 but not actually taken, and when used in the context of any act or event, it shall mean the aggregate of the maximum sums insured and payable or deemed to be insured and payable in relation to such act or event;

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

“LOA” or **“Letter of Award”** means the letter of award referred to in Recital (E);

“Lead Member” shall have the meaning as set forth in Recital (D);

“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;

“Non-Political Event” shall have the meaning as set forth in Clause 22.1;

“O&M” means the operation and maintenance of the Project and includes all matters connected with or incidental to such operation and maintenance, provision of services and facilities, and revenue generation in accordance with the provisions of this Agreement;

“Operation Period” means the period commencing from COD;

“Panel of Chartered Accountants” shall have the meaning as set forth in Clause 21.1;

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

“**Performance Security**” shall have the meaning as set forth in Clause 8.1;

“**Political Event**” shall have the meaning set forth in Clause 22.3;

“**Project**” means the construction, operation and maintenance of the greenfield DTI facility for Unmanned Aerial Systems (UAS) under the DTIS, in accordance with the provisions of this Agreement, and includes all works, services and equipment relating to or in respect of the Scope of the Project;

“**Project Agreements**” means this Agreement, the financing agreements and any other material agreements or contracts that may be entered into by the Implementation Agency with any person in connection with matters relating to, arising out of or incidental to the Project, but does not include the Escrow Agreement, or any agreement for procurement of goods and services;

“**Project Assets**” means all physical and other assets relating to and forming part of the Project including (b) tangible assets such as civil works including foundations, mechanical, electrical and plumbing systems, air conditioning, communication systems, waste disposal systems; (c) Project Facilities provided at the Site; (d) buildings and immovable fixtures (d) various testing equipment and other ancillary equipments ;

“**Project Completion Date**” means the date on which the Completion Certificate is issued under the provisions of Article 10;

“**Project Completion Schedule**” means the progressive Project Milestones set forth in Detailed Project Report for completion of the Project on or before the Scheduled Completion Date and Schedule F;

“**Project Consultant**” means the consultant appointed for monitoring and reviewing the progress of the Project in conformity with the milestones, targets and objectives as contained in this Agreement and shall submit reports to the Authority and Project Monitoring Committee;

“**Project Facilities**” means all the amenities and testing facilities under the Project, as described in the Detailed Project Report and Schedule A;

“**Project Milestones**” means the Project milestones set forth in Schedule F;

“**Project Monitoring Committee**” means the committee constituted by the Authority towards ensuring timely and proper implementation of Project without time and cost overruns;

“**RBI**” means the Reserve Bank of India, as constituted and existing under the Reserve Bank of India Act, 1934, including any statutory modification or replacement thereof, and its successors;

“**Re.**”, “**Rs.**” or “**Rupees**” or “**Indian Rupees**” or “**INR**” means the lawful currency of the Republic of India;

“**Request for Proposals**” or “**RFP**” shall have the meaning set forth in Recital (C);

“**Scheduled Completion Date**” shall have the meaning set forth in Clause 10.2;

“**Scope of the Project**” shall have the meaning set forth in Clause 2.1;

“**Services**” means the testing and certification services to be provided under the Project as per the Detailed Project Report and as mentioned in Schedule H;

“**Site**” shall have the meaning set forth in Article 9;

“**Applicable Standards**” means the standards relating to the quality, quantity, capacity and other requirements for the Project, as per Applicable Laws and Good Industry Practices, and any modifications thereof, or additions thereto, as included in the engineering for the Project submitted by the Implementation Agency;

“**State**” means the State of ***** in which the Project is situated and “**State Government**” means the government of that State;

“**Statutory Auditors**” means a reputable firm of chartered accountants acting as the statutory auditors of the Implementation Agency under the provisions of the Companies Act, 1956 including any statutory modification or re-enactment thereof, for the time being in force, and appointed in accordance with Clause 21.1;

“**Taxes**” means any Indian taxes including excise duties, customs duties, value added tax, sales tax, local taxes, cess and any impost or surcharge of like nature (whether Central, State or local) on the goods, materials, equipment and services incorporated in and forming part of the Project charged, levied or imposed by any Government Instrumentality, but excluding any interest, penalties and other sums in relation thereto imposed on any account whatsoever. For the avoidance of doubt, Taxes shall not include taxes on corporate income;

“**Termination**” means the termination of this Agreement hereunder;

“**Termination Notice**” means the communication issued in accordance with this Agreement by one Party to the other Party terminating this Agreement;

“**Termination Payment**” means the amount payable by the Implementation Agency to the Authority, upon Termination in accordance with the provisions of this Agreement;

“**Total Project Cost**” means Civil Cost and Equipment Cost, and shall be limited to the lowest of:

- (a) the estimated Civil Cost and Equipment Cost as set forth in the Detailed Project Report; and
- (b) the actual Civil Cost and Equipment Cost upon completion of the Project

provided further that the Total Project Cost shall not include any cost towards Project Site, any recurring expenditure and establishment cost for the Project.

“**User**” means a person who intends to use the Project for testing and certification purposes on payment of Fee in accordance with the provisions of this Agreement and Applicable Laws; and

“**WPI**” means the Wholesale WPI for all commodities as published by the Ministry of Industry, GOI and shall include any index which substitutes the WPI, and any reference to WPI shall, unless the context otherwise requires, be construed as a reference to the latest monthly WPI published no later than 30 (thirty) days prior to the date of consideration hereunder; and “the Project” shall have the meaning as set forth in Recital C.

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

Signed for and on behalf of:

The AUTHORITY

Signed for and on behalf of:

IMPLEMENTATION AGENCY has been affixed pursuant to the resolution passed by the Board of Directors of the Implementation Agency at its meeting held on the day of 20... hereunto affixed in the presence of, Director, who has signed these presents in token thereof and, Company Secretary/Authorised Officer who has countersigned the same in token thereof

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

(Email Address)

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

(Email Address)

Signature of the Witness:

(Name)

(Designation)

Signature of the Witness:

(Name)

(Designation)

SCHEDULES

SCHEDULE - A
PROJECT FACILITIES

The Implementation Agency shall enlist all the Project Facilities and other necessary details as proposed in the Detailed Project Report within the time period specific in Clause 3.1.3.

SCHEDULE - B

DETAILED PROJECT REPORT

The Implementation Agency shall enclose the final Detailed Project Report within the time period specific in Clause 3.1.3.

SCHEDULE - C

ESCROW AGREEMENT

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

AMONGST

1., a Section 8 company incorporated under the provisions of the Companies Act, 2013 and having its registered office at (hereinafter referred to as the “**Implementation Agency**” which expression shall, unless repugnant to the context or meaning thereof, include its successors, permitted assigns and substitutes);
2. (insert name and particulars of the Escrow Bank) and having its registered office at (hereinafter referred to as the “**Escrow Bank**” which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes); and
3. (hereinafter referred to as the “**Authority**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns).

WHEREAS:

- (A) The Authority has entered into a Contract Agreement dated with the Implementation Agency (“**Contract Agreement**”) for the development, operation and management of Defence Testing Infrastructure (DTI) facility for ***** under the Defence Testing Infrastructure Scheme (DTIS) (“**Project**”), and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.
- (B) The Authority shall be providing a Grant to the Implementation Agency for the Project in accordance with the terms and conditions set forth in the Contract Agreement.
- (C) The Contract Agreement requires the Implementation Agency to establish an Escrow Account, *inter alia*, on the terms and conditions stated therein.

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

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, the following words and expressions shall, unless repugnant to the context or meaning thereof, have the meaning hereinafter respectively assigned to them:

“**Agreement**” means this Escrow Agreement and any amendment thereto made in accordance with the provisions contained herein;

“**Contract Agreement**” means the Contract Agreement referred to in Recital (A) above and annexed hereto as Annex-A, and shall include all of its Recitals and Schedules and any amendments made thereto in accordance with the provisions contained in this behalf therein;

“**Cure Period**” means the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Implementation Agency, and shall commence from the date on which a notice is delivered by the Authority, as the case may be, to the Implementation Agency asking the latter to cure the breach or default specified in such notice;

“**Escrow Account**” means an escrow account established in terms of and under this Agreement, and shall include the Sub-Accounts;

“**Escrow Default**” shall have the meaning ascribed thereto in Clause 6.1;

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

“**Payment Date**” means, in relation to any payment specified in Clause 4.1, the date(s) specified for such payment; and

“**Sub-Accounts**” means the respective sub-accounts of the Escrow Account, into which the monies specified in Clause 4.1 would be credited every month and paid out if due, and if not due in a month then appropriated proportionately in such month and retained in the respective sub-accounts and paid out therefrom on the Payment Date(s).

1.2 Interpretation

- 1.2.1 The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the Contract Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Contract Agreement.
- 1.2.2 References to Clauses are, unless stated otherwise, references to Clauses of this Agreement.
- 1.2.3 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Contract Agreement shall apply, *mutatis mutandis*, to this Agreement.

2. ESCROW ACCOUNT

2.1 Escrow Bank to act as trustee

- 2.1.1 The Implementation Agency hereby appoints the Escrow Bank to act as trustee for the Authority and the Implementation Agency in connection herewith and authorises the Escrow Bank to exercise such rights, powers, authorities and discretion as are specifically delegated to the Escrow Bank by the terms hereof together with all such rights, powers, authorities and discretion as are reasonably incidental hereto, and the Escrow Bank accepts such appointment pursuant to the terms hereof.
- 2.1.2 The Implementation Agency hereby declares that all rights, title and interest in and to the Escrow Account shall be vested in the Escrow Bank and held in trust for the Authority and the Implementation Agency, and applied in accordance with the terms of this Agreement. No person other than the Authority and the Implementation Agency shall have any rights hereunder as the beneficiaries of, or as third-party beneficiaries under this Agreement.

2.2 Acceptance of Escrow Bank

The Escrow Bank hereby agrees to act as such and to accept all payments and other amounts to be delivered to and held by the Escrow Bank pursuant to the provisions of this Agreement. The Escrow Bank shall hold and safeguard the Escrow Account during the term of this Agreement and shall treat the amount in the Escrow Account as monies deposited by the Implementation Agency or the Authority with the Escrow Bank. In performing its functions and duties under this Agreement, the Escrow Bank shall act in trust for the benefit of, and as agent for, the Authority and the Implementation Agency or their nominees, successors or assigns, in accordance with the provisions of this Agreement.

2.3 Establishment and operation of Escrow Account

- 2.3.1 Within 30 (thirty) days from the date of this Agreement, and in any case prior to the Appointed Date, the Implementation Agency shall open and establish the Escrow Account with the (name of Branch) Branch of the Escrow Bank. The Escrow Account shall be denominated in Rupees.

2.3.2 The Escrow Bank shall maintain the Escrow Account in accordance with the terms of this Agreement and its usual practices and applicable regulations, and pay the maximum rate of interest payable to similar customers on the balance in the said account from time to time.

2.3.3 The Escrow Bank and the Implementation Agency shall agree on the detailed mandates, terms and conditions, and operating procedures for the Escrow Account, but in the event of any conflict or inconsistency between this Agreement and such mandates, terms and conditions, or procedures, this Agreement shall prevail.

2.4 Escrow Bank's fee

The Escrow Bank shall be entitled to receive its fee and expenses in an amount, and at such times, as may be agreed between the Escrow Bank and the Implementation Agency. For the avoidance of doubt, such fee and expenses shall be appropriated from the Escrow Account in accordance with Clause 4.1.

2.5 Rights of the parties

Save and except as otherwise provided in the Contract Agreement, the rights of the Authority and the Implementation Agency in the monies held in the Escrow Account are set forth in their entirety in this Agreement and the Authority and the Implementation Agency shall have no other rights against or to the monies in the Escrow Account.

3. DEPOSITS INTO ESCROW ACCOUNT

3.1 Deposits by the Implementation Agency

3.1.1 The Implementation Agency agrees and undertakes that it shall deposit or cause to be deposited the following inflows and receipts into the Escrow Account:

- (a) all monies received in relation to the Project from Banks, insurance companies, lenders and shareholders;
- (b) all Fee and any other revenues from or in respect of the Project, including the proceeds of any rentals, deposits, capital receipts or insurance claims;
- (c) Termination Payment; and
- (d) all payments by the Authority, after deduction of any Damages

3.1.2 The Implementation Agency may at any time make deposits of its other funds into the Escrow Account, provided that the provisions of this Agreement shall apply to such deposits.

3.2 Deposits by the Authority

3.2.1 The Authority agrees and undertakes that, as and when due and payable, it shall deposit into and/or credit the Escrow Account with any monies disbursed by the Authority to the Implementation Agency.

3.2.2 Provided that, notwithstanding the provisions of Clause 4.1.1, the Authority shall be entitled to appropriate from the aforesaid amounts, any Damages due and payable to it by the Implementation Agency, and the balance remaining shall be deposited into the Escrow Account.

3.3 Interest on deposits

3.3.1 The Escrow Bank agrees and undertakes that all interest accruing on the balances of the Escrow Account shall be credited to the Escrow Account; provided that the Escrow Bank shall be entitled to appropriate therefrom the fee and expenses due to it from the Implementation Agency in relation to the Escrow Account and credit the balance remaining to the Escrow Account.

4. WITHDRAWALS FROM ESCROW ACCOUNT

4.1 **Withdrawals during Construction Period**

- 4.1.1 At the beginning of every month, or at such shorter intervals as the Implementation Agency may by written instructions determine, the Escrow Bank shall withdraw amounts from the Escrow Account and appropriate them in the following order by depositing such amounts in the relevant Sub-Accounts for making due payments, and if such payments are not due in any month, then retain such monies in such Sub-Accounts and pay out therefrom on the Payment Date(s):
- (a) all taxes due and payable by the Implementation Agency for and in respect of the Project;
 - (b) all payments relating to construction of the Project;
 - (c) all payments and Damages certified by the Authority as due and payable to it by the Implementation Agency pursuant to the Contract Agreement; and
 - (d) balance, if any, in accordance with the instructions of the Implementation Agency for implementation of the Project and as part of the Total Project Cost
- 4.1.2 No later than 60 (sixty) days prior to the commencement of each Accounting Year, the Implementation Agency shall provide to the Escrow Bank, details of the amounts likely to be required for each of the payment obligations set forth in this Clause 4.1; provided that such amounts may be subsequently modified, if fresh information received during the course of the year makes such modification necessary.

4.2 **Withdrawals upon Termination**

- 4.2.1 Upon Termination of the Contract Agreement, all amounts standing to the credit of the Escrow Account shall, notwithstanding anything in this Agreement, be appropriated and dealt with in the following order:
- (a) all taxes due and payable by the Implementation Agency for and in respect of the Project;
 - (b) all payments and Damages certified by the Authority as due and payable to it by the Implementation Agency;
 - (c) any other payments required to be made under the Contract Agreement; and
 - (d) balance, if any, in accordance with the instructions of the Implementation Agency for implementation of the Project and as part of the Total Project Cost

4.3 **Application of insufficient funds**

Funds in the Escrow Account shall be applied in the serial order of priority set forth in Clauses 4.1 and 4.2, as the case may be. If the funds available are not sufficient to meet all the requirements, the Escrow Bank shall apply such funds in the serial order of priority until exhaustion thereof.

4.4 **Application of insurance proceeds**

Notwithstanding anything in this Agreement, the proceeds from all insurance claims, except life and injury, shall be deposited into and/or credited to the Escrow Account and utilised for any necessary repair, reconstruction, reinstatement, replacement or improvement of the Project.

5. **OBLIGATIONS OF THE ESCROW BANK**

5.1 **Segregation of funds**

Monies and other property received by the Escrow Bank under this Agreement shall, until used or applied in accordance with this Agreement, be held by the Escrow Bank in trust for the purposes for which they were received, and shall be segregated from other funds and property of the Escrow Bank.

5.2 **Notification of balances**

7 (seven) business days prior to each Payment Date (and for this purpose the Escrow Bank shall be entitled to rely on an affirmation by the Implementation Agency and/or the Authority as to the relevant Payment Dates), the Escrow Bank shall notify the Authority of the balances in the Escrow Account and Sub-Accounts as at the close of business on the immediately preceding business day.

5.3 **Communications and notices**

In discharge of its duties and obligations hereunder, the Escrow Bank:

- (a) may, in the absence of bad faith or gross negligence on its part, rely as to any matters of fact which might reasonably be expected to be within the knowledge of the Implementation Agency upon a certificate signed by or on behalf of the Implementation Agency;
- (b) may, in the absence of bad faith or gross negligence on its part, rely upon the authenticity of any communication or document believed by it to be authentic;
- (c) shall, within 5 (five) business days after receipt, deliver a copy to the Authority of any notice or document received by it in its capacity as the Escrow Bank from the Implementation Agency or any other person hereunder or in connection herewith; and
- (d) shall, within 5 (five) business days after receipt, deliver a copy to the Implementation Agency of any notice or document received by it from the Authority in connection herewith.

5.4 **No set off**

The Escrow Bank agrees not to claim or exercise any right of set off, banker's lien or other right or remedy with respect to amounts standing to the credit of the Escrow Account. For the avoidance of doubt, it is hereby acknowledged and agreed by the Escrow Bank that the monies and properties held by the Escrow Bank in the Escrow Account shall not be considered as part of the assets of the Escrow Bank and being trust property, shall in the case of bankruptcy or liquidation of the Escrow Bank, be wholly excluded from the assets of the Escrow Bank in such bankruptcy or liquidation.

5.5 **Regulatory approvals**

The Escrow Bank shall use its best efforts to procure, and thereafter maintain and comply with, all regulatory approvals required for it to establish and operate the Escrow Account. The Escrow Bank represents and warrants that it is not aware of any reason why such regulatory approvals will not ordinarily be granted to the Escrow Bank.

6. **ESCROW DEFAULT**

6.1 Following events shall constitute an event of default by the Implementation Agency (an "**Escrow Default**") unless such event of default has occurred as a result of Force Majeure or any act or omission of the Authority:

- (a) the Implementation Agency commits breach of this Agreement by failing to deposit any receipts into the Escrow Account as provided herein and fails to cure such breach by depositing the same into the Escrow Account within a Cure Period of 5 (five) business days;
- (b) the Implementation Agency causes the Escrow Bank to transfer funds to any account of the Implementation Agency in breach of the terms of this Agreement and fails to cure such breach by depositing the relevant funds into the Escrow Account or any Sub-Account in which such transfer should have been made, within a Cure Period of 5 (five) business days; or
- (c) the Implementation Agency commits or causes any other breach of the provisions of this Agreement and fails to cure the same within a Cure Period of 5 (five) business day

6.2 Upon occurrence of an Escrow Default, the consequences thereof shall be dealt with under and in accordance with the provisions of the Contract Agreement.

7. TERMINATION OF ESCROW AGREEMENT

7.1 Duration of the Escrow Agreement

This Agreement shall remain in full force and effect so long as any sum remains to be advanced or is outstanding from the Implementation Agency in respect of any of its obligations to the Authority remain to be discharged, unless terminated earlier by consent of all the Parties or otherwise in accordance with the provisions of this Agreement.

7.2 Substitution of Escrow Bank

7.2.1 The Implementation Agency may, by not less than 45 (forty-five) days prior notice to the Escrow Bank, the Authority terminate this Agreement and appoint a new Escrow Bank, provided that the new Escrow Bank is acceptable to the Authority and arrangements are made satisfactory to the Authority for transfer of amounts deposited in the Escrow Account to a new Escrow Account established with the successor Escrow Bank.

7.2.2 The termination of this Agreement shall take effect only upon coming into force of an Escrow Agreement with the substitute Escrow Bank.

7.3 Closure of Escrow Account

The Escrow Bank shall, at the request of the Implementation Agency made on or after the payment by the Implementation Agency of all outstanding amounts under the Contract Agreement including the payments specified in Clause 4.2, and upon confirmation of receipt of such payments, close the Escrow Account and Sub-Accounts and pay any amount standing to the credit thereof to the Implementation Agency. Upon closure of the Escrow Account hereunder, the Escrow Agreement shall be deemed to be terminated.

8. INDEMNITY

8.1 General indemnity

8.1.1 The Implementation Agency will indemnify, defend and hold the Authority and the Escrow Bank, harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of any breach by the Implementation Agency of any of its obligations under this Agreement or on account of failure of the Implementation Agency to comply with Applicable Laws and Applicable Permits.

8.1.2 The Authority will indemnify, defend and hold the Implementation Agency harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Authority to fulfil any of its obligations under this Agreement materially and adversely affecting the performance of the Implementation Agency's obligations under the Contract Agreement or this Agreement other than any loss, damage, cost and expense arising out of acts done in discharge of their lawful functions by the Authority, its officers, servants and agents.

8.1.3 The Escrow Bank will indemnify, defend and hold the Implementation Agency and the Authority harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Escrow Bank to fulfil its obligations under this Agreement materially and adversely affecting the performance of the Implementation Agency's obligations under the Contract Agreement other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Escrow Bank, its officers, servants and agents.

8.2 Notice and contest of claims

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 9.1 or in respect of which it is entitled to reimbursement (the "**Indemnified Party**"), it shall notify the other Party responsible for indemnifying such claim

hereunder (the “**Indemnifying Party**”) within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

9. **DISPUTE RESOLUTION**

9.1 Any dispute, difference or claim arising out of or in connection with this Agreement, which is not resolved amicably, shall be decided finally by reference to arbitration to a Board of Arbitrators comprising one nominee of each Party to the dispute, and where the number of such nominees is an even number, the nominees shall elect another person to such Board. Such arbitration shall be held in accordance with be the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the “**Rules**”) or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996 and Arbitration and Conciliation (Amendment) Act, 2015.

9.2 The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The place of arbitration shall be the capital of the State and the language of arbitration shall be English.

10. **MISCELLANEOUS PROVISIONS**

10.1 **Governing law and jurisdiction**

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

10.2 **Priority of agreements**

In the event of any conflict between the Contract Agreement and this Agreement, the provisions contained in the Contract Agreement shall prevail over this Agreement.

10.3 **Alteration of terms**

All additions, amendments, modifications and variations to this Agreement shall be effectual and binding only if in writing and signed by the duly authorised representatives of the Parties.

10.4 **Waiver**

10.4.1 Waiver by any Party of a default by another Party in the observance and performance of any provision of or obligations under this Agreement:

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

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

10.5 No third-party beneficiaries

This Agreement is solely for the benefit of the Parties and no other person or entity shall have any rights hereunder.

10.6 Survival

10.6.1 Termination of this Agreement:

- (a) shall not relieve the Parties of any obligations hereunder which expressly or by implication survive termination hereof; and
- (b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, shall not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of, or caused by, acts or omissions of such Party prior to the effectiveness of such termination or arising out of such termination.

10.6.2 All obligations surviving the cancellation, expiration or termination of this Agreement shall only survive for a period of 3 (three) years following the date of such termination or expiry of this Agreement.

10.7 Severability

If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Clause 10.1 of this Agreement or otherwise.

10.8 Successors and assigns

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

10.9 Notices

All notices or other communications to be given or made under this Agreement shall be in writing and shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or e-mail. The address for service of each Party, its facsimile number and e-mail address are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on a business day, or on a day that is not a business day, the notice shall be deemed to be received on the first business day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile or e-mail shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

10.10 Language

All notices, certificates, correspondence and proceedings under or in connection with this Agreement shall be in English.

10.11 Authorised representatives

Each of the Parties shall, by notice in writing, designate their respective authorised representatives through whom only all communications shall be made. A Party hereto shall be entitled to remove and/or substitute or make fresh appointment of such authorised representative by similar notice.

10.12 Original Document

This Agreement may be executed in 4 (four) counterparts, each of which when executed and delivered shall constitute an original of this Agreement.

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

THE COMMON SEAL OF IMPLEMENTATION AGENCY has been affixed pursuant to the resolution passed by the Board of Directors of the Implementation Agency at its meeting held on the day of 20... hereunto affixed in the presence of, Director, who has signed these presents in token thereof and, Company Secretary/Authorised Officer who has countersigned the same in token thereof

SIGNED, SEALED AND DELIVERED
For and on behalf of ESROW BANK by the:

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(Email Address)

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(Email Address)

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

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(Email Address)

In presence of:

(1)

(2)



SCHEDULE - D
PERFORMANCE SECURITY

To,

[Authority]

WHEREAS:

- (A) ***** (the “**Implementation Agency**”) and the ***** (the “**Authority**”) have entered into a Contract Agreement dated ***** (“**Agreement**”) whereby the Authority has agreed to the Implementation Agency undertaking the development, operation and management of greenfield Defence Testing Infrastructure (DTI) facility for ***** under the Defence Testing Infrastructure Scheme (DTIS), subject to and in accordance with the provisions of the Agreement.
- (B) The Agreement requires the Implementation Agency to furnish a Performance Security to the Authority in a sum of INR *****crore (Rupees *****crore) (the “**Guarantee Amount**”) as security for due and faithful performance of its obligations, under and in accordance with the Agreement, during the Construction Period (as defined in the Agreement).
- (C) We, ***** through our Branch at ***** (the “**Bank**”) have agreed to furnish this Bank Guarantee by way of Performance Security.

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

1. The Bank hereby unconditionally and irrevocably guarantees and undertakes to pay to the Authority upon occurrence of any failure or default in the due and faithful performance of all or any of the Implementation Agency’s obligations during the Construction Period, under and in accordance with the provisions of the Agreement, on its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Implementation Agency, such sum or sums upto an aggregate sum of the Guarantee Amount as the Authority shall claim, without the Authority being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.
2. A letter from the Authority, under the hand of an officer not below the rank of a *****, that the Implementation Agency has committed default in the due and faithful performance of all or any of its obligations under and in accordance with the Agreement shall be conclusive, final and binding on the Bank. The Bank further agrees that the Authority shall be the sole judge as to whether the Implementation Agency is in default in due and faithful performance of its obligations during the Construction Period under the Agreement and its decision that the Implementation Agency is in default shall be final, and binding on the Bank, notwithstanding any differences between the Authority and the Implementation Agency, or any dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Implementation Agency 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 and any change in the constitution of the Implementation Agency 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 Implementation Agency before presenting to the Bank its demand under this Guarantee.
5. The Authority shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Agreement or to extend the time or period for the compliance with, fulfilment and/or performance of all or any of the obligations of

- the Implementation Agency contained in the Agreement or to postpone for any time, and from time to time, any of the rights and powers exercisable by the Authority against the Implementation Agency, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement and/or the securities available to the Authority, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the Authority of the liberty with reference to the matters aforesaid or by reason of time being given to the Implementation Agency or any other forbearance, indulgence, act or omission on the part of the Authority or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.
6. This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the Authority in respect of or relating to the Agreement or for the fulfilment, compliance and/or performance of all or any of the obligations of the Implementation Agency under the Agreement.
 7. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and this Guarantee will remain in force for the period specified in paragraph 8 below and unless a demand or claim in writing is made by the Authority on the Bank under this Guarantee, no later than 6 (six) months from the date of expiry of this Guarantee, all rights of the Authority under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.
 8. The Performance Security shall cease to be in force and effect when the Commercial Operation Date under this Agreement has occurred. Upon request made by the Implementation Agency for release of the Performance Security along with the particulars required hereunder including that the Commercial Operation Date under the Agreement has occurred, duly certified by a statutory auditor of the Implementation Agency, the Authority shall release the Performance Security forthwith.
 9. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of 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 until the date which is 180 (one hundred eighty) days after the occurrence of Commercial Operation Date under the Contract Agreement as notified to the Bank by the Authority or until it is released earlier by the Authority pursuant to the provisions of the Agreement.

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.

SCHEDULE - E
PROJECT SITE

The Implementation Agency shall provide the details about the Project Site as proposed in the Detailed Project Report within the time period specific in Clause 3.1.3.

SCHEDULE - F

PROJECT COMPLETION SCHEDULE

The Implementation Agency shall provide the Schedule Completion Date, Project Completion Schedule including Project Milestones as proposed in the Detailed Project Report within the time period specific in Clause 3.1.3.

SCHEDULE - G

**UTILISATION CERTIFICATE
(To be duly certified by the Statutory Auditor)**

UTILIZATION CERTIFICATE FOR THE PERIOD FROM TO

1. Details of Grants received, expenditure incurred and closing balances: (Actuals)

Unspent balances of Grants received	Interest Earned thereon	Interest deposited back to the Authority	Grant received	Total available funds (1+2-3+4)	Expenditure incurred	Closing Balances (5-6)
1	2	3	4	5	6	7

2. Component wise utilization of Grant and financial contribution by the Implementation Agency:

Grant - Civil Costs	Grant - Equipment Costs	Financial contribution by Implementation Agency towards Civil Cost and Equipment Cost	Total
1	2	3	4

Certified that I have satisfied myself that the conditions on which Grants were sanctioned have been duly fulfilled/are being fulfilled and that I have exercised following checks to see that the Grant has been actually utilized for the purpose for which it was sanctioned:

- (a) the main accounts and other subsidiary accounts and registers (including assets registers) are maintained as per the provisions of this Agreement;
- (b) there exist internal controls for safeguarding public funds/assets, watching outcomes and achievements of physical targets against the financial inputs, ensuring quality in asset creation etc. & the periodic evaluation of internal controls is exercised to ensure their effectiveness;
- (c) to the best of our knowledge and belief, no transactions have been entered that are in violation of Defence Testing Infrastructure Scheme (DTIS) and the provisions of this Agreement;
- (d) the responsibilities among the key functionaries for execution of the Project have been assigned in clear terms and are not general in nature; and
- (e) the expenditure on various components of the Project was in the proportions authorised as per the DTIS and the provisions of the Contract Agreement

SIGNED, SEALED AND DELIVERED

For and on behalf of the Implementation Agency
by:

(Signature)

(Name)

(Designation)

(Address)

SIGNED, SEALED AND DELIVERED

For and on behalf of the Statutory Auditor by:

(Signature)

(Name)

(Designation)

(Code Number)

(Address)



SCHEDULE - H
SERVICES

The following testing Services are proposed to be undertaken at the Project across different stages viz Research & Development (R&D), Manufacturing, Acceptance and Maintenance, Repair & Operations (MRO), as applicable. The tests are categorized under mandatory tests and additional tests. Mandatory tests comprises of tests which are required be part of the DTIS facility and additional tests comprises of tests which are good to have as part of the proposed DTIS facility.

SCHEDULE - I

PANEL OF CHARTERED ACCOUNTANTS

1. Panel of Chartered Accountants

Pursuant to the provisions of Clause 21.2.1 of the Agreement, the Authority and the Implementation Agency shall prepare a mutually agreed panel of 5 (five) reputable firms of Chartered Accountants having their registered offices in India (the “**Panel of Chartered Accountants**”). The criteria for preparing such Panel of Chartered Accountants and the procedure to be adopted in this behalf shall be as set forth in this Schedule I.

2. Invitation for empanelment

2.1 The Authority shall invite offers from all reputed firms of Chartered Accountants who fulfil the following eligibility criteria, namely:

- (a) the firm should have conducted statutory audit of the annual accounts of at least 100 (one hundred) companies registered under the Companies Act, 1956/2013, including any re-enactment or amendment thereof, of which at least 10 (ten) should have been public sector undertakings;
- (b) the firm should have at least 5 (five) practicing Chartered Accountants on its rolls, each with a minimum experience of 10 (ten) years in the profession;
- (c) the firm or any of its partners should not have been disqualified or black-listed by the Comptroller and Auditor General of India or the Authority; and
- (d) the firm should have an office in the State or in an adjacent State with at least 2 (two) practicing Chartered Accountants on its rolls in such State.

2.2 Interested firms meeting the eligibility criteria shall be required to submit a statement of their capability including the bio-data of all the practicing Chartered Accountants on its rolls. In particular, each firm shall be required to furnish year-wise information relating to the names of all the companies with an annual turnover exceeding INR 10,00,00,000 (Rupees Ten crores) whose annual accounts were audited by such firm in any of the preceding 5 (five) Accounting Years.

3. Evaluation and selection

3.1 The information furnished by each firm shall be scrutinized and evaluated by the Authority and 1 (one) point shall be awarded for each annual audit of the companies specified in Paragraph 2 above. For the avoidance of doubt and by way of illustration, a firm which has conducted audit of the annual accounts of any such company for 5 (five) years shall be awarded 5 (five) points.

3.2 The Authority shall prepare a list of all the eligible firms along with the points scored by each such firm and 5 (five) firms scoring the highest points shall be identified and included in the draft Panel of Chartered Accountants.

4. Consultation with the Implementation Agency

The Authority shall convey the aforesaid panel of firms to the Implementation Agency for scrutiny and comments, if any. The Implementation Agency shall be entitled to scrutinize the relevant records of the Authority to ascertain whether the selection of firms has been undertaken in accordance with the prescribed procedure and it shall send its comments, if any, to the Authority within 15 (fifteen) days of receiving the aforesaid panel.

5. Mutually agreed panel

- 5.1 The Authority shall, after considering all relevant factors including the comments, if any, of the Implementation Agency, finalize and constitute a panel of 5 (five) firms which shall be deemed to be the mutually agreed Panel of Chartered Accountants.
- 5.2 After completion of every 5 (five) years from the date of preparing the mutually agreed Panel of Chartered Accountants, or such earlier period as may be agreed between the Authority and the Implementation Agency, a new panel shall be prepared in accordance with the provisions of this Schedule I.

SCHEDULE - J
COMPLETION CERTIFICATE

1. I/We, (Name of the Authority), acting as Authority, under and in accordance with the Contract Agreement dated (the “**Agreement**”), for development, operation and maintenance of greenfield Defence Testing Infrastructure (DTI) facility for Unmanned Aerial Systems (UAS) under the Defence Testing Infrastructure Scheme (DTIS) (the “**Project**”), through (Name of Implementation Agency), hereby certify that Project has been successfully completed as per the Detailed Project Report in the Agreement,.
2. It is certified that, in terms of the aforesaid Agreement, all works forming part of Project have been completed, on this the.....day of 20...

SIGNED, SEALED AND DELIVERED

For and on behalf of AUTHORITY by:

(Signature)

(Name)

(Designation)

(Address)