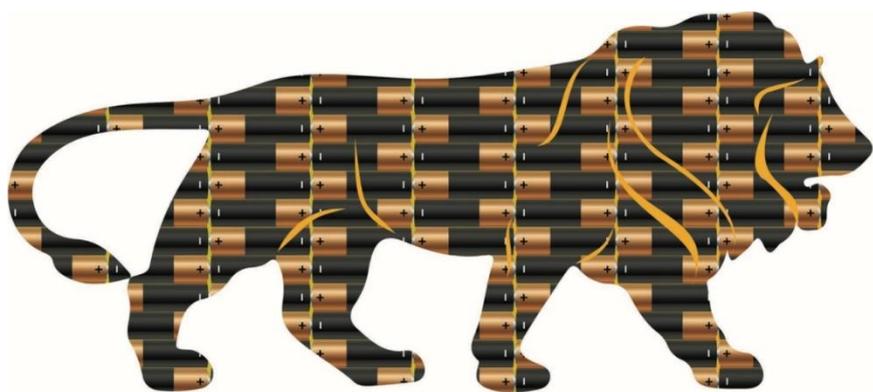


**NATIONAL PROGRAMME
ON ADVANCE CHEMISTRY
CELL (ACC)
BATTERY STORAGE**



DRAFT MODEL BID DOCUMENTS

Date: 11 November 2020
Version#1

Government of India/भारत सरकार
NITI Aayog/ नीति आयोग
(PPP Vertical)
(सरकारी निजी कंपनी भागीदारी)
Sansad Marg, New Delhi – 110001

STAKEHOLDERS CONSULTATION

Advance Chemistry Cells (“ACCs”) are the new generation advance storage technologies that can store electric energy either as electrochemical or as chemical energy and convert it back to electric energy as and when required. Globally, manufacturers are investing in these new generation technologies at commercial scale to fill the expected boom in battery demand through 2030. Considering its importance and the emphasis on transition to a clean energy economy, the Government of India (“GoI”) in March 2019, launched the National Mission on Transformative Mobility & Battery Storage (the “**Mission**”), under the Chairmanship of the CEO, NITI Aayog. The Mission, apart from notifying various policy interventions to promote electric vehicle penetration in India, has proposed the National Programme on Advance Chemistry Cell Battery Storage (the “**Programme**”), which is pending Union Cabinet’s approval, to support 50 Giga Watt hours (“GWh”) of domestic ACC manufacturing. This umbrella-level initiative proposes various fiscal incentives through a single-window mechanism, to make domestic ACC manufacturing industry, globally competitive. In addition the Programme also proposes a composite framework for imposition of suitable Basic Custom Duty with the intent to promote phased manufacturing of ACCs and its components in India and makes recommendations for promoting the overall market demand for ACCs in India.

The Hon’ble Finance Minister of India too in her Budget 2019-20 and later in her ‘Atma-Nirbhar Bharat’ speech, reaffirmed Government’s intent to extend incentives and invite domestic and global companies through a transparent competitive bidding mechanism to set-up mega-manufacturing plants in sunrise & advance technology areas such as Lithium Storage Batteries etc., in order to boost the overall *Economic Growth* and promote *Make in India*.

This is a first of its kind incentive initiative by the Government to promote Make in India and to attract global investments into setting-up of ‘Gigafactories’ in India. The Structure of the documents and the Model of the bid adopted under the Programme encompasses following key features, first, the cash subsidy shall be offered on output, i.e. the volume of cells manufactured and sold by the beneficiaries. Second, it’s a technology agnostic initiative, whereby only cells with higher performance specifications (i.e., Energy Density & Cycle Life) shall be eligible to avail the incentives. While the subsidy benchmarks shall be determined in a manner that cells with better quality or performance characteristics attract higher subsidy, thereby encouraging manufacturers to invest into Research & Development and to Manufacture such cells in India. Third, a ‘QCBS’ (i.e., Value Weighted) based bidding process on

prospective commitment criteria shall be followed, to promote large scale capacity deployment with emphasis on promoting domestic manufacturing and ensuring transparency, The participants shall be ranked on the basis of their submissions, and capacities shall be allocated in the order of their ranking, with the entity ranked 1 allocated the capacity first, followed by entity ranked 2, and so on, till a cumulative capacity of 50 GWh per year has been allocated. The subsidy support will be limited to a cumulative 50 GWh of ACC manufacturing capacity in India, with a single beneficiary not allowed more than 20 GWh cell manufacturing facility. Furthermore, to encourage economies of scale, minimum bid may be restricted to 5 GWh capacity, which may be developed in phases over a five-year window. Last but not the least, in order to ensure the bankability of the manufacturing facility and with emphasis upon key performance indicators, the incentive framework has been fused with the principles of Public Private Partnership (“PPP”). The structure thus adopted for the Programme bid documents ensures that there is an optimal sharing of risk between the beneficiary firm and the Government, and thus expected to bolster investors’ confidence and become instrumental in putting India as a leader on the world map in ACC manufacturing.

In view of the above, the draft Model Bid Documents have prepared, including the Request for Proposal (“RFP”), the Programme Agreement and a Tripartite State Support Agreement. The said documents have been uploaded on the NITI Aayog website and available at this link: <https://www.niti.gov.in/documents/model-agreements>. All stakeholders are requested to provide their written comments, if any, **by or before 14th December, 2020**. The comments are to be sent in the enclosed format, in electronic and editable form, addressed to

Mr. Aman Hans,
Consultant PPP & Lead Energy Storage Mission, NITI Aayog

by email at: aman.hans@nic.in. In this regard, there will be a stakeholder’s meet at NITI Aayog, New Delhi on **18th December, 2020 at 11:00am** through virtual mode and details shall be shared separately. All those who are interested in attending the meet are requested to send a line of confirmation latest by **16th December 2020** on the aforementioned email.

FORMAT
FOR COMMENTS ON BID DOCUMENTS ON THE
NATIONAL PROGRAM ON ADVANCE CHEMISTRY CELL (ACC)
BATTERY STORAGE

- Name and address of the comments/ suggestion provider: _____
- Designation: _____
- Name of Organization: _____
- Contact email ID and number: _____

Sl. No.	Type of Bid Document	Article/ Clause Reference	Page Number	Comment/ Suggestion and Reasons



National Programme on ACC Battery Storage

REQUEST FOR PROPOSAL

Government of India

Disclaimer

The information contained in this Request for Proposal document (the “**RFP**”) or subsequently provided to Bidder(s), whether verbally or in documentary or any other form by or on behalf of the Government or any of its employees or advisors, is provided to Bidder(s) on the terms and conditions set out in this RFP and such other terms and conditions subject to which such information is provided.

This RFP is not an agreement and is neither an offer nor invitation by the Government to the prospective Bidders or any other person. The purpose of this RFP is to provide interested parties with information that may be useful to them in making their financial offers (Bids) pursuant to this RFP. This RFP includes statements, which reflect various assumptions and assessments arrived at by the Government in relation to the Project. Such assumptions, assessments and statements do not purport to contain all the information that each Bidder may require. This RFP may not be appropriate for all persons, and it is not possible for the Government, its employees, or advisors to consider the investment objectives, financial situation and particular needs of each party who reads or uses this RFP. The assumptions, assessments, statements, and information contained in the Bidding Documents may not be complete, accurate, adequate, or correct. Each Bidder should, therefore, conduct its own investigations and analysis and should check the accuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments, statements and information contained in this RFP and obtain independent advice from appropriate sources.

Information provided in this RFP to the Bidder(s) is on a wide range of matters, some of which may depend upon interpretation of law. The information given is not intended to be an exhaustive account of statutory requirements and should not be regarded as a complete or authoritative statement of law. The Government accepts no responsibility for the accuracy or otherwise for any interpretation or opinion on law expressed herein.

The Government and its advisors make no representation or warranty and shall have no liability to any person, including any Bidder(s) under any law, statute, rules or regulations or tort, principles of restitution or unjust enrichment or otherwise for any loss, damages, cost or expense which may arise from or be incurred or suffered on account of anything contained in this RFP or otherwise, including the accuracy, adequacy, correctness, completeness or reliability of the RFP and any assessment, assumption, statement or information contained therein or deemed to form part of this RFP or arising in any way for participation in this Bid.

The Government also accepts no liability of any nature whether resulting from negligence or otherwise howsoever caused arising from reliance of any Bidder(s) upon the statements contained in this RFP.

The Government may in its absolute discretion, but without being under any obligation to do so, update, amend or supplement the information, assessment or assumptions contained in this RFP.

The issue of this RFP does not imply that the Government is bound to select a Bidder(s) or to appoint the Selected Bidder(s), as the case may be, for the Project and the Government reserves the right to reject all or any of the Bidders or Bids without assigning any reason whatsoever.

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

GLOSSARY

Advance Chemistry Cell / ACC	It shall have the definition as prescribed under the Programme Agreement
Appointed Date	As defined in the Programme Agreement
Associate	As defined in Clause 2.2.1
Bank Guarantee	As defined in Clause 2.23.1
Beneficiary Firm	As defined in the Programme Agreement
Bid	As defined in Clause 1.1.2
Bid Due Date	As defined in Clause 1.1.5
Bid Security	As defined in Clause 1.2.2
Bidder(s)	As defined in Clause 1.1.2
Bidding Documents	As defined in Clause 1.1.5
Bidding Process	As defined in Clause 1.2.1
Central Public Procurement Portal	It shall mean the electronic portal of the Government of India that facilitates all the central government organisations to publish their tenders.
Conflict of Interest	As defined in Clause 2.2.1(c)
Consortium	As defined in Clause 2.2.1(a)
CRA	Credit Rating Agency
Credit Rating	As defined in Clause 2.2.3
Eligible Bidder	As defined in Clause 1.2.5
Financial Bid	As defined in Clause 1.2.1
Financial Close	As defined in Programme Agreement
GFR Order	As defined in Clause 2.2.17
GoI	Government of India
Government	Government of India represented by Department of Heavy Industry, Ministry of Heavy Industries & Public Enterprises (DHI) and/or NITI Aayog, as the case may be
GWh	Gigawatt hours
IFRS	As defined in Clause 2.2.4 (i)
Lead Member	As defined in Clause 2.2.9 (c)
LOA	As defined in Clause 2.30.3
Member	Member of a Consortium
Net Worth	As defined in Clause 2.2.4 (ii)
Parent Company	Shall mean a company that holds at least 26% (twenty six percent) of the paid - up equity capital directly or indirectly in the Bidder or in the Member in a Consortium, as the case may be.
Performance Security	As defined in the Programme Agreement

Price Bid	As defined in Clause 3.3.4.
Project	As defined in Clause 1.1.3
Programme Agreement	As defined in Clause 2.2.10
Re. or Rs. or INR	Indian Rupee
RFP	Shall mean this request for proposal issued by the Government to the Bidders.
Selected Bidder	As defined in Clause 2.30.1
State Government	It shall mean the state governments extending support for the implementation of the Project.
Subsidy	As defined in Clause 1.2.5
Subject Person	As defined in Clause 2.2.1 (c) (i)
SPV	As defined in Clause 2.2.10
Technical Bid	As defined in Clause 1.2.1
Technical Capacity	As defined in Clause 3.2.1
Tie Bidder	As defined in Clause 2.30.2
Tripartite Agreement	As defined in Clause 1.1.3
Ultimate Parent Company	Shall mean a company which owns at least 26% (twenty six percent) equity in the Bidder or Member of a Consortium, (as the case may be) and in the SPV (as the case may be) and such Bidder or Member of a Consortium, (as the case may be) and the SPV (as the case may be) shall be under the direct control or indirectly under the common control of such company.

The words and expressions beginning with capital letters and defined in this document shall, unless repugnant to the context, have the meaning ascribed thereto herein above.

1. INTRODUCTION

1.1 Background

- 1.1.1 The Government of India (“**GoI**”) through the Department of Heavy Industry, Ministry of Heavy Industries & Public Enterprises (“**Government**”) intends to develop giga-scale advance cell manufacturing for domestic application and promotion of diverse energy sources, to ensure overall energy security for the nation in the long run. The Government has launched and intends to implement the National Programme on Advance Chemistry Cell Battery Storage (“**Programme**”). To achieve this, the Government wishes to select private entities to set-up manufacturing facilities that produce Advance Chemistry Cell (“**ACC / Advance Chemistry Cell**”) as defined under the Programme Agreement.
- 1.1.2 NITI Aayog is facilitating the Government to carry out a Bidding Process (*defined hereinafter*) and seeks bids (“**Bid**”) as response to this RFP from individuals, LLPs, funds, private entities, public entities or other international entities (hereinafter referred to as Bidder(s)).
- 1.1.3 The Selected Bidders (*defined hereinafter*) would be entitled to receive fiscal benefits in the form of a subsidy in accordance with the Programme. A Bidder selected through this RFP, to be eligible for this subsidy, would have to commit to set-up an Advance Chemistry Cell manufacturing facility of minimum 5 (five) GWh capacity and establish an Advance Chemistry Cell manufacturing facility with value-addition of minimum 25% (twenty-five percent) at the mother unit level and minimum 60% (sixty percent) overall, in accordance with the Programme Agreement (“**Project**”). The Government shall execute a Programme Agreement with the SPV (as provided in Clause 2.2.10), substantially in the format specified at Appendix VIII hereto. State Governments shall also extend support and provide additional incentives for implementation of the Project, through the execution of a tripartite agreement between the SPV, State Government and the Government (“**Tripartite Agreement**”). The template of the model Tripartite Agreement has been annexed to this RFP at Appendix XIV and the Bidders may seek additional incentives through direct negotiation with the respective State Government. It is clarified that the Government shall have the right to seek amendment to such Tripartite Agreement, agreed to be executed between the Beneficiary Firm and the respective State Government. Execution of the Programme Agreement with the Beneficiary Firm, shall be subject such amendments being carried out by the Beneficiary Firm, to the satisfaction of the Government.
- 1.1.4 The statements and explanations contained in this RFP are intended to provide a better understanding to the Bidders about the subject matter of this RFP and should not be construed or interpreted as limiting in any way or manner the scope of services or the Government’s right to amend, alter, change, supplement or clarify the scope of work. Consequently, any omissions, conflicts or contradictions in this RFP are to be noted, interpreted, and applied appropriately to give effect to this intent, and no claims on that account shall be entertained by the Government.
- 1.1.5 The Government shall receive all documents pursuant to this RFP in accordance with the terms set forth herein, as modified, altered, amended and clarified from time to time by the Government (collectively the “**Bidding Documents**”), and all documents shall be prepared and submitted in accordance with such terms on or before the date specified in Clause 1.3 for submission of Bid (the “**Bid Due Date**”).

1.2 Brief description of Bidding Process

- 1.2.1 The Government has adopted a two envelope single stage selection process (the “**Bidding Process**”) for selection of the Bidder for entitlement to receive subsidy on the basis of capacity sold by the Beneficiary Firm (including scale of Advance Chemistry Cell production and Advance Chemistry Cell’s Value Addition in India). The Bidding Process for evaluating the Bids comprise of a technical bid wherein the bidder shall state its Technical Capacity as

specified in Clause 3.2 (“**Technical Bid**”) and a financial bid which shall include the Subsidy (*as defined hereinafter*) quoted by the Bidder (“**Financial Bid**”). Prior to submission of the Bid, the Bidder shall pay to the Government a sum of [INR 4,50,000 (Rupees Four lakh fifty thousand)] as the cost of the RFP process. After the Bidder qualifies the qualification criteria as specified in Clause 2.2.3, in the first stage, a technical evaluation will be carried out as specified in Clause 3.2. Based on this technical evaluation, a list of short-listed Bidders shall be prepared as specified in Clause 3.3.1. In the second stage, a financial evaluation will be carried out as specified in Clause 3.3. Bids will finally be ranked according to their combined technical and financial scores as specified in Clause 3.4. For the purposes of evaluation, in case of a consortium, only the qualification criteria specified in Clause 2.2.3 of the Lead Member (*as defined hereinafter*) shall be considered. The Bidders shall be selected through a transparent short-listing process as provided for under Clause 3 of this RFP. The Bidders are required to submit this information on the Central Public Procurement Portal [***]. Accordingly, the Selected Bidders will be awarded incentives by Government for carrying out its obligations in relation to the Project in accordance with and under the terms of the Programme Agreement. The Subsidy disbursement shall commence once the proposed domestic Value Addition and sale of the Advance Chemistry Cell begins. It shall be phased-out over a ten (10) year windows from the Appointed Date (as defined in the Programme Agreement), on a quarterly basis.

- 1.2.2 A Bidder is required to deposit, along with its Bid, a bid security calculated at the rate of 1% (one percent) of INR 225,00,00,000 (Rupees two hundred and twenty five crore only) per GWh (the “**Bid Security**”), refundable no later than [90 (ninety)] days from the Bid Due Date, except in the case of the Selected Bidder whose Bid Security shall be retained till it has provided a Performance Security under the Programme Agreement. It is clarified that the amount of Bid Security shall be subject to a ceiling of INR 10,00,00,000 (Rupees ten crore) up to 5 (five) GWh; INR 15,00,00,000 (Rupees fifteen crore) up to 10 (ten) GWh and INR 20,00,00,000 (Rupees twenty crore) up to 20 (twenty) GW of annual Advance Chemistry Cell committed production capacity. The Bidders shall provide Bid Security in the form of a bank guarantee acceptable to the Government, with a validity period of not less than [180 (one hundred and eighty)] days from the Bid Due Date, inclusive of a claim period of [90 (ninety)] days, and may be extended as may be mutually agreed between the Government and the Bidder from time to time. The Bid shall be summarily rejected if it is not accompanied by the Bid Security.
- 1.2.3 Details of the process to be followed and the terms thereof are spelt out in this RFP.
- 1.2.4 In terms of this RFP, a Bidder is required to deposit the following at the address given at Clause 2.15.4:
- (a) A Bid Security in accordance with Clause 1.2.2; and
 - (b) A power of attorney for signing the Bid in accordance with Clause 2.2.7.
- 1.2.5 Bids are invited for the subsidy provided by the Government for implementing the Project (the “**Subsidy**”). In this RFP, the term “**Eligible Bidder**” shall mean the Bidder who has the highest score as provided in Clause 3. Subject to the provisions of Clause 2.6, the Project will be awarded to the Eligible Bidder. The Bidder shall specify the amount of Subsidy in its Bid.

1.3 Schedule of Bidding Process

The Government shall endeavour to adhere to the following schedule:

	Event Description	Date
1.	Last date for receiving queries	[25 days from the date of RFP]
2.	Pre-Bid Conference -1	[To be specified]

3.	Government response to queries latest by	[35 days from the date of RFP]
4.	Pre-Bid Conference -2	[To be specified]
5.	Bid Due Date	[To be specified]
6.	Opening of Technical Bid	On Bid Due Date [at least 45 days from the date of RFP]
7.	Opening of Financial Bid	[Within 30 days of Bid Due Date]
8.	Letter of Award (LOA)	[To be specified]
9.	Validity of Bid	[120 days of Bid Due Date]
10.	Signing the Tripartite Agreement	[60 days of the LOA]
10.	Signing the Programme Agreement	Within 30 days of signing the Tripartite Agreement

1.4 Pre-bid Conference

The date, time and venue of the Pre-bid Conference shall be:

Date: *****

Time: 1100 hrs

Venue: *****

2. INSTRUCTIONS TO BIDDERS

A. GENERAL

2.1 Scope of Bid

The Government wishes to receive Bids for selection in order to select eligible Bidders. The Bidder shall be required to submit a Technical Bid and a Financial Bid. The Financial Bid shall only be opened if the Bidder meets the threshold as provided for in Clause 3.1 and Clause 3.2, under the Technical Bid.

2.2 Eligibility of Bidders

2.2.1 For determining the eligibility of Bidders for their pre-qualification hereunder, the following shall apply:

- (a) The Bidder for pre-qualification may be a sole firm/ single entity or a group of entities (the “**Consortium**”), coming together to implement the Project. For the purpose of evaluation, in case of a consortium, only the qualification criteria specified in Clause 2.2.3 of the Lead Member (*as defined hereinafter*) shall be considered. However, no Bidder applying individually or as a member of a Consortium, as the case may be, can be a member of another Bidder. The term Bidder used herein would apply to both a single entity and a Consortium.
- (b) A Bidder may be a natural person, private entity, public sector undertaking or any combination of them with a formal intent to enter into an agreement or under an existing agreement to form a Consortium. A Consortium shall be eligible for consideration subject to the conditions set out in Clause 2.2.9 below.
- (c) A Bidder shall not have a conflict of interest (the “**Conflict of Interest**”) that affects the Bidding Process. Any Bidder found to have a Conflict of Interest shall be disqualified. A Bidder shall be deemed to have a Conflict of Interest affecting the Bidding Process, if:
 - (i) the Bidder, or its Associate (or any constituent thereof) and any other Bidder or any Associate thereof (or any constituent thereof) have common controlling shareholders or other ownership interest:

Provided that this disqualification shall not apply in cases where the direct or indirect shareholding of a Bidder, its Member or an Associate thereof (or any shareholder thereof having a shareholding of more than 20% (twenty percent) of the aggregate issued, subscribed and paid up share capital of such Bidder, Member or Associate, as the case may be) in the other Bidder, its Member or an Associate is less than 20% (twenty percent) of the aggregate issued, subscribed and paid up equity share capital thereof; provided further that this disqualification shall not apply to any ownership by the Government, a bank, insurance company, pension fund or a public financial institution referred to in Section 2(72) of the Companies Act, 2013;

For the purposes of this Clause 2.2.1, indirect shareholding held through 1 (one) or more intermediate persons shall be computed as follows: (A) where any intermediary is controlled by a person through management control or otherwise, the entire shareholding held by such controlled intermediary in any other person (the “**Subject Person**”) shall be taken into account for computing the shareholding of such controlling person in the Subject Person; and (B) subject always to sub-clause (A) above, where a person does not exercise control over an intermediary, which has shareholding in the Subject Person,

the computation of indirect shareholding of such person in the Subject Person shall be undertaken on a proportionate basis; provided, however, that no such shareholding shall be reckoned under this sub-clause if the shareholding of such person in the intermediary is less than 26% (twenty six percent) of the aggregate issued, subscribed and paid up equity shareholding of such intermediary; or

- (ii) a constituent of such Bidder is also a constituent of another Bidder; or
- (iii) such Bidder or any Associate thereof receives, has received, or has entered into an agreement to receive, any direct or indirect subsidy, grant, concessional loan, or subordinated debt from any other Bidder, or any Associate thereof or has provided or has entered into an agreement to provide any such subsidy, grant, concessional loan or subordinated debt to any other Bidder, its Member or any Associate thereof; or
- (iv) such Bidder has the same legal representative for purposes of a Bid as any other Bidder; or
- (v) such Bidder or any Associate thereof, has a relationship with another Bidder or any Associate thereof, directly or indirectly or through a common third party/ parties, that puts either or both of them in a position to have access to each other's information, or to influence the Bid of either or each other; or
- (vi) such Bidder or any Associate thereof, has participated as a consultant to the Government in the preparation of any documents, design, or technical specifications of the Project.

Explanation:

In case a Bidder is a Consortium, then the term Bidder as used in this Clause 2.2.1 shall include each Member of such Consortium and the term Associate with respect to a Bidder shall include an Associate of each Member of that Consortium.

- (d) A Bidder shall be liable for disqualification if any legal, financial or technical adviser of the Government in relation to the Project is engaged by the Bidder or its Member, in any manner for matters related to or incidental to the Project. For the avoidance of doubt, this disqualification shall not apply where such adviser was engaged by the Bidder, its Member or Associate in the past but its assignment expired or was terminated prior to the Bid Due Date. Nor will this disqualification apply where such adviser is engaged after a period of 3 (three) years from the date of commercial operation of the Project.

Explanation: In case a Bidder is a Consortium, then the term Bidder as used in this Clause 2.2.1, shall include each Member of such Consortium.

Explanation:

In case a Bidder is a Consortium, then the term Bidder as used in this Clause 2.2.1, shall include each Member of such Consortium.

For purposes of this RFP, Associate means, in relation to the Bidder/ Consortium Member, a person who controls, is controlled by, or is under the common control with such Bidder/ Consortium Member (the “**Associate**”). 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 economic or 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

2.2.2 A Bidder shall be liable for disqualification and forfeiture of Bid Security if any legal, financial or technical adviser of the Government in relation to the Project is engaged by the Bidder, its Members or any Associate thereof, as the case may be, in any manner for matters related to or incidental to such Project during the Bidding Process or subsequent to the (i) issue of the LOA or (ii) execution of the Programme Agreement; or (iii) execution of the Tripartite Agreement. In the event any such adviser is engaged by the Selected Bidder or SPV, as the case may be, after issue of the LOA or execution of the Programme Agreement or the Tripartite Agreement, for matters related or incidental to the Project, then notwithstanding anything to the contrary contained herein or in the LOA or the Programme Agreement or the Tripartite Agreement and without prejudice to any other right or remedy of the Government, including the forfeiture and appropriation of the Bid Security or Performance Security, as the case may be, which the Government may have there under or otherwise, the LOA or the Programme Agreement or the Tripartite Agreement, as the case may be, shall be liable to be terminated without the Government being liable in any manner whatsoever to the Selected Bidder or SPV for the same. For the avoidance of doubt, this disqualification shall not apply where such adviser was engaged by the Bidder, its Member or Associate in the past but its assignment expired or was terminated prior to the Bid Due Date. Nor will this disqualification apply where such adviser is engaged after a period of 3 (three) years from the date of commercial operation of the Project.

2.2.3 To be eligible for short-listing, a Bidder shall fulfil the following conditions of eligibility:

Qualification Criteria:

(A) Credit Rating

The Bidder shall have a corporate long-term credit rating of CRISIL AA+ or ICRA AA+ (in case the Bidder is incorporated in India) and/or S&P BB+ or FITCH BB+ or Moody's Ba1 (if the Bidder is incorporated in a jurisdiction other than India) from at least 2 (two) credit rating agencies ("**Credit Rating**").

(B) Net Worth

The Bidder shall have a minimum Net Worth of INR 225,00,00,000 (Rupees two hundred and twenty-five crore only) per GWh, as per the capacity specified in its Technical Bid for the financial year preceding the date of submission of the Bid.

In case of a Consortium, the aforementioned qualification of the Lead Member, who shall have an equity share of at least 26% (twenty-six per cent) in the SPV, should satisfy the above conditions of eligibility; provided that such Lead Member shall, for a period of 5 (five) years from the date of commercial operation of the Project, hold equity share capital of not less than 26% (twenty-six per cent) of the subscribed and paid up equity of the SPV.

2.2.4 The Bidder shall enclose with its Bid, to be submitted as per the format at Appendix-I, complete with its Annexes, the following[§]:

- (i) certificate prepared according to the International Financial Reporting Standards ("**IFRS**") from a reputed auditor specifying the Net Worth of the Bidder, as specified under Clause 2.2.3(B), as per format at Appendix IV.

[§] In case duly certified audited annual financial statements containing the requisite details are provided, a separate certification by statutory auditors would not be necessary in respect of Clause 2.2.4. In jurisdictions that do not have statutory auditors, the firm of auditors which audits the annual accounts of the Bidder or its Associate may provide the certificates required under this RFP.

- (ii) certificate(s) from statutory auditors of the Bidder specifying the Net Worth of the Bidder, as specified under Clause 2.2.3(B), as at the close of each of the preceding financial year for which the Net Worth is required, and also specifying that the methodology adopted for calculating such Net Worth conforms to the provisions of this Clause 2.2.4 (ii). For the purposes of this RFP, net worth (the “**Net Worth**”) shall mean the sum of subscribed and paid up equity and reserves from which shall be deducted the sum of revaluation reserves, miscellaneous expenditure not written off and reserves not available for distribution to equity shareholders.
 - (iii) the Technical Bid consisting of the Value Addition and Scale of Production committed by the Bidder, to the Government, as per format at Appendix V and a Financial Bid comprising the Subsidy quoted by the Bidder as per format at Appendix VI. The Technical Bid shall be evaluated in accordance with Clause 3.2. The Financial Bid shall be evaluated in accordance with Clause 3.3 and the Subsidy shall be payable by the Government to the Selected Bidders per the terms and conditions of this RFP and the provisions of the Programme Agreement.
- 2.2.5 The Bidder shall deposit a Bid Security in accordance with the provisions of this RFP.
- 2.2.6 The validity period of the Bank Guarantee shall not be less than [180 (one hundred and eighty)] days from the Bid Due Date, inclusive of a claim period of [90 (ninety)]days and may be extended as may be mutually agreed between the Government and the Bidder. The Bid shall be summarily rejected if it is not accompanied by the Bid Security. The Bid Security shall be refundable no later than 90 (ninety) days from the Bid Due Date except in the case of the Selected Bidder whose Bid Security shall be retained till it has provided a Performance Security under the Programme Agreement.
- 2.2.7 The Bidder should submit a Power of Attorney as per the format at Appendix-II, authorising the signatory of the Bid to commit the Bidder. In the case of a Consortium, the Members should submit a Power of Attorney in favour of the Lead Member as per format at Appendix-III.
- 2.2.8 The Financial Bid shall consist of a Subsidy payable by the Government to the Selected Bidder as per the terms and conditions of this RFP and the provisions of the Programme Agreement.
- 2.2.9 A Selected Bidder shall form an appropriate Special Purpose Vehicle, incorporated under the Indian Companies Act, 2013 (the “**SPV**”), to implement the Project. In case the Bidder is a Consortium, it shall, in addition to forming an SPV, comply with the following additional requirements:
- (a) number of members in a consortium shall not exceed [3(three)];
 - (b) subject to the provisions of sub-clause (a) above, the Bid should contain the information required for each member of the Consortium;
 - (c) members of the Consortium shall nominate 1 (one) member as the lead member (the “**Lead Member**”), who shall have an equity share holding of at least 26% (twenty-six per cent) of the paid up and subscribed equity of the SPV. The nomination(s) shall be supported by a Power of Attorney, as per the format at Appendix-III, signed by all the other members of the Consortium;
 - (d) the Bid should include a brief description of the roles and responsibilities of individual members, particularly with reference to financial and technical obligations;
 - (e) an individual Bidder cannot at the same time be member of a Consortium applying for selection. Further, a member of a particular Bidder Consortium cannot be member of any other Bidder Consortium applying for selection;

- (f) the members of a Consortium shall form an appropriate SPV to execute the Project, if awarded to the Consortium;
- (g) members of the Consortium shall enter into a binding Joint Bidding Agreement, substantially in the form specified at Appendix- XI (the “**Jt. Bidding Agreement**”), for the purpose of making the application and submitting a Bid in the event of being short-listed. The Jt. Bidding Agreement, to be submitted along with the Application, shall, *inter alia*;
 - (i) convey the intent to form an SPV with shareholding/ ownership equity commitment(s) in accordance with this RFP, which would enter into the Programme Agreement and subsequently perform all the obligations of the terms of the Programme Agreement, in case the Subsidy under the Project is awarded to the Consortium;
 - (ii) clearly outline the proposed roles and responsibilities, if any, of each member;
 - (iii) commit the minimum equity stake to be held by each member;
 - (iv) Lead Member of the Consortium undertakes that it shall hold at least 26% (twenty-six per cent) of the subscribed and paid up equity of the SPV at all times for 5 (five) years after the Appointed Date; and
 - (v) include a statement to the effect that all members of the Consortium shall be liable jointly and severally for all obligations of the SPV under the Programme Agreement.
- (h) except as provided under this RFP and the Bidding Documents, there shall not be any amendment to the Jt. Bidding Agreement without the prior written consent of the Government.

2.2.10 The SPV will be required to enter into an agreement with the Government for availing the Subsidy and specifying the details of implementation of the Project (“**Programme Agreement**”). The SPV shall also enter into a Tripartite Agreement with the Government and the State Government for availing additional incentives as specified in Clause 1.1.3 above.

2.2.11 Any entity which has been barred by the Central Government, or any entity controlled by it, from participating in any project, and the bar subsists as on the date of Bid, would not be eligible to submit a Bid, either individually or as member of a Consortium.

2.2.12 A Bidder including any Consortium Member or Associate should, in the last 3 (three) years, have neither failed to perform any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award against the Bidder or Consortium Member, nor has been expelled from any project or contract by any public entity nor have had any contract terminated by any public entity for breach by such Bidder or Consortium Member. Provided, however, that where a Bidder claims that its disqualification arising on account of any cause or event specified in this Clause 2.2.12 is such that it does not reflect (a) any malfeasance on its part in relation to such cause or event; (b) any willful default or patent breach of the material terms of the relevant contract; (c) any fraud, deceit or misrepresentation in relation to such contract; or (d) any rescinding or abandoning of such contract, it may make a representation to this effect to the Government for seeking a waiver from the disqualification hereunder and Government may, in its sole discretion and for reasons to be recorded in writing, grant such waiver if it is satisfied with the grounds of such representation and is further satisfied that such waiver is not in any manner likely to cause a material adverse impact on the Bidding Process or on the implementation of the Project. The

decision of the Government on granting such waiver under this Clause 2.2.12 shall be final and binding on the Bidder or Consortium Member.

2.2.13 The following conditions shall be adhered to while submitting a Bid:

- (a) Bidders should attach clearly marked and referenced continuation sheets in the event that the space provided in the prescribed forms in the Annexes is insufficient. Alternatively, Bidders may format the prescribed forms making do provision for incorporation of the requested information;
- (b) information supplied by a Bidder (or other constituent Member if the Bidder is a Consortium) must apply to the Bidder or Member named in the Bid and not, unless specifically requested, to other associated companies or firms; and
- (c) in responding to the pre-qualification submissions, Bidders should demonstrate their capabilities in accordance with Clause 3.1 below.

2.2.14 While qualification is open to persons from any country, the following provisions shall apply:

- (a) Where, on the date of the Bid, 25% (twenty five per cent) or more of the aggregate issued, subscribed and paid up equity share capital in a Bidder or its Member is held by persons resident outside India or where a Bidder or its Member is controlled by persons resident outside India; or
- (b) if at any subsequent stage after the date of the Bid, there is an acquisition of 25% (twenty five per cent) or more of the aggregate issued, subscribed and paid up equity share capital or control, by persons resident outside India, in or of the Bidder or its Member.

then the qualification of such Bidder or in the event described in sub clause (b) above, the continued qualification of the Bidder shall be subject to approval of the Government from national security and public interest perspective. The decision of the Government in this behalf shall be final and conclusive and binding on the Bidder.

The holding or acquisition of equity or control, as above, shall include direct or indirect holding/ acquisition, including by transfer, of the direct or indirect legal or beneficial ownership or control, by persons acting for themselves or in concert and in determining such holding or acquisition, the Government shall be guided by the principles, precedents and definitions contained in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, or any substitute thereof, as in force on the date of such acquisition.

The Bidder shall promptly inform the Government of any change in the shareholding, as above, and failure to do so shall render the Bidder liable for disqualification from the Bidding Process.

2.2.15 Notwithstanding anything to the contrary contained herein, in the event that the Bid Due Date falls within 3 (three) months of the closing of the latest financial year of a Bidder, it shall ignore such financial year for the purposes of its Bid and furnish all its information and certification with reference to the latest financial year. For the avoidance of doubt, financial year shall, for the purposes of a Bid hereunder, mean the accounting year followed by the Bidder in the course of its normal business.

2.2.16 Ministry of Finance, Government of India has issued order dated 23 July, 2020 (as attached at Appendix X of RFP) for qualification of a bidder from a country which shares a land border with India (“**GFR Order**”). As per the GFR Order, any Bidder from a country which shares a land border with India (as defined in the GFR Order) will be eligible to bid in this tender only if the Bidder is registered with the Competent Authority as specified in the GFR Order. The GFR Order shall apply mutatis mutandis to this Bidding Process. Bidders must satisfy themselves that they are qualified to bid, and should give an undertaking to this effect in the form at Appendix-I. The Competent Authority shall be entitled to disqualify a Bidder in accordance with the provisions of the GFR Order at any stage of the Bidding Process.

2.3 Change in composition of the Consortium

2.3.1 Where the Bidder is a Consortium, change in the composition of a Consortium may be permitted by the Government, only where:

- (a) the application for such change is made no later than 15 (fifteen) days prior to the Bid Due Date;
- (b) the Lead Member continues to be the Lead Member of the Consortium;
- (c) the substitute is at least equal, in terms of the requirement of the qualifications under the Bid, to the Consortium Member who is sought to be substituted and the modified Consortium shall continue to meet the pre-qualification and short-listing criteria for Bidders; and
- (d) the new Member(s) expressly adopt(s) the Bid already made on behalf of the Consortium as if it were a party to it originally and is not a Bidder/Member/Associate of any other Consortium bidding for this Project and shall submit all such documents as may be necessary in support of the Bid, including a Power of Attorney as specified in Clause 2.2.7 above.

2.3.2 Approval for change in the composition of a Consortium shall be at the sole discretion of the Government and must be approved in writing.

2.3.3 Notwithstanding anything to the contrary contained in sub-clause (c) (i) of Clause 2.2.1, a Bidder may, within 10 (ten) days after the Bid Due Date, remove from its Consortium any Member who suffers from a Conflict of Interest, and such removal shall be deemed to cure the Conflict of Interest arising in respect thereof. Upon on the occurrence of such removal, the Bidder shall submit necessary documents, as may be required by the Government, evidencing the removal of such Member from its Consortium.

2.4 Number of Bids and Costs thereof

2.4.1 No Bidder shall submit more than one Bid for the Project. A Bidder applying individually or as a member of a Consortium shall not be entitled to submit another application either individually or as a member of any Consortium, as the case may be. It is further clarified that any of the Parent Company/ Affiliate/Ultimate Parent Company of the Bidder or Member of a Consortium shall not separately participate directly or indirectly in the Bidding Process. Further, if any Bidder is having a Conflict of Interest with other Bidders participating in the Bidding Process, the Bids of all such Bidders shall be rejected.

2.4.2 The Bidders shall be responsible for all of the costs associated with the preparation of their Bids and their participation in the Bidding Process. The Government will not be responsible or in any way liable for such costs, regardless of the conduct or outcome of the Bidding Process.

2.5 Acknowledgement by Bidder

2.5.1 It shall be deemed that by submitting the Bid, the Bidder has:

- (a) made a complete and careful examination of the RFP;
- (b) received all relevant information requested from the Government;
- (c) accepted the risk of inadequacy, error or mistake in the information provided in the RFP or furnished by or on behalf of the Government; and
- (d) agreed to be bound by the undertakings provided by it under and in terms hereof.

2.5.2 The Government shall not be liable for any omission, mistake or error in respect of any of the above or on account of any matter or thing arising out of or concerning or relating to the RFP or the Bidding Process, including any error or mistake therein or in any information or data given by the Government.

2.6 Right to accept or reject any or all Bids

2.6.1 Notwithstanding anything contained in this RFP, the Government reserves the right to accept or reject any Bid and to annul the Bidding Process and reject all Bids, at any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reasons there for.

2.6.2 The Government reserves the right to reject any Bid if and appropriate the Bid Security if:

- (a) at any time, a material misrepresentation is made or uncovered, or
- (b) the Bidder does not provide, within the time specified by the Government, the supplemental information sought by the Government for evaluation of the Bid.

If the Bidder is a Consortium, then the entire Consortium may be disqualified/ rejected, at the sole discretion of the Government.

2.6.3 The Government reserves the right to verify, in any manner as the Government may deem fit, all statements, information and documents submitted by the Bidder in response to the RFP. Any such verification or lack of such verification by the Government shall not relieve the Bidder of its obligations or liabilities hereunder nor will it affect any rights of the Government there under.

2.7 Change in Ownership

2.7.1 By submitting the Bid, the Bidder acknowledges that it was pre-qualified and short-listed on the basis of qualification requirements of its Lead Member who shall, until the 5th (fifth) anniversary of the date of commercial operation of the Project, hold equity share capital representing not less than 26% (twenty-six per cent) of the subscribed and paid-up equity of the SPV. The Bidder further acknowledges and agrees that the aforesaid obligation shall be the minimum, and shall be in addition to such other obligations as may be contained in the Programme Agreement, and a breach hereof shall, notwithstanding anything to the contrary contained in the Programme Agreement, be deemed to be a breach of the Programme Agreement and dealt with as such thereunder. For the avoidance of doubt, the provisions of this Clause 2.7.1 shall apply only when the Bidder is a Consortium.

- 2.7.2 By submitting the Bid, the Bidder shall also be deemed to have acknowledged and agreed that in the event of a change in control of a Consortium Member or an Associate whose credentials were taken into consideration for the purposes of short-listing and pre-qualification under and in accordance with this RFP, the Bidder shall be deemed to have knowledge of the same and shall be required to inform the Government forthwith along with all relevant particulars about the same and the Government may, in its sole discretion, disqualify the Bidder. In the event such change in control occurs after signing of the Programme Agreement but prior to Financial Close of the Project, it would, notwithstanding anything to the contrary contained in the Programme Agreement, be deemed to be a breach of the Programme Agreement, and the same shall be liable to be terminated without the Government being liable in any manner whatsoever to the SPV. In such an event, notwithstanding anything to the contrary contained in the Programme Agreement, the Government shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, as damages, without prejudice to any other right or remedy that may be available to the Government under the Bidding Documents and/ or the Programme Agreement or otherwise.

For the purposes of determining 'control' under this Clause 2.7.2., the Government shall be guided by the principles, precedents and definitions contained in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, or any substitute thereof, as in force on the date of such acquisition.

2.8 Cost of Bidding

The Bidders shall be responsible for all the costs associated with the preparation of their Bids and their participation in the Bidding Process. The Government will not be responsible or in any way liable for such costs, regardless of the conduct or outcome of the Bidding Process.

2.9 Verification and Disqualification

- 2.9.1 The Government reserves the right to verify all statements, information and documents submitted by the Bidder in response to this RFP or the Bidding Documents and the Bidder shall, when so required by the Government, make available all such information, evidence and documents as may be necessary for such verification. Any such verification, or lack of such verification, by the Government shall not relieve the Bidder of its obligations or liabilities hereunder nor will it affect any rights of the Government thereunder.

- 2.9.2 The Government reserves the right to reject any Bid and appropriate the Bid Security if:

- (a) at any time, a material misrepresentation is made or uncovered, or
- (b) the Bidder does not provide, within the time specified by the Government, the supplemental information sought by the Government for evaluation of the Bid,

such misrepresentation/ improper response shall lead to the disqualification of the Bidder. If the Bidder is a Consortium, then the entire Consortium and each Member may be disqualified / rejected. If such disqualification / rejection occurs after the Bids have been opened and the Eligible Bidder gets disqualified / rejected, then the Government reserves the right to:

- (i) invite the remaining Bidders to submit their Bids in accordance with this RFP; or
- (ii) take any such measure as may be deemed fit in the sole discretion of the Government, including annulment of the Bidding Process.

- 2.9.3 In case it is found during the evaluation or at any time before signing of the Programme Agreement or after its execution and during the period of subsistence thereof, including the incentives thereby granted by the Government, that one or more of the pre-qualification

conditions have not been met by the Bidder, or the Bidder has made material misrepresentation or has given any materially incorrect or false information, the Bidder shall be disqualified forthwith if not yet appointed as the SPV by entering into of the Programme Agreement, and if the Selected Bidder has already has entered into the Programme Agreement, as the case may be, the same shall, notwithstanding anything to the contrary contained therein or in this RFP, be liable to be terminated, by a communication in writing by the Government to the Selected Bidder or the SPV, as the case may be, without the Government being liable in any manner whatsoever to the Selected Bidder or SPV. In such an event, the Government shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, as damages, without prejudice to any other right or remedy that may be available to the Government under the Bidding Documents and/ or the Programme Agreement, or otherwise. The decision of the Government to terminate the Programme Agreement and/or disqualify the Bidder shall be final, conclusive, and binding on the Bidder.

B. DOCUMENTS

2.10 Contents of the RFP

This RFP comprises the disclaimer set forth hereinabove, the contents as listed below.

Invitation for Qualification

- Section 1. Introduction
- Section 2. Instructions to Bidders
- Section 3. Criteria for Evaluation
- Section 4. Fraud & Corrupt Practices
- Section 5. Pre-Bid Conference
- Section 6. Miscellaneous

Appendices

- I. Letter comprising the Bid
- II. Power of Attorney for signing of Bid
- III. Power of Attorney for Lead Member of Consortium
- IV. Net Worth of the Bidder
- V. Format for Technical Bid
- VI. Format for Financial Bid
- VII. Credit Rating
- VIII. Bank Guarantee for Bid Security
- IX. Instructions for Online Submission
- X. GFR Order
- XI. Jt. Bidding Agreement
- XII. Format of Letter of Award
- XIII. Draft Programme Agreement
- XIV. Draft Tripartite Agreement

2.11 Clarifications

- 2.11.1 Bidders requiring any clarification on the RFP may notify the Government in writing by speed post/ courier/ special messenger or by e-mail in accordance with Clause 1.2. They should send in their queries before the date specified in the schedule of Bid Process contained in Clause 1.3. The Government shall endeavour to respond to the queries within the period specified therein, but no later than 10 (ten) days prior to the Bid Due Date. The responses will be sent by e-mail. The Government will forward all the queries and its responses thereto, to all Bidders of the RFP without identifying the source of queries.

- 2.11.2 The Government shall endeavour to respond to the questions raised or clarifications sought by the Bidders. However, the Government reserves the right not to respond to any question or provide any clarification, in its sole discretion, and nothing in this Clause 2.11.2 shall be taken or read as compelling or requiring responding to any question or to provide any clarification.
- 2.11.3 The Government may also on its own motion, if deemed necessary, issue interpretations and clarifications to all Bidders. All clarifications and interpretations issued by the Government shall be deemed to be part of the RFP. Verbal clarifications and information given by the Government or its employees or representatives shall not in any way or manner be binding on the Government.

2.12 Amendment of RFP

- 2.12.1 At any time prior to the deadline for submission of Bid, the Government may, for any reason, whether at its own initiative or in response to clarifications requested by a Bidder, modify the RFP by the issuance of Addenda.
- 2.12.2 Any Addendum thus issued will be sent in writing to all those who have purchased the RFP and will be put up on the Central Public Procurement Portal on <https://eprocure.gov.in/eprocure/app>.
- 2.12.3 In order to afford the Bidders a reasonable time for taking an Addendum into account, or for any other reason, the Government may, in its sole discretion, extend the Bid Due Date.[§]

C. PREPARATION AND SUBMISSION OF BID

2.13 Language

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

2.14 Format and signing of Bid

- 2.14.1 The Bidder shall provide all the information sought under this RFP on the Central Public Procurement Portal <https://eprocure.gov.in/eprocure/app> and the Government will evaluate only those Bids that are received in the required formats and complete in all respects. Incomplete and/or conditional Bids shall be liable to rejection.
- 2.14.2 The Bid shall be submitted at the address and in the manner provided in the RFP including submission of physical copies as provided under Clause 2.15.4 and where applicable, shall be typed or written in indelible ink. It shall be signed by the authorised signatory of the Bidder who shall also initial each page of the Bid (including each Appendix and Annex) in blue ink. In case of printed and published documents, only the cover shall be initialled. All the alterations, omissions, additions, or any other amendments made to the Bid shall be initialled by the person(s) signing the Bid. The Bid shall contain page numbers and shall be bound together in a manner that does not allow replacement of any page.

[§] While extending the Bid Due Date on account of an addendum, the Government shall have due regard for the time required by Bidders to address the amendments specified therein. In the case of significant amendments, at least 15 (fifteen) days shall be provided between the date of amendment and the Bid Due Date, and in the case of minor amendments, at least 7 (seven) days shall be provided.

2.15 Sealing and Marking of Bids

2.15.1 The Bidder shall submit the Bid in the format specified at Appendix-I, together with the documents specified in Clause 2.15.2, and upload the same to the Central Public Procurement Portal in the prescribed manner as set forth on the website.

2.15.2 The bidder shall be required to upload the following on the Central Public Procurement Portal:

- (i) Bid in the prescribed format (Appendix-I) along with Annexes and supporting documents;
- (ii) Copy of Power of Attorney for signing the Bid as per the format at Appendix-II;
- (iii) if applicable, copy of the Power of Attorney for Lead Member of Consortium as per the format at Appendix-III;
- (iv) Net Worth of the Bidder as per the format at Appendix-IV;
- (v) Copy of Bid Security in the format at Appendix-VIII;
- (vi) Technical Bid in the format at Appendix-V;
- (vii) Financial Bid in the format at Appendix-VI;
- (viii) Credit Rating Certificate in the format at Appendix-VII;
- (ix) Copy of Memorandum and Articles of Association;
- (x) Copies of Bidder's duly audited balance sheet and profit and loss account for the preceding year] accompanied by a certificate from the statutory auditor of the Bidder, wherever applicable;
- (xi) an attested copy of the receipt of the Government towards the cost of the RFP process as specified in Clause 1.2.1; and
- (xii) [any other sector or project-specific requirement that may be specified by the Government].

2.15.3 The Bidder shall deliver hard copies of the following:

- (i) Power of Attorney for signing the Bid as per the format at Appendix-II;
- (ii) if applicable, the Power of Attorney for Lead Member of Consortium as per the format at Appendix-III; and
- (iii) Bid Security in the format at Appendix-VIII.

the envelopes shall clearly bear the following identification:

“Bid for Qualification: **** Project”

and shall clearly indicate the name and address of the Bidder. In addition, the Bid Due Date should be indicated on the right-hand corner of each of the envelopes.

2.15.4 Each of the envelopes shall be addressed to:

ATTN. OF: Mr *****
DESIGNATION: *****
ADDRESS: *****
TELEPHONE NO: *****
E-MAIL ADDRESS: *****

2.15.5 If the envelopes are not sealed and marked as instructed above, the Government assumes no responsibility for the misplacement or premature opening of the contents of the Bid and consequent losses, if any, suffered by the Bidder.

2.16 Bid Due Date

2.16.1 Bids should be submitted before 1100 hours IST on the Bid Due Date, at the address provided in Clause 2.15.4 and on the website as specified in Clause 2.15.1 in the manner and form as detailed in this RFP. A receipt thereof should be obtained from the person specified in Clause 2.15.4.

2.16.2 The Government may, in its sole discretion, extend the Bid Due Date by issuing an Addendum in accordance with Clause 2.12.2 uniformly for all Bidders.

2.17 Late Bids

Bids received by the Government after the specified time on the Bid Due Date shall not be eligible for consideration and shall be summarily rejected.

2.18 Modifications/ substitution/ withdrawal of Bids

2.18.1 The Bidder may modify, substitute or withdraw its Bid after submission, provided that written notice of the modification, substitution or withdrawal is received by the Government prior to the Bid Due Date on the Central Public Procurement Portal <https://eprocure.gov.in/eprocure/app>. No Bid shall be modified, substituted, or withdrawn by the Bidder on or after the Bid Due Date.

2.18.2 Any alteration/ modification in the Bid or additional information supplied subsequent to the Bid Due Date, unless the same has been expressly sought for by the Government, shall be disregarded.

2.19 Rejection of Bids

2.19.1 Notwithstanding anything contained in this RFP, the Government reserves the right to reject any Bid and to annul the Bidding Process and reject all Bids at any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reasons there for. In the event that the Government rejects or annuls all the Bids, it may, in its discretion, invite all eligible Bidders to submit fresh Bids hereunder.

2.19.2 The Government reserves the right not to proceed with the Bidding Process at any time, without notice or liability, and to reject any Bid without assigning any reasons.

2.20 Validity of Bids

The Bids shall be valid for a period of not less than 120 (one hundred and twenty) days from the Bid Due Date. The validity of Bids may be extended by mutual consent of the respective Bidders and the Government.

2.21 Confidentiality

Information relating to the examination, clarification, evaluation, and recommendation for the short-listed pre-qualified Bidders shall not be disclosed to any person who is not officially concerned with the Bidding Process or is not a retained professional advisor advising the Government in relation to, or matters arising out of, or concerning the Bidding Process. The Government will treat all information, submitted as part of Bid, in confidence and will require all those who have access to such material to treat the same in confidence. The Government may not divulge any such information unless it is directed to do so by any statutory entity that has the power under law to require its disclosure or is to enforce or assert any right or privilege of the statutory entity and/ or the Government or as may be required by law or in connection with any legal process.

2.22 Correspondence with the Bidder

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

D. BID SECURITY

2.23 Bid Security

- 2.23.1 The Bidder shall furnish as part of its Bid, a Bid Security referred to in Clause 1.2.2 hereinabove in the form of a bank guarantee issued by a nationalised bank, or a Scheduled Bank in India having a net worth of at least [INR 1,000 crores (Rupees one thousand crore)], in favour of the Government in the format at Appendix–VIII (the “**Bank Guarantee**”) and having a validity period of not less than [180 (one hundred eighty)] days from the Bid Due Date, inclusive of a claim period of [90 (ninety)] days, and may be extended as may be mutually agreed between the Government and the Bidder from time to time. In case the Bank Guarantee is issued by a foreign bank outside India, confirmation of the same by any nationalised bank in India is required. For the avoidance of doubt, Scheduled Bank shall mean a bank as defined under Section 2(e) of the Reserve Bank of India Act, 1934.
- 2.23.2 Any Bid not accompanied by the Bid Security shall be summarily rejected by the Government as non-responsive.
- 2.23.3 Save and except as provided in Clauses 1.2.2 above, the Bid Security of unsuccessful Bidders will be returned by the Government, without any interest, as promptly as possible on acceptance of the Bid of the Selected Bidder or when the Bidding process is cancelled by the Government, and in any case within 90 (ninety) days from the Bid Due Date.
- 2.23.4 The Selected Bidder’s Bid Security will be returned, without any interest, upon the signing of the Programme Agreement and furnishing the Performance Security in accordance with the provisions thereof. The Government may, at the Selected Bidder’s option, adjust the amount of Bid Security in the amount of Performance Security to be provided by him in accordance with the provisions of the Programme Agreement.
- 2.23.5 The Government shall be entitled to forfeit and appropriate the Bid Security as damages *inter alia* in any of the events specified in Clause 2.23.6 herein below. The Bidder, by submitting its Bid pursuant to this RFP, shall be deemed to have acknowledged and confirmed that the Government will suffer loss and damage on account of withdrawal of its Bid or for any other default by the Bidder during the period of Bid validity as specified in this RFP. No relaxation of any kind on Bid Security shall be given to any Bidder.
- 2.23.6 The Bid Security shall be forfeited as damages without prejudice to any other right or remedy that may be available to the Government under the Bidding Documents and/ or under the Programme Agreement, or otherwise, if

- (a) a Bidder submits a non-responsive Bid;
- (b) a Bidder engages in a corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice as specified in Clause 4 of this RFP;
- (c) a Bidder withdraws its Bid during the period of validity as specified in this RFP and as extended by mutual consent of the respective Bidder(s) and the Government;
- (d) the Selected Bidder fails within the specified time limit -
 - (i) to sign and return the duplicate copy of the LOA; or
 - (ii) to sign the Programme Agreement; or
 - (iii) to furnish the Performance Security within the period prescribed therefor in the Programme Agreement.
- (e) the Selected Bidder, having signed the Programme Agreement, commits any breach thereof prior to furnishing the Performance Security.

E. EVALUATION PROCESS

2.24 Opening and Evaluation of Bids

- 2.24.1 Government shall open the Bids at [•] hours IST on the Bid Due Date, at the place specified in Clause 2.15.4 and in the presence of the Bidders who choose to attend.
- 2.24.2 Bids for which a notice of withdrawal has been submitted in accordance with Clause 2.18 shall not be opened.
- 2.24.3 The Government will subsequently examine and evaluate Bids in accordance with the provisions set out in Clause 3.
- 2.24.4 The Government shall subsequently examine and evaluate Bids in accordance with the selection process specified at Clause 1.2 and the criteria set out in Clause 3 of this RFP.
- 2.24.5 After the evaluation of the Technical Bid, the Government shall prepare a list of pre-qualified and shortlisted Bidders in terms of Clause 3 for opening of their Financial Bids. A date, time and venue will be notified to all Bidders for announcing the result of evaluation and opening of Financial Bids. Before opening of the Financial Bids, the list of pre-qualified and shortlisted Bidders along with their technical score will be read out. The opening of Financial Bids shall be done in presence of respective representatives of Bidders who choose to be present. The Government will not entertain any query or clarification from Bidders who fail to qualify at any stage of the selection process. The financial evaluation and final ranking of the Bids shall be carried out in terms of Clauses 3.3 and 3.4.
- 2.24.6 Any information contained in the Bid shall not in any way be construed as binding on the Government, its agents, successors or assigns, but shall be binding against the Selected Bidders.
- 2.24.7 The Government reserves the right not to proceed with the Bidding Process at any time without notice or liability and to reject any or all Bid(s) without assigning any reasons.

2.25 Tests of Responsiveness

- 2.25.1 Prior to evaluation of Bids, the Government shall determine whether each Bid is responsive to the requirements of the RFP. A Bid shall be considered responsive if:
 - (a) it is received as per format at Appendix-I;

- (b) it is received by the Bid Due Date including any extension thereof pursuant to Clause 2.16.2;
- (c) it is signed, sealed, bound together in hard cover, marked, and accompanied by the documents and information as stipulated in Clauses 2.14 and 2.15;
- (d) it is accompanied by the Bid Security as specified in Clause 2.23;
- (e) it is accompanied by the Power of Attorney as specified in Clause 2.2.7, and in the case of a Consortium, the Power of Attorney as specified in Clause 2.2.7 (c);
- (f) it contains all the information and documents (complete in all respects) as requested in this RFP;
- (g) it contains information in formats same as those specified in this RFP;
- (h) it does not contain any condition or qualification;
- (i) it is uploaded on the Central Public Procurement Portal <https://eprocure.gov.in/eprocure/app> in accordance with instructions for online submission as specified in Annexure IX and original thereof are signed, sealed, hard bound and marked as stipulated in Clauses 2.14 and 2.15; and
- (j) it is not non-responsive in terms hereof.

2.25.2 The Government reserves the right to reject any Bid which is non-responsive and no request for alteration, modification, substitution, or withdrawal shall be entertained by the Government in respect of such Bid. Provided, however, that the Government may, in its discretion, allow the Bidder to rectify any infirmities or omissions if the same do not constitute a material modification of the Bid.

2.26 Clarifications

2.26.1 To facilitate evaluation of Bids, the Government may, at its sole discretion, seek clarifications from any Bidder regarding its Bid. Such clarification(s) shall be provided within the time specified by the Government for this purpose. Any request for clarification(s) and all clarification(s) in response thereto shall be in writing.

2.26.2 If a Bidder does not provide clarifications sought under Clause 2.26.1 above within the prescribed time, its Bid shall be liable to be rejected. In case the Bid is not rejected, the Government may proceed to evaluate the Bid by construing the particulars requiring clarification to the best of its understanding, and the Bidder shall be barred from subsequently questioning such interpretation of the Government.

F. QUALIFICATION AND BIDDING

2.27 Short-listing and notification

After the evaluation of Bids, the Government would announce a list of short-listed pre-qualified Bidders who will be eligible for participation in the Project. At the same time, the Government would notify the other Bidders that they have not been short-listed. The Government will not entertain any query or clarification from Bidders who fail to qualify.

2.28 Submission of Bids

The Bidders will be requested to submit a Bid in the form and manner to be set out in the Bidding Documents.

Financial Bids of only pre-qualified Bidders shall be opened by the Government.

2.29 Proprietary data

All documents and other information supplied by the Governmentor submitted by a Bidder to the Government shall remain or become the property of the Government. Bidders are to treat all information as strictly confidential and shall not use it for any purpose other than for preparation and submission of their Bid. The Governmentwill not return any Bid or any information provided along therewith.

2.30 Selection of Bidders

- 2.30.1 Subject to the provisions of Clause 2.6, Bidders whose Bids are adjudged as responsive in terms of Clause 3.2. and who achieve the maximum score in accordance with Clause 3.4, subject to a ceiling of 50 (fifty) GWh, shall ordinarily be declared as the Selected Bidder(s) (the “**Selected Bidder**”). The Selected Bidders shall be paid the Subsidy quoted in the Price Bid. In the event that the Government rejects or annuls all the Bids, it may, in its discretion, invite all eligible Bidders to submit fresh Bids hereunder.
- 2.30.2 In the event that 2(two) or more Bidders achieve the same score, (the “**Tie Bidders**”), the Government shall identify the Selected Bidder by draw of lots, which shall be conducted, with prior notice, in the presence of the Tie Bidders who choose to attend.
- 2.30.3 After selection, a Letter of Award (the “**LOA**”) shall be issued, in duplicate, by the Government to the Selected Bidder, as per the format at Appendix XII. The Selected Bidder shall, within 7 (seven) days of the receipt of the LOA, sign and return the duplicate copy of the LOA in acknowledgement thereof. In the event the duplicate copy of the LOA duly signed by the Selected Bidder is not received by the stipulated date, the Governmentmay, unless it consents to extension of time for submission thereof, appropriate the Bid Security of such Bidder as damages on account of failure of the Selected Bidder to acknowledge the LOA, and the next eligible Bidder may be considered.
- 2.30.4 After acknowledgement of the LOA as aforesaid by the Selected Bidder, it shall cause the Selected Bidder/SPV to execute the Programme Agreement within the period prescribed in Clause 1.3.

3. CRITERIA FOR EVALUATION

3.1 Qualification Criteria

- 3.1.1 The Technical Bid must be accompanied by a certificate for long-term Credit Rating of CRISIL AA+ or ICRA AA+ + (in case the Bidder is incorporated in India) and/or S&P BB+ or FITCH BB+ or Moody's Ba1 from at least 2 (two) credit rating agencies (if the Bidder is incorporated in a jurisdiction other than India).
- 3.1.2 The Bidder shall have a minimum Net Worth of INR 225,00,00,000 (Rupees two hundred and twenty-five crore only) per GWh, as per the capacity specified in its Technical Bid for the Financial Year preceding the date of submission of the Bid. This Net Worth criterion is to be adopted and approved by the board of directors and shareholders of the Bidder. The Bid must be accompanied by the audited annual reports of the Bidder (of each Member in case of a Consortium) for the Financial Year, preceding the year in which the Bid is made along with a certificate prepared according to the IFRS from a reputed auditor specifying the Net Worth of the Bidder, as specified under Clause 2.2.3(B).
- 3.1.3 In case the annual accounts for the latest financial year are not audited and therefore the Bidder cannot make it available, the Bidder shall give an undertaking to this effect and the statutory auditor shall certify the same. In such a case, the Bidder shall provide the audited annual accounts for the Financial Year preceding the year for which the audited annual accounts is not being provided.
- 3.1.4 The Bidder must establish the minimum Net Worth specified in clause 2.2.3(B) and 2.2.4 (ii), and provide details as per format at Annex-II of Appendix-I.
- 3.1.5 Only those Bidders who meet the qualification criteria specified under Clause 2.2.3 and this Clause 3.1, shall qualify for evaluation of their Technical Bid. Bids of entities / consortia who do not meet these criteria shall be rejected.

3.2 Evaluation of Technical Bids

- 3.2.1 In the first stage, the Technical Bid will be evaluated on the basis of the Value Addition (*as defined in the Programme Agreement*) committed by the Bidder, and the Scale of Production (*as defined in the Programme Agreement*) committed by the Bidder (the “**Technical Capacity**”). Only those Bidders who commit minimum 60% (sixty) percent Value Addition at the Project and installation of ACC manufacturing capacity between 5 GWh to 20 GWh, within 5 (five) years from the Appointed Date shall qualify for further consideration and shall be ranked from highest to the lowest on the basis of their technical score (S_T).
- 3.2.2 An illustrative example of ranking based on Value Addition and capacity phasing for two entities has been illustrated below:

Technical Bid						
1. Phasing for Value Addition (70%)				2. Scale of Production capacity (GWh) (30%)		
Year	Weight	Bidder X	Bidder Y	Weight	Bidder X	Bidder Y
Year 1	-	-	-	-	-	-
Year 2	4	30%	50%	4	3	2
Year 3	3	-	30%	3	-	-
Year 4	2	-	-	2	2	-
Year 5	1	70%	20%	1	1	4
Weight		4*0.3 + 1*0.7 = 2.7	4*0.5+ 3*0.3		4*3 + 2*2 =	4*2 + 1*4 = 12

Technical Bid						
1. Phasing for Value Addition (70%)				2. Scale of Production capacity (GWh) (30%)		
Year	Weight	Bidder X	Bidder Y	Weight	Bidder X	Bidder Y
			1*0.2 = 3.1		1*1 = 17	
Standardized		0.87	1		1	0.71

SCORING:

- Technical Score: Company X = (70% x 0.87) + (30% x 1.0) = 0.91
- Technical Score: Company Y = (70% x 1.00) + (30% x 0.71) = 0.91

3.3 Evaluation of Financial Bids

3.3.1 The qualified Bidders shall be pre-qualified and short-listed for financial evaluation in the second stage. The financial evaluation will be carried out as per this Clause 3.3. Each Price Bid will be assigned a financial score (S_F) as specified in this Clause 3.3.

3.3.2 The Financial Bid shall comprise a Subsidy to be quoted by the Bidder in accordance with the provisions of the Programme Agreement. It is clarified that the amount of Subsidy quoted by the Bidder, shall be subject to a ceiling of INR 2000 (Rupees two thousand) per KWh. Any Bid that has quoted Subsidy over INR 2000 (Rupees two thousand) shall be rejected.

3.3.3 For financial evaluation, the Subsidy indicated in the Financial Bid will be considered. The Government will determine whether the Financial Bids are complete, unqualified and unconditional. The amount of Subsidy indicated in the Financial Bids shall be deemed as final. The lowest Financial Bids (A_M) will be given a financial score (S_A) of 1.0 point. The financial scores of other Bids will be computed as follows:

$$S_A = A_M/A \text{ (A = amount of Subsidy indicated in the Financial Bid)}$$

INR Per KWh		Energy Density (Wh/Kg)				
		≥ 50	≥ 125	≥ 200	≥ 275	≥ 350
Cycle Life	≥ 1000	-	-	-	A	$A^{*(1.2)}$
	≥ 2000	-	-	A	$A^{*(1.2)}$	$A^{*(1.2^2)}$
	≥ 4000	-	A	$A^{*(1.2)}$	$A^{*(1.2^2)}$	$A^{*(1.2^3)}$
	≥ 10000	A	$A^{*1.2}$	$A^{*(1.2^2)}$	$A^{*(1.2^3)}$	$A^{*(1.2^4)}$

3.3.4 An illustrative example of ranking based on the Subsidy quoted by two Bidders under their Financial Bid has been illustrated below:

Price Bid		
Cash Subsidy		
	Bidder X	Bidder Y
Subsidy	1800	2000
Standardized	1	0.9

SCORING:

- Financial Score for Company X = 1.00
- Financial Score for Company Y = 0.90

3.4 Final Evaluation

3.4.1 The Bids will finally be ranked according to their combined technical (S_T) and financial (S_A) scores as follows:

$$S = S_T \times T_w + S_A \times A_w$$

Where S is the combined score, and T_w and A_w are weights assigned to Technical Bid and Financial Bid, which shall be 0.80 and 0.20, respectively.

3.4.2 The Bidders shall be ranked on the basis of their Bids and the Advance Chemistry Cell capacities shall be allocated in order of their ranking, with the Bidder ranked 1st (first) being allocated the capacity first, followed by the Bidder ranked 2nd (Second), so on and so forth till a cumulative capacity of 50 (fifty) GWh per year has been allocated. Such allocation shall be subject to a minimum allocation of 5 (five) GWh and a maximum cumulative allocation of 20 (twenty) GWh to a single Bidder, in blocks of 2 (two) GWh.

3.4.3 SCORING:

- Overall score for Company X = 80% x 0.91 + 20% x 1.00 = 0.93
- Overall score for Company Y = 80% x 0.91 + 20% x 0.90 = 0.91

4. FRAUD AND CORRUPT PRACTICES

- 4.1 The Bidders and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Bidding Process and subsequent to the issue of the LOA and during the subsistence of the Programme Agreement and Tripartite Agreement. Notwithstanding anything to the contrary contained herein, or in the LOA or the Programme Agreement or the Tripartite Agreement, the Government may reject a Bid, withdraw the LOA, or terminate the Programme Agreement or Tripartite Agreement, as the case may be, without being liable in any manner whatsoever to the Bidder, as the case may be, if it determines that the Bidder, as the case may be, has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the Bidding Process. In such an event, the Government shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, as damages, without prejudice to any other right or remedy that may be available to the Government under the Bidding Documents and/ or the Programme Agreement / Tripartite Agreement, or otherwise
- 4.2 Without prejudice to the rights of the Government under Clause 4.1 hereinabove, if a Bidder is found by the Government to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Bidding Process, such Bidder shall not be eligible to participate in any tender or RFP issued by the Government during a period of 2 (two) years from the date on which such Bidder is found by the Government to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as the case may be.
- 4.3 For the purposes of this Clause 4, the following terms shall have the meaning hereinafter respectively assigned to them:
- (a) “**corrupt practice**” means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Bidding Process (for avoidance of doubt, offering of employment to, or employing, or engaging in any manner whatsoever, directly or indirectly, any official of the Government who is or has been associated in any manner, directly or indirectly, with the Bidding Process or the LOA, before or after the execution thereof, at any time prior to the expiry of 1 (one) year from the date such official resigns or retires from or otherwise ceases to be in the service of the Government, shall be deemed to constitute influencing the actions of a person connected with the Bidding Process); or (ii) save and except as permitted under sub clause (d) of Clause 2.2.1, engaging in any manner whatsoever, whether during the Bidding Process or after the issue of the LOA, any person in respect of any matter relating to the Project or the LOA, who at any time has been or is a financial or technical adviser of the Government in relation to any matter concerning the Project;
 - (b) “**fraudulent practice**” means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the Bidding Process;
 - (c) “**coercive practice**” means impairing or harming or threatening to impair or harm, directly or indirectly, any person or property to influence any person’s participation or action in the Bidding Process;
 - (d) “**undesirable practice**” means (i) establishing contact with any person connected with or employed or engaged by the Government with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Bidding Process; or (ii) having a Conflict of Interest; and

- (e) “**restrictive practice**” means forming a cartel or arriving at any understanding or arrangement among Bidders with the objective of restricting or manipulating a full and fair competition in the Bidding Process.

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5. PRE-BID CONFERENCE

- 5.1 A Pre-Bid Conference of the interested parties shall be convened at the designated date, time and place. Only those persons who have purchased the RFP document shall be allowed to participate in the Pre-Bid Conference. Bidders who have downloaded the RFP document from the Government's website (www.*****) should submit a Demand Draft for the amount specified in Clause 1.2.1 towards the cost of the RFP process, through their representative attending the conference. A maximum of 3 (three) representatives of each Bidder shall be allowed to participate on production of authority letter from the Bidder.
- 5.2 During the course of Pre-Bid Conference, the Bidders will be free to seek clarifications and make suggestions for consideration of the Government. The Government shall endeavor to provide clarifications and such further information as it may, in its sole discretion, consider appropriate for facilitating a fair, transparent and competitive Bidding Process.

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6. MISCELLANEOUS

- 6.1 The Bidding Process shall be governed by, and construed in accordance with, the laws of India and the courts in New Delhi shall have exclusive jurisdiction over all disputes arising under, pursuant to and/ or in connection with the Bidding Process.
- 6.2 The Government, in its sole discretion and without incurring any obligation or liability, reserves the right, at any time, to;
- (a) suspend and/ or cancel the Bidding Process and/ or amend and/ or supplement the Bidding Process or modify the dates or other terms and conditions relating thereto;
 - (b) consult with any Bidder in order to receive clarification or further information;
 - (c) pre-qualify or not to pre-qualify any Bidder and/ or to consult with any Bidder in order to receive clarification or further information;
 - (d) retain any information and/ or evidence submitted to the Government by, on behalf of, and/ or in relation to any Bidder; and/ or
 - (e) independently verify, disqualify, reject and/ or accept any and all submissions or other information and/ or evidence submitted by or on behalf of any Bidder.
- 6.3 It shall be deemed that by submitting the Bid, the Bidder agrees and releases the Government, its employees, agents and advisers, irrevocably, unconditionally, fully and finally from any and all liability for claims, losses, damages, costs, expenses or liabilities in any way related to or arising from the exercise of any rights and/ or performance of any obligations hereunder and this RFP to the fullest extent permitted by applicable law, and waives any and all rights and/ or claims it may have in this respect, whether actual or contingent, whether present or in future.

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APPENDICES

APPENDIX-I

Letter Comprising the Bid
(Refer Clause 2.15.2)

Dated:

To,

.....
.....
.....

Sub: Bid for the Project

Dear Sir,

With reference to your RFP document dated, I/we, having examined the document and understood its contents, hereby submit my/our Bid for the aforesaid project. The Bid is unconditional and unqualified.

1. I/ We acknowledge that the Government will be relying on the information provided in the Bid and the documents accompanying such Bid of the Bidders for the aforesaid Project, and we certify that all information provided in the Bid and in Annexes I and II is true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying such Bid are true copies of their respective originals. I/We will be solely responsible for any errors, omissions, or misstatements in our Bid submission.
2. This statement is made for the express purpose of qualifying as a Bidder for the aforesaid Project.
3. I/ We shall make available to the Government any additional information it may find necessary or require supplementing or authenticate the qualification statement.
4. I/ We acknowledge the right of the Government to reject our Bid without assigning any reason or otherwise and hereby waive, to the fullest extent permitted by applicable law, our right to challenge the same on any account whatsoever.
5. I/ We certify that in the last three years, we/ any of the Consortium Members or our/ their Associates have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award, nor been expelled from any project or contract by any public authority nor have had any contract terminated by any public authority for breach on our part.
6. I/ We declare that:
 - (a) I/ We have examined and have no reservations to the RFP document, including any Addendum issued by the Government;
 - (b) I/ We do not have any Conflict of Interest in accordance with Clauses 2.2.1(c) and 2.2.1(d) of the RFP documents;
 - (c) I/We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as defined in Clause 4.3 of the RFP document, in respect of any tender or request for proposal issued by or any agreement entered into with the Government or any other public sector enterprise or any government, Central or State; and

- (d) I/ We hereby certify that we have taken steps to ensure that in conformity with the provisions of Clause 4 of the RFP document, no person acting for us or on our behalf has engaged or will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice.
7. I/ We understand that you may cancel the Bidding Process at any time and that you are neither bound to accept any Bid that you may receive nor to invite the Bidders to Bid for the Project, without incurring any liability to the Bidders, in accordance with Clause 2.6.1 of the RFP document.
 8. I/ We believe that we/ our Consortium/ proposed Consortium satisfy(s) the qualification criteria and meet(s) all the requirements as specified in the RFP document and am/ are qualified to submit a Bid.
 9. I/ We declare that we/ any Member of the Consortium, or our/ its Associates are not a Member of a/ any other Consortium applying for pre-qualification.
 10. I/ We certify that in regard to matters other than security and integrity of the country, we/ any Member of the Consortium or any of our/ their Associates have not been convicted by a court or indicted or adverse orders passed by a regulatory authority which could cast a doubt on our ability to undertake the Project or which relates to a grave offence that outrages the moral sense of the community.
 11. I/ We further certify that in regard to matters relating to security and integrity of the country, we/ any Member of the Consortium or any of our/ their Associates have not been charge-sheeted by any agency of the Government or convicted by a court.
 12. I/ We further certify that no investigation by a regulatory authority is pending either against us/ any Member of the Consortium or against our/ their Associates or against our CEO or any of our directors/ managers/ employees.[‡]
 13. I/We further certify that we/ any Member of the Consortium or any of our/ their Associates are not barred by the Central Government or any entity controlled by it, from participating in any project, and no bar subsists as on the date of Bid.
 14. I/ We undertake that in case due to any change in facts or circumstances during the Bidding Process, we are attracted by the provisions of disqualification in terms of the provisions of this RFP, we shall intimate the Government of the same immediately.
 15. The Statement of Legal Capacity as per format provided at Annex-II in Appendix-I of the RFP document, and duly signed, is enclosed. The power of attorney for signing of Bid and the power of attorney for Lead Member of consortium, as per format provided at Appendix II and III respectively of the RFP, are also enclosed.
 16. I/ We offer a Bid Security of Rs..... (Rupees only) to the Government in accordance with the RFP Document.
 17. The Bid Security in the form of a Bank Guarantee is attached.
 18. The Subsidy has been quoted by me/us after taking into consideration all the terms and conditions stated in the RFP, draft Programme Agreement, our own estimates of costs and after

[‡] In case the Bidder is unable to provide the certification specified in paragraph 12, it may precede the paragraph by the words viz. "Except as specified in Schedule hereto". The exceptions to the certification or any disclosures relating thereto may be clearly stated in a Schedule to be attached to the Bid. The Government will consider the contents of such Schedule and determine whether or not the exceptions/disclosures are material to the suitability of the Bidder for pre-qualification hereunder.

a careful assessment of the site and all the conditions that may affect the project cost and implementation of the Project.

19. I/ We understand that the selected Bidder is an existing [*individual / LLP / fund / private entity / public entity / other international entities*] incorporated under applicable law.
20. I/ We hereby irrevocably waive any right or remedy which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by the Government in connection with the selection of Bidders, selection of the Bidder, or in connection with the selection/ Bidding Process itself, in respect of the above mentioned Project and the terms and implementation thereof.
21. I/ We agree and undertake to abide by all the terms and conditions of the RFP document.
22. I/ We certify that in terms of the RFP, my/our average Net Worth (in accordance with the RFP) is Rs. (Rupees) and the Credit Rating as issued by is

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

Yours faithfully,

Date: (Signature, name and designation of the Authorised Signatory)

Place: Name and seal of the Bidder/ Lead Member

ANNEX-I

Particulars of the Bidder

1. (a) Name:
- (b) Country of incorporation:
- (c) Address of the corporate headquarters and its branch office(s), if any, in India:
- (d) Date of incorporation and/ or commencement of business:
2. Brief description of the Company including details of its main lines of business and proposed role and responsibilities in this Project:
3. Particulars of individual(s) who will serve as the point of contact/ communication for the Bidder:
 - (a) Name:
 - (b) Designation:
 - (c) Company:
 - (d) Address:
 - (e) Telephone Number:
 - (f) E-Mail Address:
4. Particulars of the Authorised Signatory of the Bidder:
 - (a) Name:
 - (b) Designation:
 - (c) Address:
 - (d) Phone Number:
5. In case of a Consortium:
 - (a) The information above (1-4) should be provided for all the Members of the Consortium.
 - (b) Information regarding the role of each Member should be provided as per table below:

Sl. No.	Name of Member	Role	Percentage of equity in the Consortium
1.			
2.			
3.			

6. The following information shall also be provided for the Bidder, including each Member of the Consortium:

Name of Bidder/ member of Consortium:

No.	Criteria	Yes	No
1.	Has the Bidder/ constituent of the Consortium been barred by the [Central/ State] Government, or any entity controlled by it, from participating in any project?		

2.	If the answer to 1 is yes, does the bar subsist as on the date of Bid?		
3.	Has the Bidder/ constituent of the Consortium paid liquidated damages of more than 5% of the contract value in a contract due to delay or has been penalised due to any other reason in relation to execution of a contract, in the last three years?		

7. A statement by the Bidder and each of the Members of its Consortium (where applicable) or any of their Associates disclosing material non-performance or contractual non-compliance in past projects, contractual disputes and litigation/ arbitration in the recent past is given below (Attach extra sheets, if necessary):

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ANNEX-II

Statement of Legal Capacity

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

Ref. Date:

To,

.....
.....
.....

Dear Sir,

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

We have agreed that (insert member's name) will act as the Lead Member of our consortium.[§]

We have agreed that (insert individual's name) will act as our representative/ will act as the representative of the consortium on its behalf[§] and has been duly authorized to submit the RFP. Further, the authorised signatory is vested with requisite powers to furnish such letter and authenticate the same.

Thanking you,

Yours faithfully,

(Signature, name, and designation of the authorised signatory)

For and on behalf of.....

[§]Please strike out whichever is not applicable.

ANNEX-III

Undertaking Statement of Legal Capacity

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

Ref. Date:

To,

.....
.....
.....

Dear Sir,

I/We have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India; I/We hereby certify that this bidder is not from such a country and is eligible to be considered.

OR

I/We have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India; I/We certify that this applicant is not from such a country or, if from such a country, has been registered with the Competent Authority. I hereby certify that this Applicant fulfills all requirements in this regard and is eligible to be considered. [Where applicable, evidence of valid registration by the Competent Authority shall be attached]

OR

I/We have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India and on sub-contracting to contractors from such countries; I/We certify that this bidder is not from such a country or, if from such a country, has been registered with the Competent Authority and will not sub-contract any work to a contractor from such countries unless such contractor is registered with the Competent Authority. I hereby certify that this bidder fulfills all requirements in this regard and is eligible to be considered. [Where applicable, evidence of valid registration by the Competent Authority shall be attached].¹

Yours faithfully,

(Signature, name, and designation of the authorised signatory)

For and on behalf of.....

¹Please strike out whichever is not applicable

APPENDIX-II

Power of Attorney for signing of Application and Bid^s

(Refer Clause 2.2.7)

Know all men by these presents, We..... (name of the firm and address of the registered office) do hereby irrevocably constitute, nominate, appoint and authorise Mr/ Ms (name), son/daughter/wife of and presently residing at, who is presently employed with us/ the Lead Member of our Consortium and holding the position of, as our true and lawful attorney (hereinafter referred to as the "Attorney") to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our application for pre-qualification and submission of our bid for the by the (the "Government") including but not limited to signing and submission of all applications, bids and other documents and writings, participate in Pre-Bid and other conferences and providing information/ responses to the Government, representing us in all matters before the Government, signing and execution of all contracts including the undertakings consequent to acceptance of our bid, and generally dealing with the Government in all matters in connection with or relating to or arising out of our bid for the said Project and/ or upon award thereof to us.

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

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

For

(Signature, name, designation, and address)

Witnesses:

1.

(Notarised)

2.

Accepted

.....

(Signature)

(Name, Title and Address of the Attorney)

Notes:

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

^s To be submitted in original.

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

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APPENDIX-III

Power of Attorney for Lead Member of Consortium^s

(Refer Clause 2.2.7)

Whereas the (“the Government”) has invited Bids from interested parties for the Project (the “Project”).

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

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

NOW THEREFORE KNOW ALL MEN BY THESE PRESENTS

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

^sTo be submitted in original.

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

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

For
(Signature)

.....
(Name & Title)

For
(Signature)

.....
(Name & Title)

For
(Signature)

.....
(Name & Title)

Witnesses:

1.

2.

.....

(Executants)

(To be executed by all the Members of the Consortium)

Notes:

- *The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.*
- *Also, wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a board or shareholders' resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.*
- *For a Power of Attorney executed and issued overseas, the document will also have to be legalised by the Indian Embassy and notarised in the jurisdiction where the Power of Attorney is being issued. However, the Power of Attorney provided by Bidders from countries that have signed the Hague Legislation Convention 1961 are not required to be legalised by the Indian Embassy if it carries a conforming Apostille certificate.*

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APPENDIX-IV

Net Worth of the Bidder
(Refer 2.2.3 (B) and 2.2.4 (i))

(in Rs.)

Bidder Type	Member Code	Net Worth
Single entity Bidder / Lead Member of Consortium		

Name & address of Bidder's Bankers:

Instructions:

1. Net Worth shall mean (Subscribed and Paid-up Equity = Reserves) less (Revaluation reserves = miscellaneous expenditure not written off = reserves not available for distribution to equity shareholders).
2. The Net Worth provided shall be for the latest completed financial year, preceding the bidding. In case the Bid Due Date falls within 3 (three) months of the close of the latest financial year, please refer to clause 2.2.15 of the RFP.
3. The Bidder shall provide an Auditors Certificate specifying the Net worth of the Bidder and also specifying the methodology adopted for calculating such Net Worth in accordance with Clause 2.2.4 (ii) of the RFP.

APPENDIX-V

Format for Technical Bid

(Refer Clause 2.2.4 (iii))

Dated:

To

.....
.....
.....

Tel:

Fax:

Sub: "Bid for Qualification: ** Project"**

Dear Sir,

1. With reference to your RFP document dated [___], I/we, having examined the Bidding Documents and understood their contents, hereby submit my/our Bid for the aforesaid Project. The Bid is unconditional and unqualified.
2. I/We hereby submit our Technical Bid, details of which have been provided in Annex I of this Appendix V.
3. I/We agree to keep this offer valid for 180 (one hundred and eighty) days from the Bid Due Date specified in the RFP.
4. I/We agree and undertake to abide by all the terms and conditions of the RFP document. In witness thereof, I/we submit this Bid under and in accordance with the terms of the RFP document.

Yours faithfully,

Date:

(Signature of the Authorised signatory)

Place: (Name and designation of the of the Authorised signatory)

Name and seal of Bidder/Lead Member

ANNEX-I

Technical Bid

I/We (*Name of the Bidder*) hereby submit our Technical Bid, as follows:

	Technical Bid			
	Committed Value Addition (70%)		Committed Scale of Production Capacity (GWh) (30%)	
Year	Weight		Weight	
Year 1				
Year 2				
Year 3				
Year 4				
Year 5				
Weight				

(Signature, name and designation of the authorised signatory)

For and on behalf of.....

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APPENDIX-VI

Format for Financial Bid

(Refer Clause 2.2.4 (iii))

Dated:

To

.....
.....
.....

Tel:

Fax:

Sub: "Bid for Qualification: ** Project"**

Dear Sir,

1. With reference to your RFP document dated [___], I/we, having examined the Bidding Documents and understood their contents, hereby submit my/our Bid for the aforesaid Project. The Bid is unconditional and unqualified.
2. I/We hereby submit our Price Bid and quote the Subsidy for the Project as Rs. [•].
3. I/We agree to keep this offer valid for 180 (one hundred and eighty) days from the Bid Due Date specified in the RFP.
4. I/We agree and undertake to abide by all the terms and conditions of the RFP document. In witness thereof, I/we submit this Bid under and in accordance with the terms of the RFP document.

Yours faithfully,

Date:

(Signature of the Authorised signatory)

Place: (Name and designation of the of the Authorised signatory)

Name and seal of Bidder/Lead Member

APPENDIX-VII
Credit Rating
(Refer Clause 3.14.1)

[Bidder to provide Credit Rating in accordance with the format of the respective Credit Rating Agency.]

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APPENDIX-VIII

Bank Guarantee for Bid Security

(Refer Clause 2.2.5)

B.G. No. Dated:

1. In consideration of you,, having its office at, (hereinafter referred to as the “Government”, which expression shall unless it be repugnant to the subject or context thereof include its, successors and assigns) having agreed to receive the Bid of [name of the Bidder]a [individual / LLP / fund / private entity / public entity / other international entity as registered under applicable law]and having its registered office at (and acting on behalf of its Consortium) (hereinafter referred to as the “Bidder” which expression shall unless it be repugnant to the subject or context thereof include its/their executors, administrators, successors and assigns), for the project (hereinafter referred to as “the Project”) pursuant to the RFP Document dated issued in respect of the Project and other related documents including without limitation the draft programme agreement (hereinafter collectively referred to as “Bidding Documents”), we (Name of the Bank) having our registered office at and one of its branches at (hereinafter referred to as the “Bank”), at the request of the Bidder, do hereby in terms of Clause 1.2.2 of the RFP Document, irrevocably, unconditionally and without reservation guarantee the due and faithful fulfilment and compliance of the terms and conditions of the Bidding Documents (including the RFP Document) by the said Bidder and unconditionally and irrevocably undertake to pay forthwith to the Government an amount of Rs. (Rupees only) (hereinafter referred to as the “Guarantee”) as our primary obligation without any demur, reservation, recourse, contest or protest and without reference to the Bidder if the Bidder shall fail to fulfil or comply with all or any of the terms and conditions contained in the said Bidding Documents.
2. Any such written demand made by the Government stating that the Bidder is in default of the due and faithful fulfilment and compliance with the terms and conditions contained in the Bidding Documents shall be final, conclusive and binding on the Bank.
3. We, the Bank, do hereby unconditionally undertake to pay the amounts due and payable under this Guarantee without any demur, reservation, recourse, contest or protest and without any reference to the Bidder or any other person and irrespective of whether the claim of the Government is disputed by the Bidder or not, merely on the first demand from the Government stating that the amount claimed is due to the Government by reason of failure of the Bidder to fulfil and comply with the terms and conditions contained in the Bidding Documents including failure of the said Bidder to keep its Bid open during the Bid validity period as set forth in the said Bidding Documents for any reason whatsoever. Any such demand made on the Bank shall be conclusive as regards amount due and payable by the Bank under this Guarantee. However, our liability under this Guarantee shall be restricted to an amount not exceeding Rs. (Rupees only).
4. This Guarantee shall be irrevocable and remain in full force for a period of 180 (one hundred and eighty) days from the Bid Due Date inclusive of a claim period of 90 (ninety) days or for such extended period as may be mutually agreed between the Government and the Bidder, and agreed to by the Bank, and shall continue to be enforceable till all amounts under this Guarantee have been paid.
5. We, the Bank, further agree that the Government shall be the sole judge to decide as to whether the Bidder is in default of due and faithful fulfilment and compliance with the terms and conditions contained in the Bidding Documents including, *inter alia*, the failure of the Bidder to keep its Bid open during the Bid validity period set forth in the said Bidding Documents, and the decision of the Government that the Bidder is in default as aforesaid shall be final and

binding on us, notwithstanding any differences between the Government and the Bidder or any dispute pending before any Court, Tribunal, Arbitrator or any other authority.

6. The Guarantee shall not be affected by any change in the constitution or winding up of the Bidder or the Bank or any absorption, merger or amalgamation of the Bidder or the Bank with any other person.
7. In order to give full effect to this Guarantee, the Government shall be entitled to treat the Bank as the principal debtor. The Government shall have the fullest liberty without affecting in any way the liability of the Bank under this Guarantee from time to time to vary any of the terms and conditions contained in the said Bidding Documents or to extend time for submission of the Bids or the Bid validity period or the period for conveying acceptance of Letter of Award by the Bidder or the period for fulfilment and compliance with all or any of the terms and conditions contained in the said Bidding Documents by the said Bidder or to postpone for any time and from time to time any of the powers exercisable by it against the said Bidder and either to enforce or forbear from enforcing any of the terms and conditions contained in the said Bidding Documents or the securities available to the Government, and the Bank shall not be released from its liability under these presents by any exercise by the Government of the liberty with reference to the matters aforesaid or by reason of time being given to the said Bidder or any other forbearance, act or omission on the part of the Government or any indulgence by the Government to the said Bidder or any other matter or thing whatsoever which under the law relating to sureties would but for this provision have the effect of releasing the Bank from its such liability.
8. Any notice by way of request, demand or otherwise hereunder shall be sufficiently given or made if addressed to the Bank and sent by courier or by registered mail to the Bank at the address set forth herein.
9. We undertake to make the payment on receipt of your notice of claim on us addressed to [name of Bank along with branch address] and delivered at our above branch which shall be deemed to have been duly authorised to receive the said notice of claim.
10. It shall not be necessary for the the Government to proceed against the said Bidder before proceeding against the Bank and the guarantee herein contained shall be enforceable against the Bank, notwithstanding any other security which the the Government may have obtained from the said Bidder or any other person and which shall, at the time when proceedings are taken against the Bank hereunder, be outstanding or unrealised.
11. We, the Bank, further undertake not to revoke this Guarantee during its currency except with the previous express consent of the the Government in writing.
12. The Bank declares that it has power to issue this Guarantee and discharge the obligations contemplated herein, the undersigned is duly authorised and has full power to execute this Guarantee for and on behalf of the Bank.
13. For the avoidance of doubt, the Bank's liability under this Guarantee shall be restricted to Rs. crore (Rupees crore only). The Bank shall be liable to pay the said amount or any part thereof only if the Government serves a written claim on the Bank in accordance with paragraph 9 hereof, on or before [..... (indicate date falling 180 days after the Bid Due Date)].

Signed and Delivered by Bank

By the hand of Mr./Ms, its and authorised official.

(Signature of the Authorised Signatory)

(Official Seal)

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APPENDIX-IX

Instructions for Online Submission

Instructions to Bidders for the e-submission of the Bids online through the Central Public Procurement Portal for e-Procurement [***]

- (a) Possession of valid Digital Signature Certificate (DSC) and enrolment / registration of the Bidders on the e-procurement / e-tender portal is a prerequisite for e-tendering.
- (b) Bidders should do the enrolment in the e-Procurement site using the [***] option available on the home page. Central Public Procurement Portal enrolment is generally free of charge. During enrolment / registration, the Bidders should provide the correct / true information including valid email ID. All the correspondence shall be made directly with the Bidders through email ID provided.
- (c) Bidders need to login to the site through their user ID / password chosen during enrolment / registration.
- (d) Then the DSC (Class II or Class III Certificates signing key usage) issued by SIFY / TCS / nCode / e-Mudra or any Certifying Authority recognized by CCA India on eToken / SmartCard, should be registered.
- (e) The DSC that is registered only, should be used by the Bidder and should ensure safety of the same.
- (f) Bidders may go through the tenders published on the site and download the required tender documents / schedules for the tenders they are interested in.
- (g) After downloading / getting the tender document / schedules, the Bidder should go through them carefully and then submit the documents as asked.
- (h) If there are any clarifications, this may be obtained online through the tender site or through the contact details. Bidders should take into account of the corrigendum published before submitting the Bids online.
- (i) Bidder selects the tender which he / she is interested in by using the search option and moves it to the 'my favourites' folder.
- (j) From the 'my favourites' folder, the Bidder can select the tender to view all the details indicated.
- (k) It is construed that the Bidder has read all the terms and conditions before submitting their offer. The Bidder should go through the tender schedules carefully and upload the documents as asked, otherwise, the Bid will be rejected.
- (l) The Bidder, in advance, should get ready the Bid documents to be submitted as indicated in the tender document / schedule and generally, they can be in PDF / xls / rar / jpg formats, If there is more than one document, they can be clubbed together and can be provided in the requested format. Each document to be uploaded online and the tenders should be less than 2MB. If any document is more than 2MB, it can be compressed through zip / rar.
- (m) The Bidders can update well in advance, the documents, such as certificates, annual report details etc., under 'My Space' option and these can be selected as per tender requirements and then sent along with the Bid documents during Bid submission. This will facilitate the Bid submission process faster by reducing the upload time of Bids.

- (n) While submitting the Bids online, the Bidder should read the terms & conditions and accept the same to proceed further to submit the Bid.
- (o) The details of the bank guarantee, physically sent, should tally with the details available in the scanned copy and the data entered during Bid submission time, or the Bid shall be rejected.
- (p) The Bidder has to digitally sign and upload the required Bid documents one by one as indicated. Bidders to note that the very act of using DSX for downloading the Bids and uploading their offers shall be deemed to be a confirmation that they have read the entire tender thoroughly.
- (q) The Bidders have to upload the relevant files required as indicated in the cover content. In case any irrelevant files are uploaded, the Bid shall be rejected.
- (r) If the format of the Price Bid is provided in a spread sheet file, the rates offered should be entered in the allotted space only and uploaded after filing the relevant columns. The Price Bid template us not be modified / replaced by the Bidder; else the Bid shall be rejected.
- (s) The Bidders are requested to submit the Bids through online e-tendering system to the Government well before the Bid submission end date and time. The Government will not be held responsible for any sort of delay or difficulties faced during the submission of Bids online by the Bidders.
- (t) After the Bid Submission, the acknowledgement number, given by the e-tendering system should be printed by the Bidder and kept as a record of evidence for online submission of Bid for the particular tender and will also act as an entry pass to participate in the Bid opening date.
- (u) The Bidder should ensure that the Bid documents submitted should be free from any virus. If the documents are inaccessible due to a virus, the Bid shall be rejected.
- (v) The time settings fixed on the server side and displayed at the top of the tender site, will be valid for all actions of requesting, Bid submission, Bid opening etc., in the e-tender system.
- (w) [All data being entered by the Bidders would be encryption using PKI encryption techniques to ensure the secrecy of the data. The data entered will not be viewable by any unauthorized persons during Bid submission.]
- (x) [The confidentiality of the Bids is maintained since the secure Socket Layer 128-bit encryption technology is used. Data storage encryption of sensitive fields is done.]
- (y) Any Bid document that is uploaded to the server is subjected to symmetric encryption using a system generation symmetric key. Further this key is subjected to asymmetric encryption using Bid opener's public keys. Overall, the uploaded tender documents become readable only after the tender opening by the Government.
- (z) The Bidder should logout of the tendering system using the normal logout option available at the top right-hand corner and not by selecting the (X) exit option in the browser.

APPENDIX-X
GFR Order

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APPENDIX-XI

Joint Bidding Agreement

(Refer Clause 2.2.9 (g))

(To be executed on Stamp paper of appropriate value)

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

AMONGST

1., a (*individual / LLP / fund / private entity / public entity / other international entity*) incorporated under applicable law and having its registered office at (hereinafter referred to as the “First Part” which expression shall, unless repugnant to the context include its successors and permitted assigns)

AND

2., a (*individual / LLP / fund / private entity / public entity / other international entity*) incorporated under applicable law and having its registered office at..... (hereinafter referred to as the “Second Part” which expression shall, unless repugnant to the context include its successors and permitted assigns)

AND

3. {..... (*individual / LLP / fund / private entity / public entity / other international entity*) incorporated under applicable law and having its registered office at (hereinafter referred to as the “Third Part” which expression shall, unless repugnant to the context include its successors and permitted assigns)}

The above-mentioned parties of the FIRST, SECOND, {THIRD} PART is collectively referred to as the “Parties” and each is individually referred to as a “Party”

WHEREAS,

- (A) [The Government of India “GoI” through the Department of Heavy Industry, Ministry of Heavy Industries and Public Enterprises, for the Programme for Advance Chemistry Cell Manufacturing and having its principal offices at [●] (hereinafter referred to as the “**Government**” which expression shall, unless repugnant to the context or meaning thereof, include its successors and assigns) has invited applications (the Applications”) by its Request for Proposal No.....dated(the “RFP”) for pre-qualification and short-listing/selection of bidders for the Project (the “Project”).
- (B) The Parties are interested in jointly bidding for the Project as members of a Consortium and in accordance with the terms and conditions of the RFP document and other bid documents in respect of the Project, and
- (C) It is a necessary condition under the RFP document that the members of the Consortium shall enter into a Joint Bidding Agreement and furnish a copy thereof with the Application.

NOW IT IS HEREBY AGREED as follows:

1. Definitions and Interpretations

In this Agreement, the capitalised terms shall, unless the context otherwise requires, have the meaning ascribed thereto under the RFP.

2. Consortium

2.1 The Parties do hereby irrevocably constitute a consortium (the “Consortium”) for the purposes of jointly participating in the Bidding Process for the Project.

2.2 The Parties hereby undertake to participate in the Bidding Process only through this Consortium and not individually and/ or through any other consortium constituted for this Project, either directly or indirectly or through any of their Associates.

3. Covenants

The Parties hereby undertake that in the event the Consortium is declared the Selected Bidder and awarded the Project, it shall incorporate a special purpose vehicle (the “SPV”) under the Indian Companies Act, 2013 for entering into a Programme Agreement with the Government and for performing all its obligations as the Beneficiary Firm in terms of the Programme Agreement for the Project.

4. Role of the Parties

The Parties hereby undertake to perform the roles that the Party of the First Part shall be the Lead member of the Consortium and shall have the power of attorney from all Parties for conducting all business for and on behalf of the Consortium during the Bidding Process and until the Appointed Date under the Programme Agreement when all the obligations of the SPV shall become effective.

5. Joint and Several Liability

The Parties do hereby undertake to be jointly and severally responsible for all obligations and liabilities relating to the Project and in accordance with the terms of the RFP and the Programme Agreement, till such time as the Appointed Date for the Project is achieved under and in accordance with the Programme Agreement.

6. Shareholding in the SPV

6.1 The Parties agree that the proportion of shareholding among the Parties in the SPV shall be as follows:

First Party:

Second Party:

{Third Party:}

6.2 The Parties undertake that a minimum of 26% (twenty-six per cent) of the subscribed and paid up equity share capital of the SPV shall, at all times till the 5th (fifth) anniversary of the date of commercial operation of the Project, be held by the Party of the First Part whose qualification

under the qualification criteria has been reckoned for the purposes of qualification and short listing of Bidders for the Project in terms of the RFP.

- 6.3 The Parties undertake that they shall comply with all equity lock-in requirements set forth in the Programme Agreement.

7. Representation of the Parties

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

- (a) Such Party is duly organised, validly existing and in good standing under the laws of its incorporation and has all requisite power and authority to enter into this Agreement;
- (b) The execution, delivery and performance by such Party of this Agreement has been authorised by all necessary and appropriate corporate or governmental action and a copy of the extract of the charter documents and board resolution/ power of attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Consortium Member is annexed to this Agreement, and will not, to the best of its knowledge:
 - (i) require any consent or approval not already obtained;
 - (ii) violate any Applicable Law presently in effect and having applicability to it;
 - (iii) violate the memorandum and articles of association, by-laws or other applicable organisational documents thereof;
 - (iv) violate any clearance, permit, concession, grant, license or other governmental authorisation, approval, judgment, order or decree or any mortgage agreement, indenture or any other instrument to which such Party is a party or by which such Party or any of its properties or assets are bound or that is otherwise applicable to such Party; or
 - (v) create or impose any liens, mortgages, pledges, claims, security interests, charges or encumbrances or obligations to create a lien, charge, pledge, security interest, encumbrances or mortgage in or on the property of such Party, except for encumbrances that would not, individually or in the aggregate, have a material adverse effect on the financial condition or prospects or business of such Party so as to prevent such Party from fulfilling its obligations under this Agreement;
- (c) this Agreement is the legal and binding obligation of such Party, enforceable in accordance with its terms against it; and
- (d) there is no litigation pending or, to the best of such Party's knowledge, threatened to which it or any of its Associates is a party that presently affects or which would have a material adverse effect on the financial condition or prospects or business of such Party in the fulfillment of its obligations under this Agreement.

8. Termination

This Agreement shall be effective from the date hereof and shall continue in full force and effect until the Appointed Date of the Project is achieved under and in accordance with the Programme Agreement, in case the Project is awarded to the Consortium. However, in case the

Consortium is either not prequalified for the Project or does not get selected for award of the Project, the Agreement will stand terminated in case the Bidder is not pre-qualified or upon return of the Bid Security by the Government to the Bidder, as the case may be.

9. Miscellaneous

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

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

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

SIGNED, SEALED AND DELIVERED SIGNED, SEALED AND DELIVERED

For and on behalf of
LEAD MEMBER by:

SECOND PART

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

SIGNED, SEALED AND DELIVERED SIGNED, SEALED AND DELIVERED

For and on behalf of THIRD PART

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

In the presence of:

- 1.
- 2.

Notes:

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

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APPENDIX- XII

Format for Letter of Award

(Refer Clause 2.30.3)

Dated:

To

.....
.....
.....

Tel:

Fax:

Sub: Issuance of Letter of Award (the “**LOA**”) - Request for Proposal (“**RFP**”) for setting up an Advance Chemistry Cell manufacturing facility of minimum 5 (five) GWh capacity and establish an Advance Chemistry Cell manufacturing Project with value-addition of minimum 25% (twenty-five percent) at the mother unit level and minimum 60% (sixty percent) overall basis, in conformity with the Technical Bid (“**Project**”)

Dear Sir,

Pursuant to the conclusion of the bid evaluation process, we are pleased to inform you that the bid of [•] is declared as the Selected Bidder for implementing the Project having quoted a Subsidy of INR [•] in their Financial Bid dated [•]. As per Clause 2.30.3 of the RFP, we are issuing this LOA and the same is subject to the following conditions:

1. That *[insert name of Bidder]* unconditionally accepts the LOA and shall record on the duplicate copy of the LOA, “Accepted Unconditionally”, under the signature of the Authorized Signatory of *[insert name of Bidder]* and return such copy to the Government within seven (7) days of issue of this LOA.
2. That *[insert name of Bidder]* shall achieve completion of various actives as stipulated in the RFP including but not limited to:
 - (a) Incorporate a special purpose vehicle (“**SPV**”) for execution of the Programme Agreement and implementation of the Project within [•] days from the date of this LOA.
 - (b) Within [•] days of the receipt of the LOA, execute the Tripartite Agreement.
 - (b) Within [•] days of the receipt of the duplicate copy of this LOA by the Authority, procure execution of the Programme Agreement.

The Government may exercise its rights under the RFP, including rights available under Clause 2.23.5 thereof, in the event *[insert name of Bidder]* fails to comply with its obligations as specified in the RFP.

Yours faithfully,

Date:

(Signature of the Authorised signatory of the Government)

(Name and designation of the of the Authorised signatory of the Government)

Place:

National Programme on ACC Battery Storage

PROGRAMME AGREEMENT

PROGRAMME AGREEMENT

BETWEEN

**DEPARTMENT OF HEAVY INDUSTRY, MINISTRY OF HEAVY INDUSTRIES & PUBLIC
ENTERPRISES, GOVERNMENT OF INDIA**

AND

[name of the Beneficiary Firm]

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PROGRAMME AGREEMENT

THIS PROGRAMME AGREEMENT is made on [•] at [•] by and between:

1. The Department of Heavy Industry, Ministry of Heavy Industries and Public Enterprises, Government of India, having its principal offices at [•] (hereinafter referred to as the “**Government**” which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns) of **One Part**.

AND

2. [•insert name], a company incorporated and registered under the (Indian) Companies Act, 2013, with its corporate identity number [•] and having its registered office at [• insert address] (hereinafter referred to as the “**Beneficiary Firm**”, which expression shall, unless repugnant to the subject, context or meaning thereof, include its successors and permitted assigns) of **Other Part**.

“Government” and “Beneficiary Firm” hereinafter jointly referred to as the “**Parties**” and individually as the “**Party**”.

WHEREAS:

- A. The Government has launched and intends to implement the National Programme on Advance Chemistry Cell Battery Storage (“**Programme**”) in accordance with the terms and conditions to be set forth in this programme agreement (the “**Agreement**”).
- B. The Government of India (“**GoI**”), pursuant to the Programme seeks to obtain self-reliance in production of Advance Chemistry Cells and support indigenous manufacturing of Advance Chemistry Cells. To achieve this, the GoI intends to develop giga-scale Advance Chemistry Cell manufacturing unit to ensure overall energy security for India in the long run.
- C. An enabling ecosystem is hereby facilitated for the bidders to make investments into setting-up of giga-scale Advance Chemistry Cell manufacturing facilities located in India (“**Project**”). The ecosystem shall address the ongoing concerns of the indigenous manufacturing facilities.
- D. The Government had invited proposals by its request for proposal no. *** dated *** (“**RFP**”) for short listing and selection of bidders to receive a subsidy. A bidder selected through the RFP, to be eligible for this Subsidy, would have to commit to set-up an Advance Chemistry Cell manufacturing facility of a minimum of 5 (five) GWh capacity with value-addition of at least 25% (twenty-five per cent) at the mother unit level and at least 60% (sixty per cent) on an overall basis, in conformity with the Technical Bid submitted in the RFP (“**Project**”).
- E. The Government had shortlisted certain bidders including, inter alia, the {selected bidder/ consortium comprising,, and (collectively the “**Consortium**”) with as its lead member (“**Lead Member**”)}. After evaluation of the bids received, the Government has issued its letter of award No. [•] dated (hereinafter called the “**LOA**”) to [selected bidder/ Consortium] requiring, *inter alia*, the execution of this Agreement within [90] (ninety) days of the date of issue thereof.

- F. The selected bidder/Consortium has since promoted and incorporated the Beneficiary Firm as a limited liability company under the Companies Act, 2013, and has requested the Government to accept the Beneficiary Firm 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 Agreement pursuant to the LOA for undertaking the Project.
- G. {By its letter dated, the Beneficiary Firm has also joined in the said requirement of the selected bidder/ Consortium to the Government 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 Agreement pursuant to the LOA. The Beneficiary Firm has further represented to the effect that it has been promoted by the selected bidder/Consortium for the purposes thereof}.
- H. The Government has {agreed to the said request of the selected bidder/Consortium and the Beneficiary Firm and has} accordingly agreed to enter into this Agreement with the Beneficiary Firm for implementation of 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 Agreement, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

[Remainder of this page left intentionally blank]

ARTICLE 1
DEFINITIONS AND INTERPRETATION

1.1. Definitions

The words and expressions beginning with capital letters and defined in this Agreement 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.

“**Advance Chemistry Cell/ACC**” shall have the meaning prescribed to under Schedule – G.

“**Affected Party**” shall have the meaning as set forth in Clause 14.1.

“**Appointed Date**” shall have the meaning as set forth in Clause 2.1.

“**Applicable Law**” shall mean all laws, brought into force and effect by the Government of India or the State Government including rules, regulations, and notifications made there under, and judgements, decrees, injunctions, writs and order of any court of record, applicable to this Agreement and the exercise, performance and discharge of the respective rights and obligations of the Parties hereunder, as may be in force and effect during the subsistence of this Agreement.

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

“**Associate**” shall mean, in relation to either Party {and/or members of the Consortium members}, a person who controls, is controlled by or is under the common control with such Party {or member of the Consortium} (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.).

“**Award**” shall have the meaning as set forth in Clause 17.4.5.

“**Beneficiary Firm Event of Default**” shall have the meaning as set forth in Clause 16.1.

“**Beneficiary Firm’s Default Notice**” shall have the meaning as set forth in Clause 16.3.1 (a).

“**Beneficiary Firm’s Termination Notice**” shall have the meaning as set forth in Clause 16.3.2.

“**Bid**” means the documents in their entirety comprised in the bid submitted by the Beneficiary Firm in response to the RFP in accordance with the provisions thereof.

“Bid Security” means the security provided by the Beneficiary Firm to the Government along with the Bid in a sum calculated at the rate of 1% (one per cent) of INR 2,25,00,000 (Rupees Two Crore and Twenty Five Lakh only) per GWh, in accordance with the RFP, which shall remain in force until substituted by the Performance Security.

“Change in Law” means the occurrence of any of the following events after the Bid Due Date:

- (a) the enactment of any new Indian law as applicable to the State;
- (b) the repeal, modification, or re-enactment of any existing Indian Law as applicable to the State;
- (c) the commencement of any Indian law, as applicable to the State, which has not entered into effect until the date of the Bid;
- (d) a change in the interpretation or application of any Indian law by judgement of a court of record which has become final, conclusive and binding, as compared to such interpretation or application by a court of record prior to the date of the Bid; and
- (e) any change in the rates of any of the Taxes that have a direct effect on the Project.

“Committed Scale of Production” shall mean the production capacity allocated to the Beneficiary Firm by the Government, subject to selection under the RFP.

“Committed Value Addition” shall mean the percentage of Value Addition allocated to the Beneficiary Firm by the Government, subject to selection under the RFP.

“Compensation Payment” means the amount payable by the Government under and in accordance with the provisions of this Agreement, upon Termination.

“Conditions Precedent” shall have the meaning as set forth in Article 4.

“Consortium” shall have the meaning as set forth in Recital D.

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

“Damages” shall mean the deduction in Subsidy to be disbursed by the Government to the Beneficiary Firm under and in accordance with this Agreement.

“DIAC” shall have the meaning as set forth in Clause 17.4.1

“Dispute” shall have the meaning as set forth in Clause 17.1.1.

“Dispute Resolution Procedure” shall mean the dispute resolution process set out in Article 17 read with Schedule K.

“Escrow Agreement” shall mean the escrow agreement entered amongst the Government, Beneficiary Firm and Escrow Bank.

“Escrow Account” shall mean an account which the Government shall open and maintain with an Escrow Bank in which all inflows and outflows of cash on account of the Subsidy shall be credited and debited, in accordance with the provisions of this Agreement and the Escrow Agreement.

“Escrow Reserve Amount” shall have the meaning as set forth in Clause 10.1.3.

“Escrow Bank” shall mean the [•].

“Execution Date” shall mean the date of signing of this Agreement.

“Financial Year” shall mean the year commencing from the first day of April and ending on thirty first day of March of the next calendar year.

“Force Majeure” or **“Force Majeure Event”** shall have the meaning as set forth in Clause 14.1.

“Force Majeure Costs” shall have the meaning as set forth in Clause 14.7.2.

“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 Beneficiary Firm in accordance with this Agreement, Applicable Laws and Applicable Permits in reliable, safe, economical and efficient manner;

“Government Event of Default” shall have the meaning as set forth in Clause 16.2.

“Government’s Default Notice” shall have the meaning as set forth in Clause 16.4.1.

“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 obligations of the Beneficiary Firm under or pursuant to this Agreement.

“Government’s Termination Notice” shall have the meaning as set forth in Clause 16.4.2.

“Independent Engineer” shall have the meaning set forth in Article 9;

“Indirect Political Event” shall have the meaning as set forth in Clause 14.3.

“Insolvency Event” in respect of a Party means:

- (a) such Party has (A) applied for or consented to the appointment of, or the taking of possession by, a receiver, custodian, trustee, administrator, liquidator or the like of itself or of all or a substantial part of its assets or business; (B) been unable to pay its debts as such debts become due; (C) enters into a compromise arrangement with its creditors ; (D) an attachment or restraint has been levied on the assets of such entity Party which materially affects such Party’s ability to perform its obligations under this Agreement; (E) commenced proceedings under the (Indian) Insolvency and Bankruptcy Code, 2016 (“Code”); (F) filed a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts; or (G) taken any corporate or other action for the purpose of effecting any of the foregoing; or
- (b) a proceeding or case has been commenced without the application or consent of such Party in any court of competent jurisdiction seeking (A) its liquidation, reorganization, dissolution or winding-up or the composition or readjustment of debts or, (B) the appointment of an insolvency resolution professional, a trustee, receiver, custodian, administrator, liquidator or the like of such Party under the Code and an order admitting the insolvency petition has been passed in such proceeding and such order has not been stayed or dismissed within a period of [90 (ninety)] days or (C) directions with the same or similar effect happen under the provisions of the Companies Act, 1956 or the Companies Act, 2013 or the Code in relation to the winding up of the company.

“Inspection Report” shall have the meaning as set forth in Clause 12.1.

“Investment” shall mean:

Expenditure incurred on Plant, Machinery, Equipment and Associated Utilities: This shall include expenditure on plant, machinery, equipment and associated utilities as well as tools, dies, moulds, jigs, fixtures (including parts, accessories, components, and spares thereof) of the same, used in the design, manufacturing, assembly, testing, packaging, or processing of any of the Advance Chemistry Cell.) It shall also include expenditure on packaging, freight / transport, insurance, and erection and commissioning of the plant, machinery, equipment, and associated utilities. For the avoidance of doubt, associated utilities would include captive power and effluent treatment plants, essential equipment required in operations areas such as clean rooms, air curtains, temperature and air quality control systems, compressed air, water and power supply, and control systems. Associated utilities further include IT and ITES infrastructure. It is clarified that all non-creditable taxes and duties would be included in such expenditure.

Expenditure incurred on Research and Development (R&D): Capital expenditure on R&D and product development related to Advance Chemistry Cell. The term “related” shall refer to all stages in the entire value chain of the goods proposed to be manufactured including the Advance Chemistry Cell and their functioning. Such expenditure shall include expenditure on in-house and captive R&D, including all stages in the entire value chain of the goods proposed to be manufactured including hardware integral to the functioning of the same. Such expenditure shall include test and measuring instruments, prototypes used for testing, purchase of design tools, software cost (directly used for R&D) and license fee, expenditure on technology, IPR,

Patents and Copyrights for R&D/ all non-creditable taxes and duties would be included in such expenditure.

Expenditure related to Transfer of Technology (ToT) Agreements: This shall include cost of technology and initial technology purchase related to goods required for the Advance Chemistry Cell manufacturing. All non-creditable taxes and duties would be included in such expenditure.

“**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

“**Milestone**” shall have the meaning as set forth in Clause 8.1.

“**Milestone Completion Certificate**” shall have the meaning as set forth in Clause 12.3.

“**Mother Unit**” shall mean the single-roof establishment wherein the Beneficiary Firm meets its investment of at least INR 225,00,00,000 (Rupees two hundred and twenty five crore only) per GWh (excluding the cost of land) and at least 25% (twenty five per cent) Value Addition of the Advance Chemistry Cell.

“**Non-Political Event**” shall have the meaning as set forth in Clause 14.2.

“**Performance Security**” shall have the meaning as set forth in Clause 7.1.1.

“**Political Event**” shall have the meaning as set forth in Clause 14.4.

“**Project**” shall have the meaning as set forth in Recital C, in accordance with the capacity submitted by the Bidder in the Bid.

“**RFP**” shall mean the Request of Proposal issued by the Government, dated [•].

“**SBI MCLR**” shall mean the marginal cost of funds base lending rate fixed by the State Bank of India.

“**Subsidy**” shall mean financial aid or support granted by the Government to the Beneficiary Firm in accordance with terms of this Agreement.

“**Taxes**” means any Indian taxes including the goods and services tax, [excise duties], customs duties, value added tax, local taxes, any indirect tax, 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, which are 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.

“**Testing Standards**” shall mean a standardized framework for the desired performance output set forth in Schedule – D.

“**Term**” shall have the meaning as set forth in Clause 2.1.

“**Tripartite Agreement**” shall mean the agreement to extend support and provide additional incentives for implementation of the Project, through executing a tripartite agreement between the Government, State Government, and the Beneficiary Firm.

“**Value Addition**” shall mean the manufacturing activity (to manufacture Advance Chemistry Cell) being undertaken in India, by the Beneficiary Firm either on its own or through ancillary units or through indigenous manufacturers, as described in Schedule E.

1.2. Interpretation

1.2.1 In this Agreement, unless the context otherwise requires,

- (a) references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;
- (b) references to 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 2 (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, developing, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction, and “**construct**” or “**build**” shall be construed accordingly;
- (g) any reference to any period of time shall mean a reference to that according to Indian Standard Time;

- (h) 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;
- (i) any reference today shall mean a reference to a calendar day;
- (j) reference to a “**business day**” shall be construed as reference to a day (other than a Sunday and public holiday) on which banks in [Delhi] are generally open for business;
- (k) any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;
- (l) any reference to “**quarter**” shall mean a reference to the period of 3 (three) months commencing from April 1, July 1, October 1, and January 1, as the case may be;
- (m) 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;
- (n) the words importing singular shall include plural and vice versa;
- (o) “**lakh**” means a hundred thousand (1,00,000) and “**crore**” means ten million (10,000,000);
- (p) “**indebtedness**” shall be construed to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
- (q) 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 documents as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this Sub-clause (q) shall not operate so as to increase liabilities or obligations of the Government hereunder or pursuant hereto in any manner whatsoever;
- (r) any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party shall be valid and effective only if it is in writing under the hand of a duly authorised representative of such Party in this behalf and not otherwise;
- (s) the Schedules, Annexures and Recitals to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
- (t) references to Recitals, 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; reference to an Annex shall, subject to anything to the contrary specified therein, be construed as a reference to an Annex to the Schedule in which such reference occurs; and reference to a Paragraph shall, subject to anything to the contrary specified therein, be construed as a reference to a Paragraph of the Schedule or Annex, as the case may be, in which such reference appears; and

- (u) 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 Beneficiary Firm to the Government shall be provided free of cost and in 3 (three) copies, and if the Government 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 third digit of 5 (five) or above being rounded up and below 5 (five) being rounded down; provided that the drawings, engineering dimensions and tolerances may exceed 2 (two) decimal places as required.

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

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

- (a) this Agreement;
- (b) Tripartite Agreement; and
- (c) 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).

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

- (a) between 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 and between Schedules and Annexes, the Schedules shall prevail;
- (c) between any 2 (two) Schedules, the Schedule relevant to the issue shall prevail;
- (d) between any value written in numerals and that in words, the latter shall prevail.

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ARTICLE 2

TERM

- 2.1 This Agreement shall come into force and effect from the date on which the Conditions Precedent listed in Article 4 of this Agreement have been satisfied (“**Appointed Date**”). This Agreement shall remain valid for a period of 10 (ten) years from the Appointed Date (“**Term**”).

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ARTICLE 3
SCOPE OF WORK

3.1 The Beneficiary Firm shall be responsible to:

- (a) establish a Project to manufacture Advance Chemistry Cell as quoted by the selected bidder in its Technical Bid (as provided in Schedule-M) and make an Investment of minimum INR 225,00,00,000 (Rupees two hundred and twenty five crore only) per GWh (excluding the cost of land) within 2 (two) years from the Appointed Date;
- (b) ensure Value Addition to be at least 25% (twenty-five per cent) at the Mother Unit level and minimum 60% (sixty per cent) of the overall domestic Value Addition.

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ARTICLE 4
CONDITIONS PRECEDENT

- 4.1** The respective rights and obligations of the Parties under this Agreement shall be subject to the satisfaction of the conditions precedent specified in this Article 4 (“**Conditions Precedent**”). Provided, however, that a Party may grant waiver from satisfaction of any Condition Precedent by the other Party in accordance with the provisions of Clauses 4.2 and 4.3, as the case may be, and to the extent of such waiver, that Condition Precedent shall be deemed to be fulfilled for the purpose of this Article 4.
- 4.2** The Beneficiary Firm may, upon providing the Performance Security to the Government in accordance with this Agreement on the Execution Date, by notice require the Government to satisfy the Condition Precedent set forth in this Clause 4.2 within the time period specified below, or where no time period is specified, within 360 (three hundred and sixty) days of the notice, and the Condition Precedent required to be satisfied by the Government prior to the Appointed Date shall be deemed to have been fulfilled when the Government shall have:
- (a) executed Escrow Agreement with the Beneficiary Firm and Escrow Bank;
 - (b) ensured procurement of all Applicable Permits relating to environmental protection and conservation of the site of the Project excluding those provided in Schedule-A (upon fulfilment of the condition precedent in Clause 4.3 (c) by the Beneficiary Firm); and
 - (c) executed the Tripartite Agreement with the Beneficiary Firm and the State Government within 90 (ninety) days from the Execution Date.
- 4.3** The Conditions Precedent to be fulfilled by Beneficiary Firm within the time specified below or where no time period is specified, within 360 (three hundred and sixty) days from the Execution Date shall be deemed to have been fulfilled when Beneficiary Firm shall have:
- (a) ensured the effectiveness of the Tripartite Agreement with the Government and the relevant State Government within 90 (ninety) days from the Execution Date;
 - (b) executed the Escrow Agreement with the Government and Escrow Bank; and
 - (c) provided all necessary documentation required for the Government to fulfil its condition precedent in 4.2(b), within 180 (one hundred and eighty) days from the Execution Date.
- 4.4** Each Party shall make all reasonable endeavours to satisfy the Conditions Precedent within the time stipulated and shall provide the other Party with such reasonable cooperation as may be required to assist the Party in satisfying the Conditions Precedent for which that Party is responsible.
- 4.5** Subject to the terms and conditions specified herein above, if either Party fails to achieve the Conditions Precedent within the prescribed period under Clause 4.2 and 4.3 , and such failure is not on account of the default of other Party or Force Majeure Event, then such Party shall be entitled to extension of the time period by 90 (ninety) days or such additional time period as agreed by the other Party, for fulfilment of respective Condition Precedent.

4.6 The Parties agree that the date on which all the Conditions Precedent are satisfied or waived, as the case may be, shall be the Appointed Date. If the Parties are not able to fulfil the Conditions Precedent or if the Conditions Precedent are not waived as per the timelines stated above, this Agreement shall cease to be effective and binding on the Parties and the Parties shall have no further liabilities or obligations towards each other.

4.7 Damages for delay by the Government

In the event that (i) the Government does not procure fulfilment or waiver of the Condition Precedent set forth in Clause 4.2 within the period specified in respect thereof, and (ii) the delay has not occurred as a result of breach of this Agreement by the Beneficiary Firm or due to Force Majeure, the Government shall pay to the Beneficiary Firm, maximum Damages in an amount calculated at the rate of 0.1% (zero point one per cent) of the Performance Security for each day's delay until the fulfilment or waiver of such Conditions Precedent, subject to a maximum amount equal to the Bid Security.

4.8 Damages for delay by the Beneficiary Firm

In the event that (i) the Beneficiary Firm does not procure fulfilment or waiver of any or all of the Conditions Precedent set forth in Clause 4.3 within the period specified in that Clause, and (ii) the delay has not occurred as a result of breach of this Agreement by the Government or due to Force Majeure, the Beneficiary Firm shall pay to the Government, Damages in an amount calculated at the rate of [0.2% (zero point two per cent)] for each day's delay until the fulfilment or waiver of such Conditions Precedent, subject to a maximum amount equal to the Bid Security, and upon reaching such maximum, the Government, in its sole discretion and subject to the provisions of Clause 7.2, shall additionally have the right to terminate the Agreement. Provided that in the event of delay by the Government in procuring fulfilment or waiver of the Condition Precedent specified in Clause 4.2, no Damages shall be due or payable by the Beneficiary Firm under this Clause 4.8 until the date on which the Government shall have procured fulfilment or waiver of the Conditions Precedent specified in Clause 4.2.

4.9 Deemed Termination upon delay

Without prejudice to the provisions of Clauses 4.7 and 4.8, and subject to the provisions of Clause 7.2, the Parties expressly agree that in the event the Appointed Date does not occur, for any reason whatsoever, before the [1st (first) anniversary] of the date of this Agreement or the extended period provided in accordance with this Agreement, all rights, privileges, claims and entitlements of the Beneficiary Firm under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Beneficiary Firm, and the 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 Beneficiary Firm, the Performance Security of the Beneficiary Firm shall be encashed and appropriated by the Government as Damages thereof.

ARTICLE 5
REPRESENTATIONS AND WARRANTIES

5.1 Representations and warranties of Beneficiary Firm

The Beneficiary Firm represents and warrants to the Government that:

- (a) it is duly organised and validly existing under the laws of India, and has full power and authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (b) it has taken all necessary corporate and other actions under Applicable Laws to authorise the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- (c) it has the financial standing and capacity to undertake the Project in accordance with the terms of this Agreement;
- (d) 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;
- (e) 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;
- (f) 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;
- (g) 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 the selected bidder/ 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;
- (h) 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;
- (i) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any Government Instrumentality which may result in any Material Adverse Effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;

- (j) 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;
- (k) it shall at no time undertake or permit any change in ownership; and that the {selected bidder/ Lead Member}, shall hold not less than 26% (twenty-six per cent) of its issued and paid up equity from the date hereof until the Appointed Date and on a continuing basis for a period of [5 (five)] years from the Appointed Date of this Agreement;
- (l) {the selected bidder/ members of the Consortium} 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;
- (m) {the selected bidder/ each member of the Consortium} is duly organised and validly existing under the laws of the jurisdiction of its incorporation, and has requested the Government to enter into this Agreement with the Beneficiary Firm pursuant to the LOA, and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;
- (n) no representation or warranty by it contained herein or in any other document furnished by it to the Government 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;
- (o) no sums, in cash or kind, have been paid or will be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for securing the Agreement or entering into this Agreement or for influencing or attempting to influence any officer or employee of the Government in connection therewith; and
- (p) all information provided by the {selected bidder/ members of the Consortium} in response to the RFP is to the best of its knowledge and belief, true and accurate in all material respects.

5.2 Representations and warranties of the Government

The Government represents and warrants to the Beneficiary Firm that:

- (a) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Agreement, exercise its rights and perform its obligations, under this Agreement;
- (b) it has taken all necessary actions under Applicable Laws to authorise the execution, delivery, and performance of this Agreement;
- (c) it has the financial standing and capacity to perform its obligations under this Agreement;

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

5.3 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 6
OBLIGATIONS OF THE PARTIES

6.1 Obligations of the Government

- 6.1.1 The Government shall, at its own cost and expense undertake, comply with, and perform all its obligations set out in this Agreement or arising hereunder:
- 6.1.2 The Government agrees to provide assistance and support to the Beneficiary Firm on the following, subject to and in accordance with the provisions of this Agreement and Applicable Laws:
- (i) upon written request from the Beneficiary Firm, and subject to the Beneficiary Firm complying with Applicable Laws, provide reasonable support and assistance in procuring the Applicable Permits required from any Government Instrumentality for setting up and operation of the Project;
 - (ii) upon written request from the Beneficiary Firm, provide reasonable support and assistance to the Beneficiary Firm in obtaining access to all necessary infrastructure facilities and utilities; and
 - (iii) support, cooperate with and facilitate the Beneficiary Firm in the implementation and operation of the Project in accordance with the provisions of this Agreement and Applicable Laws.
- 6.1.3 The Government agrees to disburse Subsidy, as specified in Schedule - B, to the Beneficiary Firm, in accordance with Clause 11.2.
- 6.1.4 The Government shall open and maintain an Escrow Account in which all inflows and outflows of cash on account of the Subsidy shall be credited and debited, in accordance with the provisions of this Agreement and the Escrow Agreement.
- 6.1.5 The Government shall authorize representatives to inspect the certificates provided by the Beneficiary Firm validating the Value Addition and Committed Scale of Production.
- 6.1.6 The Government shall commence Subsidy disbursement upon the Beneficiary Firm exceeding the Value Addition at the Mother Unit level of 25% (twenty five per cent), with total Subsidy disbursement capped at INR 1420 Crores (Rupees one thousand four hundred and twenty crores) per GWh, for a cumulative capacity of 50 (fifty) GWh of Advance Chemistry Cell manufacturing capacity. The Subsidy disbursement shall be provided for a period not exceeding 10 (ten) years from the Appointed Date and shall be disbursed on a quarterly basis.
- 6.1.7 The Parties agree that in case of any breach of the conditions as specified in this Agreement, the Government shall levy suitable Damages, including but not limited to the forfeiture the entire incentive package and appropriation/ encashment of the Performance Security.

6.2 Obligations of the Beneficiary Firm

- 6.2.1 The Beneficiary Firm shall establish a Project to manufacture Advance Chemistry Cell as per the Technical Bid submitted by the selected bidder, as provided in Schedule M in its Bid, and requirements under the RFP.
- 6.2.2 Subject to and on the terms and conditions of this Agreement, the Beneficiary Firm shall, at its own cost and expense, procure finance, operate and maintain the Project and observe, fulfill, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 6.2.3 The Beneficiary Firm shall comply with all Applicable Laws and Applicable Permits requirements (including renewals as required) including but not limited to those specified in Schedule – A, in the performance of its obligations under this Agreement.
- 6.2.4 The Beneficiary Firm shall achieve minimum scale of Advance Chemistry Cell production by 5 (five) years from the Appointed Date. The Beneficiary Firm further agrees that it shall achieve the target Value Addition within India, as specified in the Bid, which shall in no case be below 60% (sixty per cent).
- 6.2.5 The Beneficiary Firm shall furnish to the Government, a certificate by its statutory auditor certifying that it has met its investment requirements in accordance with this Agreement.
- 6.2.6 The Beneficiary Firm shall ensure that it shall achieve not less than 25% (twenty-five) per cent Value Addition of the Advance Chemistry Cell and a minimum of INR 225,00,00,000 (Rupees two hundred and twenty five crore only) per GWh of Investment at the Mother Unit, within 2 (two) years from the Appointed Date.
- 6.2.7 The Beneficiary Firm agrees that it shall achieve the Committed Scale of Production and overall Value Addition at the Mother Unit level or through its ancillary units within 5 (five) years from the Appointed Date.
- 6.2.8 The Beneficiary Firm acknowledges that payment of Subsidy shall commence once the Beneficiary Firm exceeds the Value Addition at the Mother Unit level, i.e., achieves greater than 25% (twenty five per cent) of the Committed Scale of Production by the Beneficiary Firm in accordance with the provisions of this Agreement.

ARTICLE 7
PERFORMANCE SECURITY

7.1 Performance Security

- 7.1.1 The Beneficiary Firm shall, for the performance of its obligations hereunder, till 5 (five) years from the Appointed Date, provide to the Government on the date of signing this Agreement, an irrevocable and unconditional guarantee from a bank for a sum equivalent to INR [****]² in the form set forth in Schedule - F (the “**Performance Security**”). Until such time the Performance Security is provided by the Beneficiary Firm pursuant hereto and the same comes into effect, the Bid Security shall remain in force and effect, and upon such provision of the Performance Security pursuant hereto, the Government shall release the Bid Security to the Beneficiary Firm.
- 7.1.2 Notwithstanding anything to the contrary contained in this Agreement, in the event Performance Security is not provided by the Beneficiary Firm in accordance with the provisions of this Agreement, the Government may encash the Bid Security and appropriate the proceeds thereof as Damages, and thereupon all rights, privileges, claims and entitlements of the Beneficiary Firm or under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Beneficiary Firm, and this Agreement shall be deemed to have been terminated by mutual agreement of the Parties.

7.2 Appropriation of Performance Security

- 7.2.1 Upon occurrence of Beneficiary Firm Event of Default, the Government shall, without prejudice to its other rights and remedies hereunder or under Applicable law, be entitled to encash and appropriate from the Performance Security the amounts due to it for and in respect of such Beneficiary Firm Event of Default.
- 7.2.2 Upon such encashment and appropriation from the Performance Security, the Beneficiary Firm shall, within 15 (fifteen) days thereof, replenish, in case of partial appropriation, to its original level the Performance Security, and in case of appropriation of the entire Performance Security provide a fresh Performance Security, as the case may be, and the Beneficiary Firm shall, within the time so granted, replenish or furnish fresh Performance Security as aforesaid failing which the Government shall be entitled to terminate this Agreement. Upon such replenishment or furnishing of a fresh Performance Security, as the case may be, the Beneficiary Firm shall be entitled to an additional cure period of [120 (one hundred and twenty)] days for remedying the Beneficiary Firm Event of Default or for satisfying any Condition Precedent, and in the event of the Beneficiary Firm not curing its default within such cure period, the Government shall be entitled to encash and appropriate such Performance Security as damages, and to terminate this Agreement.

²**Note:** Performance Security shall be 5% (five per cent) of the estimated capital cost per GWh (to be computed as follows: INR 9 hundred crore / GWh * percentage Committed Value Addition) multiplied by the overall capacity (GWh) quoted by the Applicant Company.

7.3 Release of Performance Security

The Performance Security shall remain in force and effect till 5 (five) years from the Appointed Date and shall be returned to the Beneficiary Firm upon termination or expiration of the abovementioned time period.

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ARTICLE 8
CONSTRUCTION OF THE PROJECT AND MANUFACTURE OF ADVANCE
CHEMISTRY CELL

8.1 The Beneficiary Firm shall establish a Project to manufacture Advance Chemistry Cell as per the Committed Scale of Production submitted by the selected bidder in its Bid, provided in Schedule M. No later than 2 (two) years from the Appointed Date, the Beneficiary Firm shall invest at least INR 225,00,00,000 (Rupees two hundred and twenty-five crore only) per GWh (excluding cost of land) (“**Milestones**”).

8.2 Committed Scale of Production

8.2.1 If the Beneficiary Firm fails to achieve the Committed Scale of Production as specified in Schedule - E, the Government shall have the right to deduct from the Subsidy payable under Clause 11.1, 2 (two) times the Subsidy due and payable corresponding to the shortfall from the Committed Scale of Production.

By way of illustration and for the avoidance of doubt, the deduction to the Subsidy shall be computed as follows:

If the Committed Scale of Production is 10 GWh, and the Beneficiary Firm achieves production/sale of 8 GWh, the Government shall deduct Subsidy payable for $2 * (10 - 8) = 4$ GWh. The Beneficiary Firm would, under such circumstance, be paid Subsidy for $(10 - 4) =$ Six (6) GWh of capacity, notwithstanding commissioning of 8 GWh.

8.3 Committed Value Addition

8.3.1 If the Beneficiary Firm fails to achieve the scale of Committed Value Addition as specified in Schedule - E, the Damages shall be estimated by determining the deficit in the Committed Value Addition and the actual Value Addition achieved. This deficit shall be deducted from the Subsidy for the quarter where any such shortfall has been determined. If the deficit is not fulfilled within the immediately subsequent quarter, such Damages may be carried forward to subsequent quarters, until the deficit is adjusted.

By way of illustration and for the avoidance of doubt, the deduction to the Subsidy shall be computed as follows:

If the Beneficiary Firm commits 50% (fifty per cent) Value Addition in its bid but only meets 40% (forty per cent) at the end of the quarter, then there will be a retrenchment in the subsidy paid by the Government. The retrenchment amount shall be subsidy of 40% (forty per cent) Value Addition i.e., the actual Value Addition met by the Beneficiary Firm subtracted from subsidy of 50% (fifty per cent) Value Addition i.e., the Committed Value Addition. This amount will be deducted from the subsidy to be disbursed in the same quarter as way of Damages.

8.4 The Parties agree that in case the Beneficiary Firm fails to achieve Milestone as mentioned under Clause 8.1 and/or the Value Addition as submitted by the selected bidder in the Bid; and the Government deducts Damages pursuant to this Article 8 for 6 (six) consecutive quarters, the Government shall have the right to discontinue payment of any Subsidy and shall amount to Beneficiary Firm Event of Default.

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ARTICLE 9
INDEPENDENT ENGINEER

9.1 Appointment of Independent Engineer

The Government shall appoint a consulting engineering firm, from a panel of 6 (six) firms or bodies corporate, constituted by the Government substantially in accordance with the selection criteria set forth in Schedule-L, to be the independent consultant-under this Agreement (the “**Independent Engineer**”). The appointment shall be made no later than 90 (ninety) days from the date of this Agreement and shall be for the Term of this Agreement. The Government may in its discretion appoint another firm from a fresh panel constituted pursuant to Schedule-L to be the Independent Engineer.

9.2 Duties and functions

9.2.1 The Independent Engineer shall discharge its duties and functions substantially in accordance with the terms of reference set forth in Schedule-L.

9.2.2 The Independent Engineer shall submit to the Government, regular periodic reports at the end of each quarter in respect of its duties and functions set forth in Schedule-L.

9.2.3 True copy of all communications sent by the Government to the Independent Engineer and by the Independent Engineer to the Government, shall be sent forthwith by the Independent Engineer to the Beneficiary Firm.

9.2.4 True copy of all communications sent by the Independent Engineer to the Beneficiary Firm and by the Beneficiary Firm to the Independent Engineer shall be sent forthwith by the Independent Engineer to the Government.

9.3 Remuneration

The remuneration, cost and expenses of the Independent Engineer shall be paid by the Government. One-half of such remuneration, cost and expenses shall be reimbursed by the Beneficiary Firm to the Government within 15 (fifteen) days of receiving a statement of expenditure from the Government.

9.4 Termination of appointment

9.4.1 The Government may, in its discretion, terminate the appointment of the Independent Engineer at any time, but only after appointment of another Independent Engineer in accordance with Clause 9.1.

9.4.2 If the Beneficiary Firm has reason to believe that the Independent Engineer is not discharging its duties and functions in a fair, efficient and diligent manner, it may make a written representation to the Government and seek termination of the appointment of the Independent Engineer. Upon receipt of such representation, the Government shall hold a tripartite meeting with the Beneficiary Firm and Independent Engineer for an amicable resolution of the Dispute, and if any difference or disagreement between the Government and the Beneficiary Firm remains unresolved, the Dispute shall be settled in accordance with the Dispute Resolution Procedure. In the event that the appointment of the Independent Engineer is terminated hereunder, the Government shall appoint forthwith another Independent Engineer in accordance with Clause 9.1.

9.5 Authorised signatories

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

9.6 Dispute resolution

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

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ARTICLE 10
ESCROW ACCOUNT

10.1 Escrow Account

- 10.1.1 The Parties shall, prior to the Appointed Date, execute an Escrow Agreement with the Escrow Bank for the establishment and operation of the Escrow Account. The Parties agree and acknowledge that the Subsidy to be provided to the Beneficiary Firm by the Government shall be deposited in the Escrow Account by the Government as per the terms of Escrow Agreement, as specified in Schedule – C.
- 10.1.2 Subject to Clause 10.1.3, the Parties agree and acknowledge that balance monies, left in the Escrow Account after appropriation of the Subsidy by Beneficiary Firm, shall belong to the Government.
- 10.1.3 The Government agrees and acknowledges that it shall deposit an amount equal to Subsidy due and payable, as submitted in the Bid for 2 (two) quarters in the Escrow Account as security deposit, within 2 (two) months from the Appointed Date (“**Escrow Reserve Amount**”).
- 10.1.4 The Government agrees that during the Term, it shall maintain the Escrow Reserve Amount in the Escrow Account and shall replenish any shortfall within 30 (thirty) days of such shortfall to ensure that the balance therein does not fall below the amount specified in Clause 10.1.3. The Parties agree that failure to comply with this Clause 10.1.4 shall be regarded as the Government Event of Default.

ARTICLE 11
SUBSIDY AND DISBURSEMENT

11.1 Entitlement to Subsidy

- 11.1.1 The Beneficiary Firm shall ensure that the Advance Chemistry Cell manufactured by it in the Project shall be as per the Testing Standards set forth in Schedule – D. The Parties agree that the Government shall disburse the Subsidy under and in accordance with Clause 11.2.
- 11.1.2 Subject to Clause 11.5, 11.6, 11.7 and 11.8, , the Beneficiary Firm shall be entitled to avail the Subsidy in accordance with this Agreement for a period of 10 (ten) years from the Appointed Date.
- 11.1.3 The Beneficiary Firm further agrees that the Subsidy shall be as quoted by the selected bidder in the Bid, subject to any adjustment in accordance with this Agreement.

11.2 Disbursement Mechanism

- 11.2.1 The Subsidy to be paid to the Beneficiary Firm shall be disbursed quarterly upon the Beneficiary Firm fulfilling the requirements forth in Schedule – E.
- 11.2.2 The Beneficiary Firm shall, in addition to the documents specified in Clause 11.3, furnish a letter requesting the Government to disburse the Subsidy in the format as prescribed in Schedule – H, a Subsidy determination form in the format as set forth in Schedule – B, an undertaking certifying the parameters for disbursement of the Subsidy have been met in the format as prescribed in Schedule – I, the commensurate Milestone Completion Certificate issued by the Independent Engineer and an undertaking certifying the Value Addition by business premises, ancillary units or third parties or indigenous manufacturers in the format as prescribed in Schedule – J.
- 11.3 The Beneficiary Firm agrees and undertakes that it shall, in addition to self-certification mentioned in the Clause 11.2, furnish all documents specified in Clause 13.3 for availing the Subsidy and shall provide documentary evidence for the commencement of commercial production from the Directorate of Industries in accordance with Applicable Laws.
- 11.4 The Government shall have the right to, inspect the Project to ensure that the Beneficiary Firm has met its Committed Scale of Production and is eligible for availing the Subsidy.
- 11.5 The Beneficiary Firm agrees that the Subsidy extended by the Government shall be subject to discounting. The Government shall discount the Subsidy by way of a year on year reduction for the Term of the Project. The year wise discounting of the Subsidy as quoted by the Beneficiary Firm under its Bid shall be as follows:

Years from Appointed Date	+1	+2	+3	+4	+5	+6	+7	+8	+9	+10
Reduction	0%	5.0%	5.0%	5.0%	5.0%	10.0%	20.0%	30.0%	40.0%	50.0%
YoY Effective	100%	95%	90%	86%	81%	73%	59%	41%	25%	12%

- 11.6** Notwithstanding anything contained herein, all Taxes (including without limitation direct taxes) applicable on the Project, in respect of Advance Chemistry Cell, shall be borne by the Beneficiary Firm, under and in accordance with Applicable Laws.
- 11.7** Notwithstanding anything contained herein, the Subsidy payable by the Government shall in no event exceed 20% (twenty per cent) of the sale price of the Advance Chemistry Cell i.e., the effective total turnover on account of sale of Advance Chemistry Cells manufactured and sold by the Beneficiary Firm during the Term of this Agreement. For the avoidance of any doubt, it is clarified that for the purpose of calculation of such 20% (twenty per cent), Taxes shall be excluded from the sale price of the Advance Chemistry Cell.
- 11.8** Notwithstanding anything contained herein, the cumulative Subsidy payable by the Government to the Beneficiary Firm during the Term of this Agreement, shall not exceed INR 1,420 crore (Rupees one thousand and four hundred and twenty crores) per GWh.

ARTICLE 12
INSPECTION

- 12.1** The Government shall have a right to inspect the Project to determine compliance with Schedule-D hereto, including Advance Chemistry Cell manufactured, at least once each quarter. It shall make a report of such inspection (the “**Inspection Report**”) stating in reasonable detail the defects or deficiencies, if any and send a copy thereof to the Beneficiary Firm within 15 (fifteen) days of such inspection.
- 12.2** The Beneficiary Firm shall repair or rectify the defects or deficiencies, if any, set forth in the Inspection Report and furnish a report in respect thereof to the Government within 15 (fifteen) days of receiving the Inspection Report, provided that where the remedying of such defects or deficiencies is likely to take more than 15 (fifteen) days, the Beneficiary Firm shall submit progress reports once every week until such works are completed in conformity with this Agreement.
- 12.3** The Beneficiary Firm shall intimate in writing to the Government and the Independent Engineer of its readiness to complete each milestones specified in the Bid (as specified in Clause 6.2), along with detailed proof of completing each such activity. The Government shall, within [7 (seven)] days of receiving such written intimation, cause the Independent Engineer to inspect the relevant documents and the Project to determine compliance by the Beneficiary Firm with fulfilment of such milestones. Upon being satisfied that the Beneficiary Firm has duly complied with all the requirements set forth in this Agreement and as provided in the Bid for achieving each such milestone, the Independent Engineer shall within a period no longer than [21 (twenty-one)] days from such inspection, issue to the Beneficiary Firm a milestone Completion Certificate (the “**Milestone Completion Certificate**”). In the event of any deficiencies or shortcomings, the Independent Engineer shall notify the same to the Beneficiary Firm within [7 (seven)] days of such inspection, and the Beneficiary Firm shall rectify/ remove the deficiencies within such period to the reasonable satisfaction of and as specified by the Independent Engineer, who shall thereafter issue the relevant Milestone Completion Certificate within [7 (seven)] days from the date of such rectification/ removal of deficiencies and intimation by Beneficiary Firm to the Independent Engineer. It is clarified that the Beneficiary Firm shall not be entitled to receive any Subsidy in accordance with Article 11, till the issuance of the corresponding Milestone Completion Certificate is issued by the Independent Engineer. For the avoidance of any doubt, it is clarified that the milestones referred to in this Clause 12.3 shall include the Investment specified in Clause 8.1.1 and the phased capacity fulfilment by the Beneficiary Firm, as specified in the Bid.
- 12.4** In the event that remedial measures are not completed by the Beneficiary Firm in accordance with the provisions of this Agreement, it shall amount to the Beneficiary Firm Event of Default.

ARTICLE 13
AUDIT AND ACCOUNTS

- 13.1** The Beneficiary Firm shall maintain books of accounts recording all its receipts, income, expenditure, payments, assets, and liabilities, in accordance with this Agreement, Applicable Laws and Applicable Permits.
- 13.2** The Beneficiary Firm shall provide 2 (two) copies of its Balance Sheet, Cash Flow Statement and Profit and Loss Account, along with a report thereon by its statutory auditor, within [60 (sixty) days] of the close of every Financial Year. The Government shall have the right to inspect the records of the Beneficiary Firm during office hours and require copies of relevant extracts of books of accounts, duly certified by the statutory auditor and in the event of any discrepancy or error being found, the same shall be rectified.
- 13.3** The Beneficiary Firm agrees that for availing the Subsidy, it shall furnish the following documents to the Government:
- (a) Certified statements by its statutory auditor evidencing receipt of quantum and value of raw material, inputs, semi-finished goods, capital goods, and finished goods, along with the respective tax credit, if applicable;
 - (b) A certificate from its statutory auditor certifying the sales and capacity of manufactured goods/trading goods/scrap/ stock transfer and GST paid the amount of sales reported in financial statements and GST returns;
 - (c) Unit level audited accounts for the relevant Financial Year issued by a statutory auditor, where the Beneficiary Firm is operating through various ancillary units; or
 - (d) GST audit report for the relevant Financial Year for the Beneficiary Firm.
- 13.4** The Beneficiary Firm shall, within [30 (thirty) days] of the close of each quarter of a Financial Year, furnish to the Government its unaudited financial results in respect of the preceding quarter, in the manner and form prescribed under Applicable Law and as may be required by the Government.
- 13.5** Notwithstanding anything to the contrary contained in this Agreement, the Government shall have the right, but not the obligation, to appoint at its cost from time to time and at any time, another independent firm to audit and verify all those matters, expenses, costs, realizations and things which the statutory auditor are required to do, undertake or certify pursuant to this Agreement.

ARTICLE 14

FORCE MAJEURE

14.1 Force Majeure

As used in this Agreement, the expression “**Force Majeure**” or “**Force Majeure Event**” shall mean, save and except as expressly provided otherwise, occurrence in India of any or all of Non-Political Event, Indirect Political Event and Political Event, as defined in Clauses 14.2, 14.3 and 14.4, 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.

14.2 Non-Political Event

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

- (a) act of God, epidemic, 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 Project);
- (b) strikes or boycotts (other than those involving the Beneficiary Firm, Contractor 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 a Financial Year, and not being an Indirect Political Event set forth in Clause 14.3;
- (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 Beneficiary Firm by or on behalf of such Contractor;
- (d) any delay or failure of an overseas Contractor to deliver equipment in India if such delay or failure is caused outside India by any event specified in Sub-clause (a) above and which does not result in any offsetting compensation being payable to the Beneficiary Firm by or on behalf of such Contractor;
- (e) any judgement or order of any court of competent jurisdiction or statutory authority made against the Beneficiary Firm in any proceedings for reasons other than (i) failure of the Beneficiary Firm 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 Government;
- (f) the discovery of geological conditions, toxic contamination or archaeological remains on the Project that could not reasonably have been expected to be discovered through a site inspection; or
- (g) any event or circumstances of a nature analogous to any of the foregoing.

14.3 Indirect Political Event

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

- (a) an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;
- (b) any political or economic upheaval, disturbance, movement, struggle or similar occurrence which could not have been anticipated or foreseen by a prudent person and which causes the construction or operation of the Project to be financially unviable or otherwise not feasible;
- (c) industry-wide or State-wide strikes or industrial action for a continuous period of [24 (twenty-four)] hours and exceeding an aggregate period of [7 (seven)] days in a Financial Year;
- (d) any civil commotion, boycott or political agitation which prevents production and assembly of Advance Chemistry Cell or fulfilment of obligations by the Beneficiary Firm for an aggregate period exceeding [15 (fifteen)] days in a Financial Year;
- (e) failure of the Government to permit the Beneficiary Firm to continue its construction works, with or without modifications, in the event of stoppage of such works after discovery of any geological or archaeological finds or for any other reason;
- (f) any failure or delay of a Contractor to the extent caused by any Indirect Political Event and which does not result in any offsetting compensation being payable to the Beneficiary Firm by or on behalf of such Contractor;
- (g) any Indirect Political Event that causes a Non-Political Event; or
- (h) any event or circumstances of a nature analogous to any of the foregoing.

14.4 Political Event

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

- (a) Change in Law, only if consequences thereof cannot be dealt with under and in accordance with the provisions of Article 15 and its effect, in financial terms, exceeds the sum specified in Clause 15.1;
- (b) compulsory acquisition in national interest or expropriation of any assets or rights in relation to the Project, of the Beneficiary Firm or Contractors;
- (c) unlawful or unauthorised or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, licence, permit, authorisation, no objection certificate, consent, approval or exemption required by the Beneficiary Firm or any of the Contractors to perform their respective obligations under this Agreement and the;

provided that such delay, modification, denial, refusal or revocation did not result from the Beneficiary Firm's or any Contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, licence, authorisation, no objection certificate, exemption, consent, approval or permit;

- (d) any failure or delay of a Contractor but only to the extent caused by another Political Event and which does not result in any offsetting compensation being payable to the Beneficiary Firm by or on behalf of such Contractor; or
- (e) any event or circumstance of a nature analogous to any of the foregoing.

14.5 Duty to report Force Majeure Event

14.5.1 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 14 with evidence in support thereof;
- (b) the estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Agreement;
- (c) the measures which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Event; and
- (d) any other information relevant to the Affected Party's claim.

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

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

14.6 Effect of Force Majeure Event on the Contract

14.6.1 Upon the occurrence of any Force Majeure Event prior to the Appointed Date, the period set forth in Clause 2.1 for fulfilment of Conditions Precedent and for achieving the Appointed Date shall be extended by a period equal in length to the duration of the Force Majeure Event.

14.6.2 At any time after the Appointed Date, if any Force Majeure Event occurs, the Term shall be extended by a period, equal in length to the period during which the Beneficiary Firm was prevented from performing its obligations.

14.7 Allocation of costs arising out of Force Majeure

- 14.7.1 Upon occurrence of any Force Majeure Event prior to the Appointed Date, the Parties shall bear their respective costs and no Party shall be required to pay to the other Party any costs thereof.
- 14.7.2 Upon occurrence of a Force Majeure Event after the Appointed Date, the costs incurred and attributable to such event and directly relating to the Project (the “**Force Majeure Costs**”) shall be allocated and paid as follows:
- (a) upon occurrence of a Non-Political Event, the Parties shall bear their respective Force Majeure Costs and neither Party shall be required to pay to the other Party any costs thereof;
 - (b) upon occurrence of an Indirect Political Event, all Force Majeure Costs attributable to such Indirect Political Event, and not exceeding the insurance proceeds, if any for such Indirect Political Event, shall be borne by the Beneficiary Firm, and to the extent Force Majeure Costs exceed such insurance cover, one half of such excess amount shall be reimbursed by the Government to the Beneficiary Firm; and
 - (c) upon occurrence of a Political Event, all Force Majeure Costs attributable to such Political Event shall be reimbursed by the Government to the Beneficiary Firm.

For avoidance of doubt, Force Majeure Costs may include costs directly attributable to the Force Majeure Event, but shall not include loss of revenues or debt repayment obligations.

- 14.7.3 Save and except as expressly provided in this Article 14, 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.

14.8 Termination Notice for Force Majeure Event

If a Force Majeure Event subsists for a period of [90 (ninety)] days or more within a continuous period of [365 (three hundred and sixty five)] days, or for a continuous period of [90 (ninety) days] in any given time-frame, 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 14, 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 a period of [15 (fifteen)] days 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.

14.9 Compensation Payment for Force Majeure Event

- 14.9.1 If Termination is on account 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.

14.9.2 If Termination is on account of an Indirect Political Event, all Force Majeure Costs attributable to such Indirect Political Event, and not exceeding the insurance proceeds, if any for such Indirect Political Event, shall be borne by the Beneficiary Firm, and to the extent Force Majeure Costs exceed such insurance cover, one half of such excess amount shall be reimbursed by the Government to the Beneficiary Firm.

14.9.3 If Termination is on account of a Political Event, the Government shall pay a Compensation Payment to the Beneficiary Firm in an amount that would be payable under Article 16 as if it were a Government Event of Default.

14.10 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; 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.

14.11 Excuse from performance of obligations

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

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

14.11.2 The Parties agree that the Beneficiary Firm shall develop alternate or standby arrangements for provision of goods and services in accordance with Good Industry Practice and failure on this account shall not excuse the Beneficiary Firm from performance of its obligations hereunder.

ARTICLE 15

CHANGE IN LAW

15.1 Increase in costs

If as a result of Change in Law, the Beneficiary Firm suffers an increase in costs or reduction in net after-tax return or other financial burden, the aggregate financial effect of which exceeds the higher of INR [5 (five) crores] per GWh of Committed Scale of Production in any Financial Year, the Beneficiary Firm may so notify the Government and propose amendments to this Agreement so as to place the Beneficiary Firm in the same financial position as it would have enjoyed had there been no such Change in Law resulting in the cost increase, reduction in return or other financial burden as aforesaid. Upon notice by the Beneficiary Firm, the Parties shall meet, as soon as reasonably practicable but no later than 30 (thirty) days from the date of notice, and either agree on amendments to this Agreement or on any other mutually agreed arrangement:

Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the Beneficiary Firm may by notice request the Government to pay an amount that would place the Beneficiary Firm in the same financial position that it would have enjoyed had there been no such Change in Law, and within 15 (fifteen) days of receipt of such notice, along with particulars thereof, the Government shall pay the amount specified therein; provided that if the Government shall dispute such claim of the Beneficiary Firm, the same shall be settled in accordance with Article 17. For the avoidance of doubt, it is agreed that this Clause 15.1 shall be restricted to changes in law directly affecting the Beneficiary Firm's costs of performing its obligations under this Agreement.

15.2 Reduction in costs

If as a result of Change in Law, the Beneficiary Firm benefits from a reduction in costs or increase in net after-tax return or other financial gains, the aggregate financial effect of which exceeds the higher of INR [5 (five) crores] per GWh of Committed Scale of Production in any Financial Year, the Government may so notify the Beneficiary Firm and propose amendments to this Agreement so as to place the Beneficiary Firm in the same financial position as it would have enjoyed had there been no such Change in Law resulting in the decreased costs, increase in return or other financial gains as aforesaid. Upon notice by the Government, the Parties shall meet, as soon as reasonably practicable but no later than 30 (thirty) days from the date of notice, and either agree on such amendments to this Agreement or on any other mutually agreed arrangement:

Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the Government may by notice require the Beneficiary Firm to pay an amount that would place the Beneficiary Firm in the same financial position that it would have enjoyed had there been no such Change in Law, and within 15 (fifteen) days of receipt of such notice, along with particulars thereof, the Beneficiary Firm shall pay the amount specified therein to the Government; provided that if the Beneficiary Firm shall dispute such claim of the Government, the same shall be settled in accordance with Article 17. For the avoidance of doubt, it is agreed

that this Clause 15.2 shall be restricted to changes in law directly affecting the Beneficiary Firm's costs of performing its obligations under this Agreement.

15.3 Protection of NPV

Pursuant to the provisions of Clauses 15.1 and 15.2 and for the purposes of placing the Beneficiary Firm in the same financial position as it would have enjoyed had there been no Change in Law affecting the costs, returns or other financial burden or gains, the Parties shall rely on the financial model to establish a net present value (the "NPV") of the net cash flow and make necessary adjustments in costs, revenues, compensation or other relevant parameters, as the case may be, to procure that the NPV of the net cash flow is the same as it would have been if no Change in Law had occurred.

15.4 Restriction on cash compensation

The Parties acknowledge and agree that the demand for cash compensation under this Article 15 shall be restricted to the effect of Change in Law during the respective Financial Year and shall be made at any time after commencement of such year, but no later than one year from the close of such Financial Year. Any demand for cash compensation payable for and in respect of any subsequent Financial Year shall be made after the commencement of the Financial Year to which the demand pertains, but no later than 2 (two) years from the close of such Financial Year.

ARTICLE 16
EVENTS OF DEFAULT AND TERMINATION

16.1 Beneficiary Firm Event of Default

16.1.1 The occurrence of any of the following events would constitute an event of default on the part of the Beneficiary Firm (“**Beneficiary Firm Event of Default**”), unless such an event occurs due to Force Majeure Event or the Government Event of Default:

- (a) the Beneficiary Firm fails to meet any Condition Precedent, within a cure period of 60 (sixty) days;
- (b) appropriation of Performance Security for continuous default under Clause 7.2 for a period of 5 (five) consecutive quarters;
- (c) occurrence of any Insolvency Event;
- (d) if the Damages is levied for 6 (six) consecutive quarters owing to a non-achievement of Committed Scale of Production and/or the Committed Value Addition; and
- (e) breach of any other obligations under this Agreement.

16.2 Government Event of Default

16.2.1 The occurrence of any of the following events would constitute an event of default on the part of the Government (“**Government Event of Default**”), unless such an event occurs due to Force Majeure Event or Beneficiary Firm Event of Default:

- (a) the Government fails to meet any Condition Precedent, within a cure period of 30 (thirty) days;
- (b) the Government fails to disburse Subsidy to the Beneficiary Firm for a continuous period of 6 (six) months; and
- (c) failure to maintain Escrow Reserve Amount as specified in Clause 10.1.4 of this Agreement.

16.3 Termination for Beneficiary Firm Event of Default

16.3.1 Upon the occurrence of any Beneficiary Firm Event of Default for continuance period of 30 (thirty) days, the Government may deliver a default notice (“**Beneficiary Firm’s Default Notice**”), specifying the reasonable details and calling upon the Beneficiary Firm to remedy the same.

16.3.2 Unless the Parties have mutually agreed otherwise, or the Beneficiary Firm Event of Default has been remedied within a period of 15 (fifteen) days, the Government may terminate this Agreement by serving a 7 (seven) days’ notice (“**Beneficiary Firm’s Termination Notice**”) to such effect to the Beneficiary Firm.

16.3.3 Upon delivery of the Beneficiary Firm's Termination Notice, this Agreement shall stand terminated from the date of Beneficiary Firm's Termination Notice. Upon such termination, the Beneficiary Firm shall stand discharged of all its obligations, except for those that had accrued prior to the date of termination of this Agreement.

16.4 Termination for the Government Event of Default

16.4.1 Upon the occurrence of any the Government Event of Default for continuance period of 60 (sixty) days, the Beneficiary Firm may deliver a default notice ("**Government Default Notice**"), specifying the reasonable details and calling upon the Government to remedy the same.

16.4.2 Unless the Parties have mutually agreed otherwise, or the Government Event of Default has been remedied within a period of 30 (thirty) days, the Beneficiary Firm may terminate this Agreement by serving a 15 (fifteen) days' notice ("**Government Termination Notice**") to such effect to the Government.

16.4.3 Upon delivery of the Government's Termination Notice, this Agreement shall stand terminated from the date of the Government's Termination Notice. Upon such termination, the Government shall stand discharged of all its obligations, except for those that had accrued prior to the date of termination of this Agreement.

16.5 Compensation Payment

16.5.1 Upon Termination on account of a Government Event of Default after 2 (two) years from the Appointed Date but prior to 5 (five) years from the Appointed Date, the Government shall pay to the Beneficiary Firm, by way of Compensation Payment, NPV of the Subsidy due for a period of 3 (three) years. The Subsidy due to the Beneficiary Firm by way of Compensation Payment shall be calculated as per the Value Addition and quantity of Advance Chemistry Cell sold by the Beneficiary Firm, in the preceding quarter in accordance with this Agreement.

16.5.2 Notwithstanding anything to the contrary contained in Clause 16.5.1, upon Termination on account of a Government Event of Default after 5 (five) years from the Appointed Date, the Government shall pay to the Beneficiary Firm, by way of Compensation Payment, NPV of the Subsidy due for the remaining Term or 3 (three) years, whichever is lower. The Subsidy due to the Beneficiary Firm by way of Compensation Payment under this Clause shall be calculated as per the Value Addition and quantity of Advance Chemistry Cell sold by the Beneficiary Firm, as an average between the 5th (fifth) anniversary of the Appointed Date and the date of termination of this Agreement. .

16.5.3 The Parties agree that the Beneficiary Firm shall not be eligible to receive any Compensation Payment in the event the Beneficiary Firm has not commenced production and manufacturing of the Advance Chemistry Cells.

16.5.4 Compensation Payment shall become due and payable to the Beneficiary Firm within [60 (sixty)] days of a demand being made by the Beneficiary Firm to the Government with the necessary particulars, and in the event of any delay, the Government shall pay interest at a rate equal to an additional 1% (one per cent) of the current SBI MCLR; provided that such delay

shall not exceed [90 (ninety)] days; it is expressly agreed that Compensation Payment shall constitute full discharge by the Government of its payment obligations in respect thereof hereunder.

16.5.5 The Beneficiary Firm expressly agrees that Compensation Payment under this Article 16 shall constitute a full and final settlement of all claims of the Beneficiary Firm on account of Termination of this Agreement for any reason whatsoever and that the Beneficiary Firm or any shareholder thereof shall not have any further right or claim of any nature under any law, treaty, convention, contract, equity or otherwise.

16.5.6 The Parties agree that the Government shall pay such Compensation Payment for an amount not more than the actual Investment made by the Beneficiary Firm as a consequence of the Government Event of Default.

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ARTICLE 17
DISPUTE RESOLUTION

17.1 Dispute resolution

17.1.1 Notwithstanding anything to contrary contained in this Agreement including Clause 17.1, 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 (“**Dispute**”) shall, in the first instance, be attempted to be resolved amicably in accordance with the procedure set forth in Clauses 17.2, 17.3 and 17.4.

17.2 Conciliation

17.2.1 In the event of any Dispute between the Parties, either Party may require such Dispute to be referred to the authorised representative of Beneficiary Firm and the authorised representative of Government for an amicable settlement. In the event the Dispute is not amicably settled within 15 (fifteen) days of the meeting of the authorised representative of each Party 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 17.1.1 or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to the DRB in accordance with the provisions of Clause 17.3.

17.3 Dispute Resolution Board

17.3.1 Failing Conciliation by the authorised representatives of the Parties as set out in Clause 17.2 above, either Party may require such Dispute to be referred to the Dispute Resolution Board (“**DRB**”) in accordance with the procedure set forth in Schedule – K. The decision(s) of the DRB shall be binding on both Parties who shall promptly give effect to unless and until the same is amended, as hereinafter provided, during Arbitration.

17.4 Arbitration

17.4.1 Any Dispute which is not resolved amicably by conciliation, as provided in Clause 17.2, or through the DRB, as provided in Clause 17.3, shall be finally decided by reference to arbitration in accordance with the rules of the Delhi International Arbitration Centre (“**DIAC**”).

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

17.4.3 The seat and venue of arbitration shall be at New Delhi.

17.4.4 The arbitration panel shall consist of [3 (three)] arbitrators to be appointed in accordance with the rules of DIAC. The language of the arbitration shall be English.

17.4.5 The arbitral tribunal shall make a reasoned award (the “**Award**”). Any Award made in any arbitration help pursuant to this Article 17 shall be final and binding on the Parties as from the date it is made, and the Government and the Beneficiary Firm agree and undertake to carry out such Award without delay.

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

17.4.7 The Parties shall bear their respective costs of arbitration.

17.4.8 The Parties agree that in the event the Party against whom the Award has been granted challenges the Award for any reason in a court of law, it shall make an interim payment to the other Party for an amount equal to 75% (seventy five per cent) of the Award, pending final settlement of the Dispute. The aforesaid amount shall be paid forthwith upon furnishing an irrevocable bank guarantee for a sum equal to the aforesaid amount. Upon final settlement of the Dispute, the aforesaid interim payment shall be adjusted and any balance amount due to be paid or returned, as the case may be, shall be paid or returned with interest calculated at the rate of 10% (ten per cent) per annum from the date of interim payment to the date of final settlement of such balance.

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ARTICLE 18
MISCELLANEOUS

18.1 Governing law and jurisdiction

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

18.2 Waiver of sovereign immunity

The Government unconditionally and irrevocably:

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

18.3 No Waiver

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

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

Neither the failure by 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.

18.4 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.

18.5 Survival

18.5.1 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.

18.5.2 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.

18.6 Notices

All notices or other communications to be given or made under this Agreement shall be in writing, shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or e-mail. The address for service of each Party, its facsimile number and e-mail address are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on any day, or on a day that is a public holiday, the notice shall be deemed to be received on the first working day following the date of actual receipt. Without prejudice to the foregoing, a 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.

18.7 Language

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

18.8 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.

18.9 Confidentiality

- (a) The Parties agree that all aspects of the content of this Agreement shall be treated as confidential and no information in respect thereof shall be disclosed without prior written consent of the other Party.
- (b) Sub-clause (a) does not apply to confidential information which: (i) at the date of disclosure by and on behalf of one Party to the other Party or that other party's professional advisers is in the public domain, or (ii) after such disclosure, enters the public domain through no fault of that Party or its professional advisers, or (iii) was lawfully in the possession of that Party or its professional advisers at the date of hereof as evidenced by the written records of that Party or its professional advisers, and which was not acquired directly or indirectly from such first Party, or (iv) is required under the Applicable Law or order of any competent court.

18.10 Binding Nature

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

18.11 Further Assurance

Each Party agrees to execute, acknowledge, deliver, file record and publish such further contracts, certificates, amendments to certificates, instruments and documents, and do all such other acts and things as may be required by law, or as may be required to carry out the intent and purposes of this Agreement.

18.12 Heading and References

The clause headings are for convenience only and do not form part of this Agreement and references to Clause and Annexures shall be deemed to be references to clauses and Annexures of this Agreement unless the context expressly provides otherwise.

18.13 Counterparts

This Agreement may be executed in one or more duplicate counterparts, and when executed and delivered by the Parties, shall constitute a single binding agreement.

18.14 Amendment

This Agreement can be amended or supplemented only with the written consent of both the Parties.

18.15 Stamp Duty and Registration Costs

The Parties shall bear all charges equally on account of stamping or registration of this Agreement that may be applicable and is levied by the concerned authorities on registration of this Agreement.

18.16 Severability

- (a) The Parties agree that if any provision of this Agreement is or becomes invalid, illegal, or unenforceable, the validity, legality or enforceability of the remaining provisions shall not in any way be affected or impaired.
- (b) Notwithstanding the foregoing, the Parties shall thereupon negotiate in good faith in order to agree to the terms of a mutually satisfactory provision, achieving as nearly as possible the same commercial effect, to be substituted for the provision so found to be void or unenforceable.

18.17 Relationship of the Parties

This Agreement shall not be interpreted or construed to be or create an association, joint venture, or partnership between the Parties or to impose any partnership obligation or liability upon either Party. 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.

18.18 Entire Agreement

This Agreement and any other transaction documents to which both Parties are a party constitute the entire agreement of the parties relating to the subject matter hereof. There are no promises, terms, conditions, obligations, or warranties other than those contained in this Agreement. This Agreement supersedes all prior communications, representations, RFP or agreements, verbal or written, among the Parties relating to the subject matter hereof.

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

FOR [Government of India] <hr/> Authorised Signatory Name: Designation: Witnessed by: Name: Designation:	FOR [•] <hr/> Authorised Signatory Name: Designation: Witnessed by: Name: Designation:
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SCHEDULE – A
APPLICABLE PERMITS FOR ESTABLISHING PROJECT

1. Clearance / Permit Requirements

Below is an indicative list of Applicable Permits for setting up the new manufacturing project as specified by Department for Promotion of Industry and Internal Trade:

Clearance/ permit	Agency concerned
Incorporation of Company	Registrar of Companies
Registration/IEM (Industrial Entrepreneur Memorandum/Industrial license	District Industry Center for Small Scale Industries (SSI) /Secretariat of Industrial Assistance (SIA) for large and medium industries
Allotment of land	State Directorate of Industries (DI) /State Industrial Development Corporation (SIDC)/Infrastructure Corporation/Small Scale Industrial Development Corporation (SSIDC)
Permission for land use (in case industry is located outside an industrial area)	a. State Directorate of Industries b. Department of Town and Country c. Planning d. Local authority/District Collector
NOC and consent to establish and operate under Water and Air Pollution Control Acts	State Pollution Control Board
Approval of construction activity and building plan	a. Town and country planning b. Municipal and local authorities c. Chief Inspector of Factories d. Pollution Control Board e. Electricity Board
Sanction of Power	State Electricity Board / State Power distribution utility or company
Tax Registration	a. State and Central GST Department b. State Department of Revenue
Extraction of Minerals (if required)	State Director of Mines and Geology
Code Number for Export and Import	Regional Office of Director General of Foreign Trade

SCHEDULE – B
SUBSIDY GRANTED TO THE BENEFICIARY FIRM
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**Annex - I
Subsidy Determination Form**

(For the purpose of releasing subsidy under “National Programme on Advance Chemistry Cell (ACC) Battery Storage”)

Beneficiary Name	CIN Number
Subsidy eligibility certificate No.	Subsidy eligibility certificate validity
From Month	To Month

I, _____ (Name, authorized signatory), on behalf of M/s _____ (Beneficiary name) being an applicant for release of subsidy under “National Programme on Advance Chemistry Cell (ACC) Battery Storage” with LOA number _____ (bid LOA number) hereby confirm that my subsidy during the period _____ to _____ (quarter months) is calculated to be INR.

a. Quantity of cells sold during period (Nos.):

HSN no.	Quantity (nos)

b. Quantity of cells sold during period (kWh):

HSN no.	Quantity (kWh)

c. Effective Subsidy per kWh (as per Programme Agreement) (INR):

HSN no.	Subsidy (INR / kWh)

d. Percentage of value capture (as per Certificate for value capture in India):

HSN no.	Value capture (%)

e. Overall subsidy amount (b x c x d) (INR):

HSN no.	Value capture (%)

.....
Authorized Signatory with date, Name and Seal
(Name of Beneficiary)
Designation.....

Seal

Verified by

.....
Name of Statutory Auditor

Seal

SCHEDULE – C
ESCROW AGREEMENT

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

AMONGST

- 1 Limited, a company incorporated under the provisions of the Companies Act, 2013 and having its registered office at (hereinafter referred to as the “**Beneficiary Firm**” which expression shall, unless repugnant to the context or meaning thereof, include its successors, permitted assigns and substitutes).
- 2 (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 The Government of India (“**GoI**”), through Department of Heavy Industry, Ministry of Heavy Industries and Public Enterprises (hereinafter referred to as the “**Government**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors, and assigns).

WHEREAS:

- (A) The Government has entered into a Programme Agreement dated with the Beneficiary Firm for pre-qualification and short-listing of bidders entitled to receive a subsidy (“**Subsidy**”) on the basis of the Advance Chemistry Cell manufactured by it (including scale of Advance Chemistry Cell production and Advance Chemistry Cell’s Value Addition in India) (“**Project**”), and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.
- (B) The Programme Agreement requires the Government 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;

“Programme Agreement” means the agreement entered into by both Parties for carrying out the Subsidy, 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 Beneficiary Firm or the Government, as the case may be and shall commence from the date on which a notice is delivered by the Government or Beneficiary Firm, to the Beneficiary Firm or the Government, as the case may be, with either the Beneficiary Firm or the Government asking the other Party 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 Programme Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Programme 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 Programme Agreement shall apply, *mutatis mutandis*, to this Agreement.

2 ESCROW ACCOUNT

2.1 Escrow Bank to act as trustee

2.1.1 The Beneficiary Firm hereby appoints the Escrow Bank to act as trustee for the Government, and the Beneficiary Firm 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 Beneficiary Firm 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 Government and the Beneficiary Firm and applied in accordance with the terms of this Agreement. No person other than the Government and the Beneficiary Firm 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 Government 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 Government and the Beneficiary Firm 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 {insert number of days} days from the date of this Agreement, and in any case prior to the Appointed Date, the Beneficiary Firm shall open and establish the Escrow Account with the..... (name of Branch) Branch of the Escrow Bank. The Escrow Account shall be denominated in INR.

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 Beneficiary Firm shall, after consultation with the Government 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 Parties. Such fee and expenses shall be appropriated from the Escrow Account in accordance with Clause 4.1.

2.5 Rights of the parties

The rights of the Government and the Beneficiary Firm in the monies held in the Escrow Account are set forth in their entirety in this Agreement and the Government and the Beneficiary Firm shall have no other rights against or to the monies in the Escrow Account.

3 DEPOSITS INTO ESCROW ACCOUNT

3.1 Deposit by the Government

3.1.1 The Government agrees and undertakes that it shall deposit into and/or credit the Escrow Account with;

- (a) Subsidy in accordance with Article 11 of the Programme Agreement wherein the Government shall at all times throughout the Term of the Programme Agreement maintain in the Escrow Account, a balance of at least an amount equivalent to {2 (two)} months' estimated Subsidy;
- (b) Any other monies disbursed by the Government to the Beneficiary Firm;
- (c) Damages payable to the Beneficiary Firm; and
- (d) Compensation Payment.

4 WITHDRAWALS FROM ESCROW ACCOUNT

4.1 Withdrawals during Term

4.1.1 At the beginning of every month, or at such intervals as the Government 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 payments towards taxes and other statutory levies, payable by the Beneficiary Firm for and in respect of the Project;
- (b) all payments and Damages certified by the Government as due and payable to it by the Beneficiary Firm pursuant to the Programme Agreement; and
- (c) balance, if any, in accordance with the instructions of the Beneficiary Firm.

4.2 Withdrawals upon Termination

Upon Termination of the Programme Agreement, all amounts standing to the credit of the Escrow Account shall, notwithstanding anything in this Agreement, shall be appropriated in the following order:

- (a) all taxes due and payable by the Beneficiary Firm for and in respect of the Project;
- (b) all payments and Damages certified by the Government as due and payable to it by the Beneficiary Firm pursuant to the Programme Agreement and any claims in connection with or arising out of Termination; and
- (c) retention and payments arising out of, or in relation to, liability for defects and deficiencies set forth in the Programme Agreement.

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. 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.

5 OBLIGATIONS OF THE ESCROW BANK

5.1 Segregation of funds

Monies 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

[•] business days prior to each Payment Date (and for this purpose the Escrow Bank shall be entitled to rely on an affirmation by the Government as to the relevant Payment Dates), the Escrow Bank shall notify the Government of the balances and any anticipated shortfall in the Escrow Account and Sub-Accounts as at the close of business on the immediately preceding business day. In the event of any such shortfall, the Government shall meet the same by crediting adequate sums to the Escrow Account from its own financial sources.

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 Government upon a certificate signed by or on behalf of the Government;
- (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 [•] Business Days after receipt, deliver a copy to the Government acting through..... (name to be specified by the Government) of any notice or document received by the Escrow Bank (in its capacity as the Escrow Bank) from the Beneficiary Firm or any other person hereunder or in connection herewith;
- (d) shall, within [•] Business Days after receipt, deliver a copy to the Beneficiary Firm of any notice or document received by the Escrow Bank (in its capacity as the Escrow Bank) from the Government or any entity in connection herewith.

5.4 No set off

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

5.5 Regulatory approvals

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

6 ESCROW DEFAULT

6.1 Escrow Default

6.1.1 Government Default

Following events shall constitute an event of default by the Government (a “Government Escrow Default”) unless such event of default has occurred as a result of Force Majeure or any act or omission of the Beneficiary Firm:

- (a) the Government commits breach of this Agreement by failing to deposit any monies 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 [•] business days;
- (b) the Government causes the Escrow Bank to transfer funds to any account of the Government 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 [•] business days; or
- (c) the Government commits or causes any other breach of the provisions of this Agreement and fails to cure the same within a Cure Period of [•] business days.

6.1.2 Beneficiary Firm Default

Following events shall constitute an event of default by the Beneficiary Firm (a “Beneficiary Firm Escrow Default”) unless such event of default has occurred as a result of Force Majeure or any act or omission of the Government:

- (a) the Beneficiary Firm causes the Escrow Bank to transfer funds to any account of the Beneficiary Firm 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 [•] business days;
- (b) the Beneficiary Firm commits or causes any other breach of the provisions of this Agreement and fails to cure the same within a Cure Period of [•] business days.

6.1.3 Upon occurrence of a Government Escrow Default or Beneficiary Firm Escrow Default, as the case may be, the consequences thereof shall be dealt with under and in accordance with the provisions of the Programme Agreement.

7 TERMINATION OF ESCROW AGREEMENT

7.1 Duration of the Escrow Agreement

This Agreement shall unless terminated earlier by the mutual consent of the Parties or otherwise in accordance with the provisions of this Clause by written notice from the Government and the Beneficiary Firm to the Escrow Bank, remain in full force and effect for the duration of the Programme Agreement.

7.2 Substitution of Escrow Bank

The Government may after consultation with the Beneficiary Firm, by not less than [•] days prior notice to the Escrow Bank, terminate this Agreement and appoint a new Escrow Bank, provided that arrangements are made for transfer of amounts deposited in the Escrow Account to a new Escrow Account established with the successor Escrow Bank. The termination of this Agreement shall take effect only upon coming into force of an Escrow Agreement with the substitute Escrow Bank.

7.3 Closure of Escrow Account

The Escrow Bank shall, at the request of the Government made on or after the payment by the Government of all outstanding amounts under the Programme 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 Government. Upon closure of the Escrow Account hereunder, the Escrow Agreement shall be deemed to be terminated.

8 SUPPLEMENTARY ESCROW AGREEMENT

8.1 Supplementary escrow agreement

The Government and the Beneficiary Firm shall be entitled to enter into a supplementary escrow agreement with the Escrow Bank providing, inter alia, for detailed procedures and documentation for withdrawals from Sub-Accounts pursuant to Clause 4.1.1 and for matters not covered under this Agreement such as the restrictions on withdrawals by the Beneficiary Firm or the Government in the event of breach of this Agreement or upon occurrence of an Escrow Default, procedures relating to operation of the Escrow Account and withdrawal therefrom, reporting requirements and any matters incidental thereto; provided that such supplementary escrow agreement shall not contain any provision which is inconsistent with this Agreement and in the event of any conflict or inconsistency between provisions of this Agreement and such supplementary escrow agreement, the provisions of this Agreement shall prevail.

9 INDEMNITY

9.1 General indemnity

9.1.1 The Government will indemnify, defend and hold the Beneficiary Firm and 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 Government of any of its obligations under

this Agreement or on account of failure of the Government to comply with Applicable Laws and Applicable Permits.

9.1.2 The Beneficiary Firm will indemnify, defend and hold the Government harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Beneficiary Firm to fulfil any of its obligations under this Agreement materially and adversely affecting the performance of the Government's obligations under the Programme Agreement.

9.1.3 The Escrow Bank will indemnify, defend and hold the Government 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 Government's obligations under the Programme Agreement other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Escrow Bank, its officers, servants and agents.

9.2 Notice and contest of claims

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 10.1 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 [•] days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

10 DISPUTE RESOLUTION

10.1 Dispute resolution

10.1.1 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 rules of the Delhi International Arbitration Centre (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.

10.1.2 The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The venue of arbitration shall be.....(name of the city) and the language of arbitration shall be English.

11 MISCELLANEOUS PROVISIONS

11.1 Governing law and jurisdiction

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

11.2 Waiver of sovereign immunity

The Government unconditionally and irrevocably:

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

11.3 Priority of agreements

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

11.4 Alteration of terms

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

11.5 Waiver

11.5.1 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.

11.5.2 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.

11.6 No third-party beneficiaries

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

11.7 Survival

11.7.1 Termination of this Agreement:

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

11.7.2 All obligations surviving the cancellation, expiration or termination of this Agreement shall only survive for a period of [•] years following the date of such termination or expiry of this Agreement.

11.8 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 dispute resolution under Clause 10.1 of this Agreement or otherwise.

11.9 Successors and assigns

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

11.10 Notices

All notices or other communications to be given or made under this Agreement shall be in writing and shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or e-mail. The addresses for service of each Party, its facsimile number or e-mail, 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.

11.11 Language

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

11.12 Authorised representatives

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

11.13 Original Document

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

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

SIGNED, SEALED, AND
DELIVERED

SIGNED, SEALED AND
DELIVERED

For and on behalf of
ESCROW BANK by:

For and on behalf of
the Government by:

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

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

SIGNED, SEALED AND
DELIVERED

For and on behalf of Beneficiary Firm
in the presence of:

1.

2.

DRAFT

SCHEDULE – D

TESTING STANDARDS

1 Testing Standards

1.1 Purpose

- 1.1.1 This schedule lays down guidelines for testing of Advance Chemistry Cells for the purpose of availing subsidy to be provided under the National Programme on Advance Chemistry Cell (ACC) Battery Storage. The tests and criteria prescribed in this schedule are limited to calculation of Energy Density and Cycle lives which are the essential qualifying criteria for manufacturers to avail subsidy for ACC as per the performance outputs specified in ACC matrix (e.g. para 1.2 below). For the purpose of commercial sale of the cells in the Indian market, independent testing as per the prevailing standards would be necessary.
- 1.1.2 This guideline provides the Standardized Testing Framework to decide the eligibility criteria in the National Programme on Advance Chemistry Cell Battery Storage for incentivising cell manufacturing in India. The cells will be tested to determine the Beneficiary Firm's eligibility as per the eligibility matrix for availing incentives under the said programme.
- 1.1.3 The Guidelines specify performance requirements of the cells to be tested by a third party laboratory accredited by NABL. It also specifies the requirements of sampling, test methods and key requirements to be met by the testing laboratories.

1.2 Terms and definitions

Following terms and definitions shall apply for standardise testing framework:

Advance Chemistry Cells:

As defined in Schedule-G.

The Cycle life and energy density have been defined which have to be achieved at specified operating conditions (Temperature and C-rate) as elaborated in this document. The cycle life has to be achieved at specified Depth of Discharge (DoD) and End of Life (EoL) capacity as defined in the document.

Energy density:

Energy density is the amount of energy stored per unit weight of a cell and to be measured in Wh/kg.

Cycle life:

Cycle life is the number of charge and discharge cycles that a cell is able to support at a specified DoD before its capacity degrades to the EoL (End of Life) condition.

State of Health (SoH):

State of Health is defined as the ratio of actual capacity of a cell and the initial rated capacity of the cell and it is expressed as a percentage.

End-of-life (EoL) capacity:

End-of-Life capacity is defined as the minimum SoH of the cells, post which they cannot fulfil the application's requirements due to a significant reduction in performance.

Room temperature:

Room Temperature is defined here as the temperature of 25 °C (centigrade) \pm 2K

Rate of Discharge (C-Rate):

Rate of Discharge (C-rate) is a measure of the rate at which a cell is discharged or charged relative to its maximum capacity. e.g. 1C rate means that the discharge current will discharge the entire cell in 1 hour and in the same cell discharging at 0.5C would mean that discharge current will discharge the entire cell in 2 hours.

Depth of discharge (DoD):

Depth of Discharge (DoD) is defined as the percentage (%) of energy cycled out of the battery on a given cycle with respect to the total capacity of the battery. In other words, the DoD can also be referred to as the fraction of the battery capacity which is used in every charge and discharge cycle.

Useable/ Useful energy:

Useable or useful energy refers to the total cumulative energy discharged by a cell during the entire cycle life at the specified DoD level and EoL capacity threshold.

State of Charge (SoC):

The state of charge of a cell denotes the capacity which is currently available as a function of the rated capacity. The value of the SoC varies between 0% and 100%. If the SoC is 100%, then the cell is said to be fully charged, whereas a SOC of 0% indicates that the cell is completely discharged.

Power Capacity:

Power Capacity refers to the rate at which the energy is delivered per unit time by the cell and is measured in Watts.

1.3 Testing criteria for cell performance

There are several factors which affect both the useable energy and the cycle life. To avail the incentive under the National Programme on ACC Battery Storage, the manufacturer shall follow a common set of operating and environmental conditions, as defined in the subsequent sections, to demonstrate the output parameters and qualify for the incentive under the said programme. Manufacturers may be permitted to make performance claim for which tests can be carried out over and above the minimum specified criteria. However, this must be done under the knowledge of the Programme Administrator.

1.3.1 Temperature

Criteria:

1.3.1.1 The test shall be performed at room temperature 25 °C \pm 2 K.

Note: The performance values at 25 °C has been prescribed for the purpose of availing subsidy. However, for the purpose of commercial sale of the ACCs in the Indian market, independent

testing as per prevailing standards would be required. It is anticipated that such additional testing for product validation purposes will be taken up by the product developers and concerned customers as per their application and specific requirements.

1.3.2 Rate of Discharge (C-Rate)

Criteria:

1.3.2.1 The Energy density and Cycle life tests shall be conducted at 0.5C charge and 0.5C discharge as the standard test condition or any other higher charge / discharge rate, if requested by the manufacturer.

1.3.3 Depth of discharge (DoD)

Criteria:

1.3.3.1 The minimum DoD for testing shall be 80%. Testing at any other higher DoD level is permissible, if requested by the manufacturer. The cycle life and energy density tests shall be done at the same level of DoD.

1.3.3.2 The criteria for determining eligibility for incentives are given hereunder:-

Manufacturers' specifications (illustrative)			Useful Wh for energy density calculation	Qualified? Yes/No
Cell	Name plate rating (Wh)	Cycle life at 80% DOD		
A	100	>10000	$100 \times 0.8 = 80$ Wh	Yes, if the cell meets or exceeds the energy density criteria of 50 Wh/kg
B	100	>4000	$100 \times 0.8 = 80$ Wh	Yes, if the cell meets or exceeds the energy density criteria of 125 Wh/kg
C	100	>2000	$100 \times 0.8 = 80$ Wh	Yes, if the cell meets or exceeds the energy density criteria of at least 200 Wh/kg
D	100	>1000	$100 \times 0.8 = 80$ Wh	Yes, if the cell meets or exceeds the energy density criteria of more than 275 Wh/kg

1.4 Testing criteria to assess the life cycle capacity

1.4.1 End-of-life (EoL) capacity

Criteria:

1.4.1.1 End-of-life capacity for testing shall be “80% of initial capacity and would be measured in Wh”.

1.4.2 Cycle life testing: Based on partial “cycle life” tests

Criteria:

1.4.2.1 Testing of the cycle life of the cells, at the specified DoD levels, shall be carried out up to completion of 50% of the number of cycles as specified by the manufacturer. Based on the performance of the cell at the end of 50% of the specified number of cycles, projections shall be made to arrive at the total cycle life of the cell, considering an EoL capacity of 80% of the initial rating of the cell. In addition:-

- (a) Energy delivered at the start of cycle life, at end of 50% of cycle life and as projected at the End-of-life capacity should be at or above 100%, 90% and 80% of the rated capacity, respectively.
- (b) Power delivered at the start of cycle life, at end of 50% of cycle life and as projected at the End-of-life capacity should be at or above the manufacturer specified value.
- (c) The cell needs to demonstrate minimum acceptable voltage level through a high-rate discharge test.

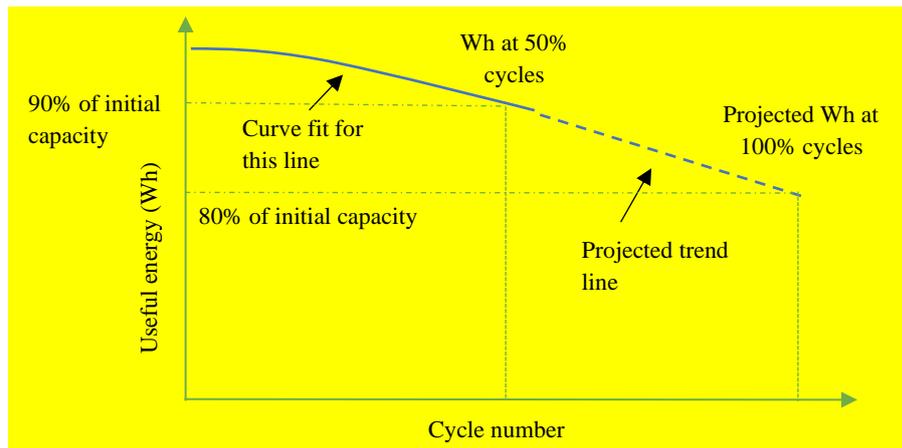
1.4.2.2 The subsidy determined through the above process would be provisional subject to the cell demonstrating the complete cycle life in due course. In case, the cell demonstrates a cycle life which changes its position in the ACC matrix, a penalty, as determined suitably, would have to be paid by the cell manufacturer. The detailed test procedure to carry out the cycle life test is given in **Section 3**.

1.4.2.3 It is recommended that the test results and projections shall cover the following parameters as minimum performance requirements of the cell:-

#	Parameter	Start of cycle test	End of 50% specified no. of cycles	End of specified no. of cycles
1	Useful energy in Wh (delivered in one cycle)	Measured value to match specified value	Measured value to be at least 90% of initial value	Projected value to be at least 80% initial value
2	Power Capacity (Watts)	Measured value to be equal to or exceed “specification”	Measured value to be equal to or exceed “specification @50% cycle”	Projected value to be equal to or exceed “specification @ end of cycle”

Note: Manufacturer has to mention the useful energy and power capacity for each of these stages.

1.4.2.4 To undertake the cycle life projections, post the end of 50% of specified no of cycles, the useful energy is measured in each cycle and a plot of energy is made against cycle number. The following diagram illustrates this process. This graph is then projected using a linear extrapolation method to determine the projected value of cycle life when the cell is expected to reach the End-of-life capacity (80% of initial capacity in Wh).

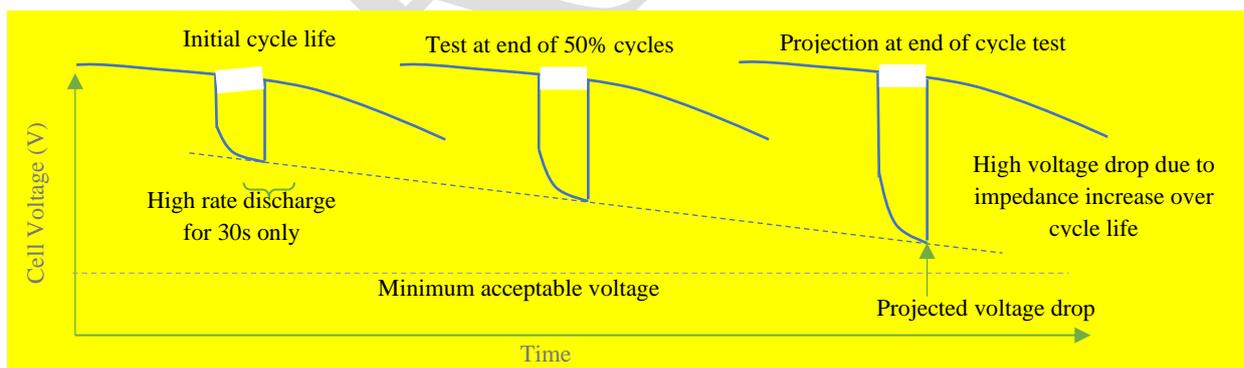


1.4.2.5 In addition, the testing should include a high rate discharge test to ensure that the cell, under testing, can deliver rated power/ C-rate till the end of projected life, apart from maintaining the rated energy (kWh) capacity. Considering the same, the Power capability of the cell, as mentioned in the end-of-life criterion, shall be measured using a “high rate pulse discharge” as described below.

[The testing agency should also endeavour to verify the results of cycle life testing, as per procedure illustrated above, through an alternate mechanism of Predictive cycle life / Accelerated ageing method, in line with relevant standards, if available, and suited for the concerned ACC type]

1.4.3 High rate discharge test

1.4.3.1 This test shall be conducted by applying a high current pulse of 30 second duration while the cell is going through a normal discharge test. The parameters to be measured are as shown by the following illustration:



Note: Manufacturer should define the minimum acceptable voltage level. No “specific” value of the magnitude of the “high current” pulse is recommended for this test. The “manufacturer specified” 30 sec peak discharge current value shall be used for the test.

1.4.3.2 The cell, under testing, will need to pass this test by demonstrating that the cell voltage after application of the high current pulse shall not fall below the manufacturer determined end-of-discharge voltage / minimum acceptable voltage as highlighted in the graph above.

1.4.3.3 It is recommended that this test shall be conducted at a temperature of $25^{\circ}\text{C} \pm 2 \text{ K}$ and SoC of the cell below 5Z0% but above 40%. The test should not be performed at below 40% SoC since the cell may not be able to deliver the required power at SoC levels below it.

2 Test Method for Energy Density

2.1 General

The following general conditions shall apply for the test method listed in subsequent clauses:

2.1.1 During each test, voltage, current and ambient temperature shall be recorded.

2.1.2 Before each test, the cell temperature shall be stabilized at room temperature by soaking at a temperature of 25°C for a minimum of 12 h.

NOTES

- Thermal Stabilization of a cell is considered to be reached if after an interval of 1 h, the change of cell temperature is lower than 1 K.
- The soaking period of 12 h may be reduced if thermal stabilization is reached.

2.1.3 The ambient temperature shall be the room temperature, which is the temperature of thermal chamber.

2.1.4 The overall accuracy of controlled or measured values, relative to the specified or actual values, shall be within the following tolerances:

- $\pm 0.1 \%$ for voltage;
- $\pm 1 \%$ for current;
- $\pm 2 \text{ K}$ for temperature;
- $\pm 0.1 \%$ for time;
- $\pm 0.1 \%$ for mass;

NOTE These tolerances comprise the combined accuracy of the measuring instruments, the measurement technique used, and all other sources of error in the test procedure.

2.1.5 Rounding off shall be done as per IS 2.

2.2 Charging procedure for test purposes

2.2.1 Prior to charging, the cell or battery shall be discharged at 25°C at a constant C-rate, as per **1.3.2**, down to a specified final voltage as declared by the manufacturer.

2.2.2 The charging procedure for test purposes shall be carried out in an ambient temperature of 25°C , using the method declared by the manufacturer.

2.3 Mass measurement

The mass of a cell is measured at room temperature up to three significant figures in accordance with the tolerances in **2.1.4**.

2.4 Energy Capacity measurement (in Wh)

2.4.1 The energy capacity of a cell shall be measured in accordance with the following steps:

Step 1 – The cell shall be charged in accordance with 2.2

Step 2 – The cell or battery shall be stored, in an ambient temperature of 25 °C, for the duration specified by the manufacturer.

Step 3 – The cell shall be discharged in an ambient temperature of 25 °C at a constant C-rate, as per 1.3.2, to the end-of-discharge voltage that is provided by the cell manufacturer.

NOTE The end-of-discharge voltage provided by the cell manufacturer shall correspond to at least a DoD of 80%, as per 1.3.2

Step 4 – Measure the discharge duration until the specified end-of-discharge voltage is reached. Calculate the discharge capacity of cell expressed in Ah up to three significant figures, by multiplying the discharge current (A) with the discharge duration (h).

Step 5 – Average voltage calculation

The value of the average voltage during discharging shall be obtained by integrating the discharge voltage over time and dividing the result by the discharge duration. The average voltage is calculated in a simple manner using the following method:

Discharge voltages U_1, U_2, \dots, U_n are noted every 5 sec from the time the discharging starts and voltages that cut off the end-of-discharge voltage in less than 5 sec are discarded. The average voltage U_{avr} is then calculated in a simplified manner using Equation (1) up to three significant figures by rounding off the result.

$$U_{avr} = \frac{U_1 + U_2 + \dots + U_n}{n} \quad (1)$$

Step 6 – The energy capacity expressed in Wh shall be calculated using Equation (2) up to three significant figures by rounding off the result.

$$W = C_d \times U_{avr} \quad \dots\dots(2)$$

where

W is the energy capacity of the cell at room temperature (Wh) when discharged under specified conditions;

C_d is the discharge capacity (Ah) as calculated in Step 4;

U_{avr} is the average voltage during discharging (V) as calculated in Step 5.

2.5 Calculation of mass energy density

2.5.1 Mass measurement

Mass of the cell shall be measured as specified in **2.3**.

2.5.2 Energy Capacity measurement

Energy capacity of the cell shall be determined in accordance with **2.4** at room temperature.

2.5.3 The mass energy density shall be calculated using Equation (3) up to three significant figures by rounding off the result:

$$\rho_{ed} = \frac{W}{m} \quad \text{..... (3)}$$

where

ρ_{ed} is the mass energy density (Wh/kg);

W is the energy capacity of the cell at room temperature (Wh) when discharged under specified conditions;

m is the mass of the cell (kg).

2.5.4 Process 2.5.2 and 2.5.3 shall be repeated five times. The final result shall be calculated by taking average of best three readings.

3 Test Method for Cycle Life measurement

A cell is generally chosen based on its high energy density and good power capability at the desired working voltage. However, the reliability of a cell depends on its ability to deliver the expected cycle life in the long run. High discharge currents can significantly reduce the cycle life of cells. The following steps illustrate the procedure for undertaking cycle life testing through a series of charge and discharge cycles. Before the charge and discharge cycle test, measure the energy capacity as the initial performance of the cell in accordance with **2.4** at 25 °C.

3.1 Charge and discharge cycle

The charge and discharge cycle test shall be performed as follows:

(a) At the start of the test, cell temperature shall be stabilized to 25 °C in accordance with **2.1.2**.

(b) Test phases

Phase 1 – The cell shall be discharged at 25 °C at a constant C-rate, as per **1.3.2**, down to a specified final voltage. The final voltage shall be the same as that declared by the manufacturer.

Phase 2 – The cells shall be fully charged, in an ambient temperature of 25 °C, by the method specified by the cell manufacturer. The charge time shall be less than 2 h for the constant current charging step.

Phase 3 - The cell shall be discharged, in an ambient temperature of 25 °C at constant C-rate, as per **1.3.2**, until its voltage is equal to the end-of-discharge voltage that is provided by the cell manufacturer.

NOTE The end-of-discharge voltage provided by the cell manufacturer shall correspond to at least a DoD of 80%, as per **1.3.3**.

Phase 4 – Phase 2 and 3 shall be repeated until the test termination specified in **3.1((d))**.

NOTE The rest time between each phase shall be as specified by the cell manufacturer.

(c) Periodical measurement of performance

After completion of every 500 cycles, the energy capacity of the cell shall be measured as specified in **2.4**.

(d) Termination of test

The cycle life test shall be terminated when either of the following conditions is satisfied.

Condition A – The test sequence from phase 2 to phase 4 has been repeated for equal number of cycles as declared by the cell manufacturer.

Condition B – Energy capacity is decreased to less than 80 % of the initial value.

NOTE If the voltage falls below the lower limit specified by the cell manufacturer during phase 3, the test shall be discontinued notwithstanding the stipulation in **3.1((d))**, and the cell performance shall be measured at this point as specified in **3.1((c))**.

4 Terms & Conditions for Empanelment of Testing Laboratories

This section describes the key guidelines and terms of empanelment of testing laboratories for the purpose of conducting the testing of Advance Chemistry Cell for evaluation of eligibility for subsidy as per the National Program on ACC Battery Storage and to fulfil the requirements of testing as mandated by the Programme Administrator from time to time. The Terms & Conditions for Empanelment of Testing Laboratories under the ACC Programme (hereinafter referred to as the “Terms of empanelment”) will be prepared by NABL in consultation with NITI Aayog. The Program Administrator/ Ministry will empanel the laboratories, in accordance with these Terms and Conditions.

4.1 Requirement of Laboratory set-up

4.1.1 Key requirements

Criteria:

4.1.1.1 The testing shall be carried out in a laboratory/testing facility which shall be accredited by NABL in accordance with ISO/IEC 17025: 2017. The useful energy, cycle life and high discharge rate test should be in the accredited scope of the laboratory for the test methods mentioned in this guideline.

Desirable Equipment:

The testing facility to be furnished with the following equipment to carry out the tests:

1. Digital multimeter - Resolution: 1 mV, 0.1 A
2. Charger – To cover the full range of C-rates i.e., 0.5 C to the maximum C rate claimed by the manufacturer.
3. Electronic load- for discharge should cover 0.5 C to the maximum discharge rate claimed by the manufacturer.
4. Battery impedance meter - Resolution 1 milli Ohm
5. Environmental chamber – Non-condensing humidity chamber for maintaining temperature of 25 +/- 2°C and Relative Humidity of 45 to 70% for charge, discharge, and storage. All testing should be conducted using environmental chambers with forced air circulation. The cells shall be placed in such a manner that local heating effects are minimized.
6. Data logger - for continuous multi-channel data logging of test parameters with at least 10 Hz rate [two channels per cell (voltage & current) and two channels for Temperature and RH].

Note: If the parameter recording facility is part of cell cycler, no separate data logger is required.

7. Cell cycler with charge / discharge capability and data logging system to record continuous readings of voltage, current and temperature.

The charge / discharge rates shall be programmable up to the peak levels as required by the cell specification.

The cycler shall also have provision for programming any specific usage cycle on a second-by-second basis.

8. A high rate discharge tester for applying 30 sec high discharge pulse with sufficient rating to apply specified peak current and record voltage, temperature and current at a 10 Hz rate. (to be taken as per test method requirement given in the standard).

Some of the equipment may have a combination of more than one of the above requirements and hence it is left to the manufacturer to decide on the exact equipment which it wants to install.

Note: In addition to this, it is suggested that the cell manufacturer should have a testing process to analyze all cells which have returned from customer premises after being installed/ used. However, this is not required to be eligible for the incentive programme.

4.1.2 General Guidance

4.1.2.1 The laboratory in which the testing is to be carried out is required to be empanelled by the programme administrator.

4.1.2.2 The laboratory at manufacturer's facility should strive to have standard/ custom built equipment for demonstrating abuse tolerance of cells as per relevant UN/ BIS and AIS standards. However, these tests shall necessarily be carried out externally at an accredited laboratory.

4.1.2.3 All equipment for performance and cycle tests shall be calibrated through NABL accredited laboratory or directly from CSIR-National Physical Laboratory and records maintained. The periodicity of calibration should not be more than a year. It is recommended that the laboratory should obtain NABL accreditation, for its testing facility for at least the tests mentioned in this guideline. Additional facilities like x-ray scanning, calorimetry and microscopes are suggested for the purpose of battery diagnostics assessment.

Recommended additional facilities:

1. Infrared thermal imaging camera - To monitor, map and interpret the thermal behaviour of batteries during charging/discharging cycles
2. Battery analyser for EIS (Electrochemical Impedance Spectroscopy) measurement. EIS is an accurate analytical technique for measuring critical battery parameters, including:
 - (a) State of Charge (SoC)
 - (b) State of Health (SoH)
 - (c) Internal temperature
 - (d) Fault within cell packs

4.2 Eligibility criteria for laboratories

1. The laboratory must be a legal entity in India, having NABL accreditation certificate in accordance with ISO/IEC 17025 for the relevant scope (tests in this document) and valid for a year from the date of application.
2. The laboratory should have been in the testing activity for at least 6 months and must provide an undertaking affirming capability to test at least fifty cells at a time.
3. The laboratory must have adequate skilled people to conduct the test (Educational qualification/ experience as per NABL criteria). The details of skilled manpower must be submitted along with application for empanelment.

4. The laboratory should have adequate spare storage space for the tested samples. Samples shall be retained for a period of six months after testing.
5. The laboratory shall follow Indian Electricity Rules and any Regulatory requirements of the Central and State Governments, for ensuring safety and standards. If there is a contradiction between ISO/ IEC 17025 and the regulatory requirements, the regulatory requirements will supersede.
6. The laboratory should not have been blacklisted by any agency from India or abroad.

4.3 Operational guidelines

1. An agreement will be signed between the Programme Administrator and the laboratory for a period of 2 years. Renewal or extension of timeline will be as per the Terms of Empanelment.
 - (a) The work order of 2 years would be awarded to the successful empaneled laboratories.
 - (b) The contract may then be further extended depending upon the performance with mutual consent.
2. Minimum period to be maintained for NABL Accreditation
 - (a) Laboratory is responsible for maintaining a minimum of one year of validity of the NABL Accreditation Certification and shall inform the Programme Administrator when this minimum period is likely to be breached.
 - (b) In the event of failing to get extension the empanelment will be deemed to be suspended till the NABL accreditation is renewed.
 - (c) Laboratory shall ensure continuity in NABL accreditation while carrying out cycle life tests, as per the terms and conditions of NABL.
3. Temporary Incapacity
 - (a) Laboratory must inform the Programme Administrator within 5 working days about temporary incapacity to handle fresh samples, along with valid reasons for the same. In case there is a breakdown while testing is underway, the same has to be reported to the Programme Administrator by the laboratory so that fresh samples from the same quarter are submitted to another empanelled laboratory for conducting the test afresh. The financial terms in such a case are to be worked out by NITI Aayog.
 - (b) At any point of time if the laboratory is under adverse action like denial, scope reduction, suspension, debar or withdrawal of accreditation, laboratory shall inform the Programme administrator. The empanelment may be withdrawn by the Programme Administrator in such cases.
4. Removal from empanelled list

- (a) Programme Administrator may remove the name of a laboratory from its empanelled list after giving due notice.
 - (b) Once a laboratory has been removed by the Programme Administrator from the list of empanelled laboratories, the laboratory can apply for re-empanelment only after a cooling off period of 3 months.
- 5. Programme Administrator reserves the right to visit the laboratory at any time or call for any information related to the test carried out for the Programme.
 - 6. The Programme Administrator has the right to obtain the progress report of the testing from time to time in case of long duration tests.

5 Guidelines for the Sampling & Reporting Procedures

5.1 Sampling & Testing

5.1.1 Collection of samples.

5.1.1.1 For the purpose of this section, the definitions given in IS 4905: 2015 shall apply.

5.1.1.2 The sample size should be at least four times the number of units required for testing, to take into account probable damages due to transportation and possible repetition of tests upon failure in a test. Five cells for one particular test will suffice [Please refer IS 16046 (parts 1 and 2)].

Explanatory Note: If the total number of exclusive cells required for all the tests is n , the sample size will be $4n$. The four samples will totally contain $4 \times n$ cells. Only the first sample out of the four selected samples need be submitted for testing. The other three sets totalling $3 \times n$ cells are to be kept as back up for the above-mentioned exigencies. If only five cells are required for each test and all the tests can sequentially be completed on those five cells, then n will be 5.

5.1.1.3 The sample should be drawn from cells which have completed manufacture, inclusive of all quality assurance programmes of the manufacturer, but before their assembly into batteries. The sample shall be drawn from batches which are not more than 3 months old.

5.1.1.4 The sample shall be collected as per Method 1 in clause 8.6 of IS 4905: 2015 from the production where the identification of the units shall be by their serial numbers. Random numbers for the purposes shall be generated as per algorithm at clause 7 of IS 4905.

Audit records as per 7.4 of IS 4905: 2015 shall be maintained.

5.1.2 Criteria for acceptance.

All units of a selected sample shall pass the tests. In case a sample fails (results fall outside the eligibility matrix) in any of the tests, a further sample consisting of double the number of units should be tested for all the tests. All units of this second sample shall pass in the tests.

5.1.3 Surveillance testing.

An Independent agency designated by the Programme Administrator shall collect samples at the dispatch point or customers premises and get the samples tested at an independent

laboratory once in a quarter. The samples shall conform to the requirements specified for the tests. In case of non-conformity, two more samples shall be tested, both of these subsequent samples shall conform to the specified requirements. The agency should draw the sufficient number of units to take care of this eventuality.

5.1.4 Storage/Transportation of samples.

Storage and transportation of samples shall be as per the instructions provided for the model by the manufacturer. UN 38.3 protocol for transportation of cells and batteries shall be followed in case no such instructions are provided by the manufacturer.

5.2 Online System for Sample Selection, Transactions & Reporting

1. The samples shall be provided by the manufacturer to the laboratory as per the Sampling Procedure. The manufacturer and the empanelled laboratory shall adhere to the Guidelines, in the selection of samples, codifications, handling, storage and dispatch.
2. Before initiating the testing of the samples, the laboratory shall record compliance to the Guidelines and if it observes any variance from the Guidelines, the laboratory will inform the Programme Administrator for specific decisions.
3. Testing shall be done as per the test parameters defined in this document, and in accordance with the Indian or International Standards. The turn-around time shall be less than 3 days, in addition to the required test duration as specified in the test method. No deviation is permitted in test procedures.
4. The Program Administrator shall implement an online system for information collation from the manufacturers and testing laboratories, for updating the status/details of sample physical fitness, sample receiving date, testing & completion date, test conformance details, progress report along with the test reports & its observed values, status of failures, analysis of trends etc.

5.3 Guidance on Samples used in Long Term Aging Test Procedures.

- 5.3.1 Cells are subject to degradation in storage due to a variety of chemical mechanisms, such as limited thermal stability of materials in storage. Battery performance can degrade during use, due to parasitic reactions. Rates of degradation can be related to a number of factors, such as storage temperature or temperature variations.
- 5.3.2 The effect of degradation of performance can be estimated by real time storage measurements or by accelerated ageing at high temperatures.
- 5.3.3 Hence, the selection of cells to be done for long term aging / cycle life testing has to be done exclusively from the fresh batch of manufacturing. For instance, as per **5.1.1**, if the sampling has been done for batches manufactured during January - March, the cycle life testing/ aging test has to be done on samples manufactured at the most recent date in the January - March period.

SCHEDULE – E
DISBURSEMENT MECHANISM

1. The amount of cash Subsidy to be distributed shall be linked to the following factors:
 - (a) Capacity of Advance Chemistry Cell sold (per KWh basis); and
 - (b) Value Addition within India of Advance Chemistry Cell produced. The percentage of Value Addition may also include the Value Addition by the ancillary units or indigenous manufacturers undertaking the activity of manufacturing in India.

2. The amount of Subsidy to be disbursed would be calculated as following:

Formula for calculation:

Fixed amount per kilowatt hour **X (multiplied)** Percentage of Value Addition achieved during the period **X (multiplied)** Actual production of Advance Chemistry Cell sold (in KWh).

Explanation:

“**Value Addition**” shall be construed as the percentage of manufacturing activity (to manufacture Advance Chemistry Cell) being undertaken in India, by the Beneficiary Firm either on its own or through ancillary units or via indigenous manufacturers.

3. **Self-certification/ Validation**

The Beneficiary Firm shall provide self-certification given by the Chartered Accountant in terms of generally accepted costing principles. The following parameters may be considered by the Cost Accountant to calculate the Value Addition in India:

- (a) Change in HSN at 6-digit level: The final product (Advance Chemistry Cell) should be achieved as a result of change in a HSN (as per the Customs Tariff Act, 1975) at the six digit level (of the final product manufactured vis-a-vis the goods procured for the manufacturing activity) on account of manufacturing activity undertaken by the Beneficiary Firm, ancillary unit or by the indigenous manufacturer, respectively.
- (b) The final process of manufacture is performed in India. The term “manufacture” may mean processing of raw-material or inputs in any manner that results in emergence of new product having a distinct name, character, and use. In other words, to meet the qualifying criteria for the incentives, the Advance Chemistry Cell should be manufactured in India and have such percentage of localization as may be notified from time to time.
- (c) Value Addition³ in respect of the Advance Chemistry Cell may be denominated as the ratio of 'actual value added' to the sale value (net of returns, price adjustments,

³ Similar procedure has been prescribed by the Central Government in the Notification No. 01/2010 – Central Excise, dated 06 February 2010

discounts, etc.) of the said goods (ACCs), excluding indirect taxes, if any paid on the goods. It may be expressed as the percentage of manufacturing activity being undertaken in India, either on its own or through ancillary units or indigenous manufacturers. The 'actual value added' may be calculated on the basis of financial records (including turnover reported in GST returns) as per the following formulae:

- Sale value of the said goods, excluding indirect taxes, if any, paid on the goods
 - **Less:** Cost of raw materials and packing materials consumed in the said goods (i.e. in the sale price of the goods sold) to be calculated in terms of generally accepted costing principles
 - **Less:** Cost of material whose source of origin cannot be ascertained (beyond prescribed threshold)
 - **Less:** Cost of fuel consumed, if eligible for GST input credit
 - **Less:** Expenses incurred in foreign currency for royalty or technical know-how as debited in the income statement (Directly or through intermediate Company)
 - **Add:** 'Actual value added by the ancillary units or indigenous manufacturers' attributable to sale value of said goods
- (d) 'Actual value added by the ancillary units or indigenous manufacturers' is 'actual value added' (as per the above formulae) by such units in relation to sale (net of returns, price adjustments, discounts, etc.) considered by the Mother Unit (for computation of the 'actual cumulative value added' by the Mother Unit). The value (in absolute terms) of 'Actual value added by the ancillary units or domestic manufacturers' may be validated basis the statutory auditor's certificate received from the respective ancillary unit or indigenous manufacturer.
- (e) The certificate from the statutory auditor may not be required where value addition by the ancillary unit or the indigenous manufacturer is less than 2% (two per cent) (viz. calculated as percentage of actual value added by indigenous manufacturers to the sale value (net of returns, price adjustments, discounts, etc.) of ACCs manufactured by Mother unit) or INR 200,000 (Rupees two lakhs) (Gross amount).
- (f) The onus to validate the Value Addition by ancillary units or indigenous manufacturers would remain on the Beneficiary Firm.
- (g) Where the Beneficiary Firm is also engaged in manufacture of battery packs and a Value Addition till the cell stage could not be determined with the abovementioned approach, the percentage of value added calculated (as above) should be reduced by at-least 35% (thirty five per cent) to calculate the percentage of value added to manufacture ACCs. For example, if the value capture at the battery level is x%, then the value capture at the cell level shall be $(x-35)/(100-35)$ %. The Beneficiary Firms shall be submitting to the Government, the information pertaining to the fraction of battery pack in the total battery value produced in India.

- (h) For the purpose of validation of claim, following documents may also be considered:
- (i) Document issued by the concerned Director of Industries evidencing the commencement of commercial production.
 - (ii) Certificate by a statutory auditor certifying the quantity and value of finished goods procured.
 - (iii) Certificate by a statutory auditor certifying the breakup of the major components in the final value of finished goods sold (i.e ACC Batteries). The major components shall constitute all those components that account for more than 2% (viz. calculated as percentage of actual value added by indigenous manufacturer to the sale value of ACC batteries manufactured by Mother unit) or INR 200,000 (Gross amount), whichever is lower, in the corresponding period.
 - (iv) Certificate by statutory auditor certifying the reconciliation of value and quantity of ACCs manufactured, traded, sold as scrap, stock transferred, and GST paid vis a vis the amount of reported in financial statements and GST returns.
 - (v) Audited account for the relevant financial year.
 - (vi) GST Audit Report for the relevant financial year for the company.
 - (vii) Self-Certification by the Authorized Signatory of the Beneficiary Firm, claiming the intended end-use (Category Mobile & Stationary) of the ACCs sold under the Programme.

SCHEDULE – F
PERFORMANCE SECURITY

The Chairman,

WHEREAS:

- (A) (the “**Beneficiary Firm**”) and The Government of India (“**GoI**”), through the Department of Heavy Industry, Ministry of Heavy Industries and Public Enterprises (hereinafter referred to as the “**Government**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) have entered into a Programme Agreement dated (the “**Agreement**”) for pre-qualification and short-listing of bidders entitled to receive a subsidy on the basis of the Advance Chemistry Cells manufactured by it (including scale of Advance Chemistry Cell production and Advance Chemistry Cell’s Value Addition in India)
- (B) The Agreement requires the Beneficiary Firm to furnish a Performance Security to the Government in a sum of INR***** (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 the due and faithful performance of the Beneficiary Firm’s obligations during the Term of the Agreement, under and in accordance with the Agreement, and agrees and undertakes to pay to the Government, upon its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Beneficiary Firm, such sum or sums up to an aggregate sum of the Guarantee Amount as the Government shall claim, without the Government 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 Government, that the Beneficiary Firm 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 Government shall be the sole judge as to whether the Beneficiary Firm is in default in due and faithful performance of its obligations during the Term under the Agreement and its decision that the Beneficiary Firm is in default shall be final, and binding on the Bank, notwithstanding any differences between the Government and the Beneficiary Firm, or any Dispute between them pending before any court, tribunal, arbitrators or any other the Government or body, or by the discharge of the Beneficiary Firm for any reason whatsoever.

3. In order to give effect to this Guarantee, the Government shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Beneficiary Firm 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 Government to proceed against the Beneficiary Firm before presenting to the Bank its demand under this Guarantee.
5. The Government 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 Beneficiary Firm contained in the Agreement or to postpone for any time, and from time to time, any of the rights and powers exercisable by the Government against the Beneficiary Firm, 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 Government, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the Government of the liberty with reference to the matters aforesaid or by reason of time being given to the Beneficiary Firm or any other forbearance, indulgence, act or omission on the part of the Government 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 Government 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 Beneficiary Firm 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 term of the Agreement and unless a demand or claim in writing is made by the Government on the Bank under this Guarantee, no later than 6 (six) months from the date of expiry of this Guarantee, all rights of the Government under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.
9. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the Government 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 Government that the envelope was so posted shall be conclusive.

11. This Guarantee shall come into force with immediate effect and shall remain in force and effect for a period of one year and six months from the date hereof or until it is released earlier by the Government 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.

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 – G
DEFINITION OF ADVANCE CHEMISTRY CELL

Advance Chemistry Cells (ACCs) are the new generation technologies that can store electric energy either as electrochemical or as chemical energy and convert it back to electric energy as and when required. Globally manufacturers are investing in these new generation technologies at commercial scale to fill the expected boom in battery demand through 2030. Under the said Programme, these technologies shall comprise of ACCs and integrated advanced batteries (Single Units) that suffice the minimum performance specifications as provided hereunder.

The minimum technical specifications of ACCs shall be as provided in the regions hereunder (shaded):

ACC Eligibility Matrix:

		Energy density (Wh/kg)				
		≥ 50	≥ 125	≥ 200	≥ 275	≥ 350
Cycle Life	≥ 1000					
	≥ 2000					
	≥ 4000					
	≥ 10000					

SCHEDULE – H
REQUEST LETTER TO THE GOVERNMENT FOR AVAILING CASH SUBSIDY

Date:xx/xx/xxxx

From
XXXXXX (Beneficiary Firm's Name, Address, E-mail, and phone number)

To
The Director,
Department of Heavy Industry
Ministry of Heavy Industries and Public Enterprises,
Government of India,
Udyog Bhawan, Rafi Marg, New Delhi- 110011

Sir/Madam,

Subject: Request for release of subsidy against subsidy eligibility certificate XXXXX received dated XXXXXX.

With reference to above mentioned subsidy eligibility certificate number xxxxxxxx, assigned by Department of Heavy Industry dated xxxxxxxx, M/s/ xxxxxxxxx (beneficiary name) hereby submits its application for release of eligible subsidy under "National Programme on Advance Chemistry Cell (ACC) Battery Storage" for the period xxxxx – xxxxxx (quarter), in accordance with Clause [] of the Programme Agreement dated [] signed between the Government and the xxxxxxxxx (Beneficiary Firm's name).

xxxxxxx (Beneficiary Firm's name) has successfully sold xxxx cells of xxxxx kWh each capturing xx% value in India during the aforementioned quarter. The overall calculated subsidy therefore comes out as INR xxxx/-.

In this regard, Government may kindly do the needful to release the eligible subsidy of INR XXXX against the verification of following enclosures.

Enclosures (✓ mark the appropriate box)

1. Undertaking for subsidy parameters (Energy density & cycle life) of the sold cells in line with current subsidy certification
2. Subsidy determination form
3. Certificate for Value Addition in India
4. Certified statements by statutory auditor evidencing receipt of quantum and value of raw material, inputs, semi-finished goods, capital goods, and finished goods, along with the respective tax credit (if applicable)
5. Certificate from statutory auditor certifying the sales and capacity of manufactured goods/trading goods/scrap/ stock transfer and GST paid the amount of sales reported in financial statements and GST returns
6. Unit level audited accounts for the relevant Financial Year, where the Beneficiary Firm is operating through various ancillary units (if applicable)
7. GST audit report for the relevant Financial Year for the Beneficiary Firm

Note: Above template to be used for all models (HSN no) of cells produced and sold by the manufacturer
Yours Sincerely,

Authorized Signature of beneficiary with date and seal:

Name of the Authorized person with contact number:

Designation

Company Seal

DRAFT

SCHEDULE – I
UNDERTAKING FOR SUBSIDY PARAMETERS

(For the purpose of releasing subsidy under “National Programme on Advance Chemistry Cell (ACC) Battery Storage”)

Beneficiary Name	CIN Number
Subsidy eligibility certificate No.	Subsidy eligibility certificate validity
From Month	To Month

I, _____ (Name, authorized signatory), on behalf of M/s _____ (Beneficiary name) being an applicant for release of subsidy under “National Programme on Advance Chemistry Cell (ACC) Battery Storage” with LOA number _____ (bid LOA number) hereby confirm that cells sold during the period _____ to _____ (quarter months) conform to the technical specifications (cycle life and energy density) as per subsidy eligibility certification no, _____ which is valid from _____ till _____ (expiry date of subsidy eligibility certification).

.....
Authorized Signatory with date, Name and Seal
(Name of Beneficiary)
Designation

Company Seal

Note: Manufacturer to submit the undertaking for all models of cells produced and sold

SCHEDULE – J
CERTIFICATE FOR VALUE ADDITION IN INDIA

(For the purpose of releasing subsidy under “National Programme on Advance Chemistry Cell (ACC) Battery Storage”)

Beneficiary Name	CIN Number
Subsidy eligibility certificate No.	Subsidy eligibility certificate validity
From Month	To Month

a. HSN code (6-digit) of the factory output:

b. Is the final manufacturing done in India? (Y/N)

Calculation for “actual value added”

i. Sale value of the said goods, excluding Taxes, if any, paid on the goods (INR)

ii. Cost of raw materials and packing materials consumed in the said goods (i.e. in the sale price of the goods sold) to be calculated in terms of generally accepted costing principles (INR)

iii. Cost of material whose source of origin cannot be ascertained (beyond prescribed threshold) (INR)

iv. Cost of fuel consumed (if eligible for GST input credit) (INR)

v. Expenses incurred in foreign currency for royalty or technical know-how as debited in the income statement (Directly or through intermediate Company) (INR)

vi. Actual value added by the ancillary units or indigenous manufacturers’ attributable to sale value of said goods (INR)

vii. **Actual Value added** (i-ii-iii-iv-v+vi) (INR)

If the Beneficiary Firm is also engaged in battery pack manufacturing

viii. Does the Beneficiary Firm manufacturer battery packs? (Y/N)

.....

ix. If Yes, Actual value added (vii x (1-0.34) (INR)

.....

Value Addition by the beneficiary

x. Actual value added (= vii or =ix) (as applicable) (INR)

.....

xi. Total sales of the ACC during the period (excluding Taxes) (INR)

.....

xii. Value Addition (=x/xi) (%)

.....

Note: Above template to be used for all models (HSN no) of cells produced and sold by the manufacturer

.....
Authorized Signatory with date, Name and Seal
(Name of Beneficiary)

Designation.....

Company Seal

Verified by
.....
Name of Statutory Auditor

Company Seal

SCHEDULE – K
PROCEDURE FOR DISPUTE RESOLUTION

The Parties to the Agreement mutually agree as follows:

- (1) The Board shall comprise of three members having experience in the field of battery storage or have been involved in the works related to battery storage and with the interpretation of contractual documents. One Member shall be selected by each, Government and the Beneficiary Firm from the list maintained by [•] hosted on its website. In the event the Parties fail to select the member within 28 (twenty eight) days of the date of signing of the Agreement, upon that eventuality, upon the request if either or both Parties such member shall be selected by [•] within 14 (fourteen) days. The third member shall be selected by the other two members from the same list. If two members selected by or on behalf of the Parties fail to select a third member within 14 (fourteen) days after the later of their selections, then upon the request of either or both Parties such third member shall be selected by [•] within 14 (fourteen) days. The third member shall serve as the Chairman of the Board.
- (2) The Board shall be constituted with each of the three board members has signed a board members' declaration of acceptance as required by DRB's rules and procedures.
- (3) In the event of death, disability, or resignation of any Member, such Member shall be replaced in the same manner as the Member being replaced was selected. If for any other reason, a Member fails or is unable to serve, the Chairman (or failing the action of the Chairman then either of the other Members) shall inform the Parties and such non-serving Member shall be replaced in the same manner as the Member being replaced was selected. Any replacement made by the Parties shall be completed within 28 (twenty-eight) days after the even giving rise to the vacancy on the Board, failing which the replacement shall be made by [•] in the same manner as described above. Replacement shall be considered complete when the new Member signs the Board Member's Declaration of Acceptance. Throughout any replacement process, the Members not being replaced shall continue to serve and the Board shall continue to function and its activities shall have the same force and effect as if the vacancy had no occurred, provided, however, that the Board shall not conduct a hearing nor issue a decision until the replacement is completed.
- (4) If either the Government or the Beneficiary Firm is dissatisfied with any decision of the Board, and/or if the Board fails to issue its decision within 56 (fifty-six) days after the receipt of all the pleadings (along with the supporting documents) of the Parties by the Chairman of the Board or any extension mutually agreed upon by the Government and the Beneficiary Firm, in such a case, either the Government or the Beneficiary Firm may, within 28 (twenty-eight) days after his receipt of the decision or within 28 (twenty-eight) days after the expiry of the said period, as the case may be, give notice to the other party, with a copy for information to the authorised representatives of the Parties, or his intention to refer the matter for arbitration.
- (5) It is mandatory to refer all the disputes to DRB before issuance of completion certification and satisfactory completion of punch list items. No dispute shall be entertained after completion of aforementioned date.
- (6) If the Board has issued a decision to the Government and the Beneficiary Firm within the said 56 (fifty six) days or any extension mutually agreed upon by the Government and the Beneficiary Firm and no notice of intention to commence Arbitration as to such dispute has been given by either Party within 28 (twenty eight) days after the Parties received such decision

from the Board, the decision shall become final and binding on the Government and the Beneficiary Firm.

- (7) Whether or not it has become final and binding upon the Government and the Beneficiary Firm, a decision shall be admissible as evidence in any subsequent dispute resolution procedure, including any arbitration or litigation having any relation to the dispute to which the decision related.
- (8) All decision of DRB which have become final and binding or till they have been reversed in subsequent conciliation / arbitration process shall be implemented by the Parties forthwith. Such implementation shall also include any relevant action of the authorized representatives of the Parties.
- (9) If during the Term of the Agreement, the Government and the Beneficiary Firm are of the opinion that the DRB is not performing its functions properly, the Government and the Beneficiary Firm may together disband the DRB and reconstitute it. In that case, a new board shall be selected in accordance with the provisions applying to the selection of the original Board as specific above, except that works “withing 28 (twenty eight) days after the signing of this Agreement” shall be replaced with “within 28 (twenty eight) days after the date of which the notice disbanding the original Board became effective”
- (10) The Beneficiary Firm shall sign a notice specifying that the Board shall stand disbanded with effect from the date specified in the note. The notice shall be posted by email to each Member of the Board. A Member shall be deemed to have received the email even if he refuses to have received the same.
- (11) All other terms and conditions of the original Agreement shall remain unaltered/unaffected and the Parties shall remain bound by terms and conditions as contained therein.

Annex I
Dispute Resolution Board's Rules and Procedures

1. Except for providing the services required hereunder, the Board Members shall not give any advice to either Party concerning the Project. The Board Members:
 - (a) Shall have no financial interest in any party to the Agreement, or a financial interest in the Agreement, except for payment for services on the Board;
 - (b) Shall have had no previous employment by, or financial ties to, any party to the Agreement, except for fee based consulting services/advisors on other projects, and/or be Retired Government Officers (not connected in whole or part with the Project), all of which must be disclosed in writing to both parties prior to appointment to the Board;
 - (c) Shall have disclosed in writing to both Parties prior to appointment to the Board any and all recent or close professional or personal relationships with any director, officer, or employee or any party to the Agreement, and any and all prior involvement in the project to which the Agreement relates;
 - (d) Shall not, while Board Member, be employed whether as a consultant or advisor or otherwise by either party to the Agreement, except as a Board Member, without the prior consent of the Parties and other Board Members;
 - (e) Shall not, while a Board Member, engage in discussion or make any agreement with any Party to the Agreement, regarding employment whether as a consultant or otherwise whether after the Agreement is completed or after service as a Board Member is completed;
 - (f) Shall remain and be impartial and independent of the Parties and shall disclose in writing to the Government, the Beneficiary Firm and one another, any fact or circumstance which might be such as to cause either the Government or the Beneficiary Firm to question the continued existence of the impartiality and independence required of Board Members; and
 - (g) Shall be fluent in the language of the Agreement.
2. Except for its participation in the Board's activities as provided in the Agreement and neither the Government and the Beneficiary Firm, shall solicit advice or consultation from the Board or the Board Members on matters dealing with the Project.
3. The Beneficiary Firm shall:
 - (a) Furnish to each Board Member one copy of all documents which the Board may request including Agreement, progress reports and other documents pertinent to the performance of the Agreement.
 - (b) In cooperation with the Government, coordinate the Project visits of the Board, including conference facilities, and secretarial and copying service.
4. The Board shall begin its activities following the signing of a Board Member's Declaration of Acceptance by all three Board Members, and it shall terminate these activities as set forth below:

- (a) The Board shall terminate its regular activities when either (i) issuance of completion certificate and completion of punch list items or (ii) the Parties have terminated the contract and when, in either case, the Board has communicated to the Parties its decision on all disputes previously referred to.
 - (b) Once the Board has terminated its regular activities as provided by the previous paragraph, the Board shall remain available to process any dispute referred to it by either Party. In case of such referral, Board Members shall receive payments as provided in paragraphs 7 (a)(ii), (iii) and (iv).
5. Board Members shall not assign or subcontract any of their work under these Rules and Procedures.
6. The Board Members are independent and not employees or agents of either the Government or the Beneficiary Firm
7. Payments to the Board Members for their services shall be governed by the following provisions:
- (a) Each Board Member will receive payments as follows:
 - (i) A retainer fee per calendar month as specified in the schedule of fee made part of this Schedule and its revision from time to time. This retainer fee shall be considered as payment in full for:
 - (A) Being available, on 7 (seven) days' notice, for all hearings and other meetings of the Board.
 - (B) Being conversant with all project developments and maintain relevant files.
 - (C) All offices and overhead expenses such as secretarial services, photocopying and office supplies (but not include telephone calls, faxes, telexes) incurred in connection with the duties as a Board Member.
 - (ii) A daily fee as specified in the schedule of fee in respect of fee for Project visit and meeting, fee for meeting/hearing not at PProject and extra charges for days (max of 2 days for travel on each occasion) other than hearing / meeting days.
 - (iii) Expenses, in addition to the above, all reasonable and necessary travel expenses (including economy class air fare, subsistence, and other direct travel expenses). Receipts for all expenses in excess of [(INR 2000 (Rupees two thousand only))] shall be provided.
 - (iv) Reimbursement of any taxes that may be levied on payments made to the Board Member pursuant to this paragraph 7.
 - (v) The retainer fee and other fees shall remain fixed for the period of each Board Member's term until revised by the Government.

- (vi) Phasing out of monthly retainer fee, beginning with the next month after the completion certificate (or, if there are more than one, the one issued last) has been issued, the Board Members shall receive only one-third of the monthly retainer fee till next one year. Beginning with the next month after the Board has terminated its regular activities pursuant to paragraph 4(a) above, the Board Members shall no longer receive any monthly retainer fee.
- (vii) Payments to the Board Members shall be shared equally by the Government and the Beneficiary Firm. The concerned representative of the Government shall pay Members' invoices within 30 (thirty) calendar days after receipt of such invoices and shall invoice the Beneficiary Firm for one-half of the amounts of such invoices. The Beneficiary Firm shall pay such invoices within 30 (thirty) days' time period after receipt of such invoices.

8. Board Project visits:

- (a) The Board shall visit the Project and meet the representatives of the Government and the Beneficiary Firm at regular intervals, at times of critical construction events, at the written request of either Party, and in any case not less than 6 (six) times in any period of 12 (twelve) months. The timing of the Project visits shall be agreed among the Government, the Beneficiary Firm, and the Board, but failing agreement shall be fixed by the Board.
- (b) Project visits shall include an informal discussion of the status of manufacturing of the Advance Chemistry Cells. Project visits shall be attended by personnel from the Government and the Beneficiary Firm.
- (c) At the conclusion of each Project visit, the Board shall prepare a report covering its activities during the visit and shall send copies to the Parties.

9. Procedure for Dispute Referral to the Board:

- (a) If either Party objects to any action or inaction of the other Party, the objecting Party may file a written notice of dispute ("**Notice of Dispute**") to the other Party stating that it is given pursuant to the Agreement and state clearly and in details the basis of the dispute.
- (b) The Party receiving the Notice of Dispute will consider it and respond to it in writing within 14 (fourteen) days after receipt.
- (c) This response shall be final and conclusive on the subject, unless a written appeal to the response is filed with the responding party within 10 (ten) days after receiving the response and call upon the authorised representatives of the Parties to mediate and assist the Parties in arriving an amicable settlement thereof. Both Parties are encouraged to pursue the matter further to attempt to settle the dispute.
- (d) If the Parties authorised representatives receiving the Notice of Dispute fail to provide a written response within 14 (fourteen) days after receipt of such Notice of failing conciliation by the authorised representatives, either Party may require such dispute to be referred to the Board, either Party may refer the dispute to the Board by written request to the Board. The request for decision shall state clearly and in full detail the specific issues of the dispute(s) to be considered by the Board and shall be addressed to the

Chairman of the Board, with copies to the other Board Members and the other Party, and it shall state it is made pursuant to this Agreement.

- (e) When a dispute is referred to the Board, and the Board is satisfied that the dispute requires the Board's assistance, the Board decide when to conduct a hearing on the dispute. The Board may request that written documentation and arguments from both Parties be submitted to each Board Member before the hearing begins. The Parties shall submit insofar as possible agreed statements of the relevant facts.
- (f) During the hearing, the Beneficiary Firm and the Government shall each have ample opportunity to be heard and to offer evidence. The Board's decision for resolution of the dispute will be given in writing to the Government and the Beneficiary Firm as a soon as possible, and in any event not more than 56 (fifty six) days or any mutually extended period between the Beneficiary Firm and the Government. The time period of 56 (fifty six) days of issuance of the DRB decision will start from the day of first hearing that begins after submission of complete pleadings (including supporting documents, if any) by the Parties.

10. Conduct of hearings:

- (a) Normally hearings will be conducted at the Project, but any location that would be more convenient and still provide all required facilities and access to necessary documentation may be utilized by the Board. Private session of the Board may be held at any cost-effective location convenient to the Board. Video recordings of all hearings shall invariable be made.
- (b) During the hearings, no Bord Members shall express any opinion concerning the merit of the respective arguments of the parties.
- (c) After the hearings are concluded, the Board shall meet privately to formulate its decision. The private meeting(s) of the Board shall not exceed 3 (three) sittings. All Board deliberations shall be conducted in private, with all Members' individual views kept strictly confidential. The Board's decisions, together with an explanation of its reasoning shall be submitted in writing to both Parties. The Decision shall be based on the pertinent contract provisions, applicable laws and regulations and the facts and circumstances involved in the dispute.
- (d) The Board shall make every effort to reach a unanimous decision. If this proves impossible the majority shall decide and the dissenting Member may prepare a written minority report together with an explanation of its reasoning for submission to both Parties.

11. In all procedural matters, including the furnishing of written documents and arguments relating to disputes, Project visits and conduct of hearings, the Board shall have full and the final authority. If a unanimous decision on any such matter proves impossible, the majority shall prevail.

12. After having been selected and where necessary approved each Board Member shall sign 2 (two) copies of the following declaration and make one copy available each to the Government and the Beneficiary Firm.

“BOARD MEMBER’S DECLARATION OF ACCEPTANCE”

WHEREAS

- (a) A Programme Agreement (the “**Agreement**”) for the Battery Storage Project has been signed on _____ [date] between the Department of Heavy Industry, Ministry of Heavy Industries and Public Enterprises, Government of India, having its principal offices at [•] (the “**Government**”) and the _____ (the “**Beneficiary Firm**”).
- (b) The provisions of the Agreement and Dispute Resolution Board’s rules and procedure provided for establishment and operation of Dispute Resolution Board (the “**DRB**”).
- (c) The undersigned has been selected to serve as a Board Member on said DRB.

NOW THEREFORE, the undersigned Board Member hereby declares as follows:

- 1. I accept the selection as a Board member and agree to serve on the Board and to be bound by the provisions of the Programme Agreement and rules and procedure provided for establishment and operation of the DRB.
- 2. With respect to paragraph 1 of the DRB’s Rules and Procedure, said Annex I, I declare:
 - (a) that I have no financial interest of the kind referred to in subparagraph (a);
 - (b) that I have had no previous employment nor financial ties of the kind referred to in subparagraph (b); and
 - (c) that I have made to both Parties any disclosures that may be required by subparagraphs (b) and (c).
- 3. I declare that I have ___ no. of Arbitrations (list enclosed) and ___ no. of DRBs (list enclosed) in progress and I will give sufficient time for the current assignment.

BOARD MEMBER

[insert name of Board Member]

Date: _____

SCHEDULE OF EXPENSES AND FEES PAYABLE TO THE MEMBER (S) OF DRB

The fee and other expense payable to the Members of DRB shall be as under:-

S. No.	PARTICULARS	AMOUNT PAYABLE
1.	Retainer-ship fee, secretarial assistance, and incidental charges (telephone, fax postage etc.)	[INR 50,000 (Rupees fifty thousand) per month for one package and maximum of INR 75,000 (Rupees seventy-five thousand) per month for 2 or more packages]
2. (i)	Fee for Project visit or meetings at the Project	[INR 25,000 (Rupees twenty-five thousand) per day]
(ii)	Fee for meetings / hearings not at the Project	[INR 10,000 (Rupees ten thousand) per day]
3.	Traveling Expenses	Economy class by air, AC first class by train and AC taxi by road.
4.	Lodging and Boarding	[INR 15,000 (Rupees fifteen thousand) per day (metro cities); or INR 10,000 (Rupees ten thousand) per day (in other cities); or INR 5,000 (Rupees five thousand) per day (own arrangement)]
5.	Extra charges for days other than hearing/meeting days (travel days maximum of 2 days on each occasion)	[INR 5,000 (Rupees five thousand)]
6.	Local conveyance	[INR 2,000 (Rupees two thousand)]

Notes:

- (i) Lodging, boarding, and travelling expenses will be allowed only for those members who are residing 100kms away from the place of meeting.
- (ii) Delhi, Mumbai, Chennai, Kolkata, Bangalore, and Hyderabad shall be considered as metro cities.
- (iii) The above schedule of fee and expenses shall be applicable on or after the date of issue of this circular.
- (iv) The expenses are to be shared equally by the Parties i.e., the Government and the Beneficiary Firm.

SCHEDULE – L
SELECTION OF INDEPENDENT ENGINEER

(See Clauses 9.1 and 9.2)

1. Selection of Independent Engineer

- 1.1 The provisions of Part II of the Standard Bidding Documents for Consulting Assignments. Time Based (Volume V) issued by the Ministry of Finance, GOI in July, 1997 or any substitute thereof shall apply, *mutatis mutandis*, for invitation of bids and evaluation thereof save as otherwise provided herein.
- 1.2 The Government shall invite expressions of interest from consulting engineering firms or bodies corporate to undertake and perform the duties and functions set forth in the Programme Agreement and thereupon shortlist 6 (six) qualified firms in accordance with pre-determined criteria. The Government shall convey the aforesaid list of firms to the Beneficiary Firm for scrutiny and comments, if any. The Beneficiary Firm shall be entitled to scrutinise the relevant records of the Government 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 Government within 15 (fifteen) days of receiving the aforesaid list of firms. Upon receipt of such comments, if any, the Government shall, after considering all relevant factors, finalise and constitute a panel of 6 (six) firms (the “**Panel of Firms**”) and convey its decision to the Beneficiary Firm.
- 1.3 The Government shall invite the aforesaid firms in the Panel of Firms to submit their respective technical and financial offers, each in a separate sealed cover. All the technical bids so received shall be opened and pursuant to the evaluation thereof, the Government shall shortlist 3 (three) eligible firms on the basis of their technical scores. The financial bids in respect of such 3 (three) firms shall be opened and the order of priority as among these firms shall be determined on the basis of a weighted evaluation where technical and financial scores shall be assigned respective weights of 80:20.
- 1.4 In the event that the Government shall follow the selection process specified in the Model RFP for selection of Technical Consultant, as published by the Ministry of Finance, the selection process specified in this Schedule – L shall be deemed to be substituted by the provisions of the said Model RFP and the Beneficiary Firm shall be entitled to scrutinize the relevant records forming part of such selection process.

2. Fee and expenses

- 2.1 In determining the nature and quantum of duties and services to be performed by the Independent Engineer during the Term of the Programme Agreement, the Government shall endeavour that payments to the Independent Engineer on account of fee and expenses do not exceed INR [•]. Payments not exceeding INR [•] shall be borne equally by the Government and the Beneficiary Firm in accordance with the provisions of this Agreement and any payments in excess thereof shall be borne entirely by the Government.

3. [Appointment of Government entity as Independent Engineer

- 3.1 Notwithstanding anything to the contrary contained in this Schedule - L, the Government may in its discretion appoint a government-owned entity as the Independent Engineer; provided that such entity shall be a body corporate having as one of its primary function the provision of consulting, advisory and supervisory services for engineering projects; provided further that a government- owned entity which is owned or controlled by the Government shall not be eligible for appointment as an Independent Engineer.]

Annex-1

I. TERMS OF REFERENCE FOR INDEPENDENT ENGINEER

1. Scope

1.1 These Terms of Reference for the Independent Engineer (the “**TOR**”) are being specified in accordance with the Programme Agreement dated..... (the “**Agreement**”), which has been entered into between the Government and..... (the “**Beneficiary Firm**”) for availing subsidy for manufacturing Advance Chemistry Cells (“**ACCs**”), and a copy of which is annexed hereto and marked as Annex-A to form part of this TOR.

1.2 This TOR shall apply to construction, operation and maintenance of the Project under the Agreement.

The TOR for the appointment of the Independent Engineer will be as follows:

2. Definitions and Interpretation

2.1 The words and expressions beginning with or in capital letters used in this TOR and not defined herein but defined in the Agreement shall have, unless repugnant to the context, the meaning respectively assigned to them in the Agreement.

2.2 References to Articles, Clauses and Schedules in this TOR shall, except where the context otherwise requires, be deemed to be references to the Articles, Clauses and Schedules of the Agreement, and references to Paragraphs shall be deemed to be references to Paragraphs of this TOR.

The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Agreement shall apply, mutatis mutandis, to this TOR.

3. Role and functions of the Independent Engineer

3.1 The role and functions of the Independent Engineer shall include the following:

- (i) review and certify that the Beneficiary Firm has met its Committed Scale of Production;
- (ii) inspection of the Advance Chemistry Cells manufactured at the Project; and
- (iii) undertaking all other duties and functions in accordance with the Agreement.

3.2 The Independent Engineer shall discharge its duties in a fair, impartial and efficient manner, consistent with the highest standards of professional integrity and Good Industry Practice.

4. Inspection

4.1 The Independent Engineer shall inspect a sample of the Advance Chemistry Cell manufactured at the Project, at least once a quarter. The inspection shall be undertaken on a random sample basis and shall be in addition to, and independent of, the inspection carried out by the Government or its authorised representatives, or any inspection that may be carried out by the Beneficiary Firm for its own quality assurance in accordance with Good Industry Practice

4.2 The Independent Engineer shall have the right to test the Advance Chemistry Cell at an independent lab.

4.3 In a separate section of the Inspection Report, the Independent Engineer shall describe in reasonable detail the lapses, defects or deficiencies observed by it in the Advance Chemistry Cell, if any. The Independent Engineer shall send a copy of this section to the Government within 7 (seven) days of its inspection to form a part of the Inspection Report.

5 Committed Scale of Production

5.1 The Independent Engineer shall inspect the Project to ensure that the Beneficiary Firm has met its Committed Scale of Production, every quarter, and submit a **Milestone completion certificate**,

6. Other duties and functions

6.1 The Independent Engineer shall perform all other duties and functions specified in the Agreement.

7. Miscellaneous

7.1 The Independent Engineer shall notify its programme of inspection to the Government and to the Beneficiary Firm, who may, in their discretion, depute their respective representatives to be present during the inspection.

7.2 A copy of all communications, comments, instructions, or documents sent by the Independent Engineer to the Beneficiary Firm pursuant to this TOR, and a copy of all the test results with comments of the Independent Engineer thereon shall be furnished by the Independent Engineer to the Government forthwith.

7.3 The Independent Engineer shall obtain and the Beneficiary Firm shall furnish in 2 (two) copies thereof, all communications and reports required to be submitted, under this Agreement, by the Beneficiary Firm to the Independent Engineer, whereupon the Independent Engineer shall send 1 (one) of the copies to the Government along with its comments thereon.

7.4 Upon completion of its assignment hereunder, the Independent Engineer shall duly classify and list all documents, results of tests and other relevant records, and hand them over to the Government or such other person as the Government may specify and obtain written receipt thereof. Two copies of the said documents shall also be furnished in editable digital format or in such other medium or manner as may be acceptable to the Government.

SCHEDULE – M
TECHNICAL BID SUBMITTED BY THE BIDDER

DRAFT

**National Programme on ACC Battery
Storage**

TRIPARTITE AGREEMENT

TRIPARTITE AGREEMENT

BY AND AMONGST

**Department of Heavy Industry, Ministry of Heavy Industry & Public Enterprises, Government
of India**

AND

[insert name of the State Government]

AND

[insert name of the Beneficiary Firm]

DRAFT

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[To be executed on stamp paper of appropriate value]

TRIPARTITE AGREEMENT

THIS TRIPARTITE AGREEMENT (“**Tripartite Agreement**”) is made on this ____ day of _____, 20[•], by and amongst:

1. **Government of India**, through Department of Heavy Industry, Ministry of Heavy Industries & Public Enterprises having its office at [• *insert address*], (hereinafter referred to as “**GoI**”), which expression shall unless repugnant to the context or meaning thereof, include its successors and assigns, of the **First Part**; and
2. **State Government of [•]**, through [• *insert name*], [• *insert designation*], [• *insert Department*], having its office at [• *insert address*], (hereinafter referred to as “**State Government**”), which expression shall unless repugnant to the context or meaning thereof, include its successors and assigns, of the **Second Part**; and
3. [• *insert name*], a company incorporated and registered under the Indian Companies Act, 2013, with its corporate identity number [•] and having its registered office at [• *insert address*] (hereinafter referred to as the “**Beneficiary Firm**”, which expression shall, unless repugnant to the subject, context or meaning thereof, include its successors and permitted assigns) of **Third Part**.

The “**GoI**”, “**State Government**” and “**Beneficiary Firm**” hereinafter jointly referred to as the “**Parties**” and individually as the “**Party**”.

1. PREAMBLE

- 1.1 The GoI, in order to obtain self-reliance in production of advance chemistry cell (“**ACC**”) and storage batteries, endeavours to support domestic manufacturing of ACC;
- 1.2 The GoI has issued the has launched and intends to implement the National Programme on Advance Chemistry Cell Battery Storage (“**Programme**”) for implementing an enabling ecosystem for the private sector to make investments into setting-up of ACC manufacturing facilities as described in the Programme Agreement (“**Project**”). The ecosystem will facilitate export competitiveness and address ongoing concern of the domestic manufacturing facilities;
- 1.3 The GoI is desirous of appointing a Beneficiary Firm, incorporated as a special purpose vehicle (“**SPV**”) under the Indian Companies Act, 2013 pursuant to the request for proposal (“**RFP**”), issued by the GoI dated [•], to set-up a Project and undertake the capital phasing for the overall production capacity and domestic Value Addition. A copy of the Letter of Award given to the Beneficiary Firm by the GoI has been annexed with this Tripartite Agreement in Schedule-C;
- 1.4 The GoI shall render its support to the Beneficiary Firm by extending financial incentives (“**Subsidy**”) as quoted by the Beneficiary Firm under the RFP and the State Government has offered to extend support at its level for providing land to the Beneficiary Firm for setting up of the Project and extending support for procuring all the Applicable Permits (“**Project**”);
- 1.5 Pursuant to the aforesaid, the Parties have agreed that the successful implementation of the Project, requires extensive continued support and grant of certain rights and authorities as hereinafter set forth, by State Government;
- 1.6 The Parties therefore consider it necessary and expedient to enter into this Tripartite Agreement.

NOW THEREFORE THE PARTIES HERETO HEREBY AGREE AND THIS AGREEMENT WITNESSETH AS FOLLOWS:

2. DEFINITIONS AND INTERPRETATIONS

2.1 In this Tripartite Agreement, the following terms shall, unless repugnant to the context or meaning thereof, have the meaning hereinafter respectively assigned to them:

“**ACC**” shall have the meaning ascribed under the Programme Agreement;

“**Applicable Laws**” means all laws, brought into force and effect by GoI or State Government, including rules, regulations, policies and notifications made thereunder, and judgements, decrees, injunctions, writs and orders of any court of record, applicable to this Tripartite 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 Tripartite Agreement;

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

“**Claimants**” has the meaning ascribed to such term in Clause 11.2 of this Tripartite Agreement;

“**DIAC**” has the meaning ascribed to such term in Clause 11.2 of this Tripartite Agreement;

“**Effective Date**” shall be the date when the State Government meets all its obligations under this Tripartite Agreement;

“**Government Agency**” means any department, section, division or sub-division including any board, authority, commission, instrumentality, agency, municipality, panchayat or other local authority or any statutory body or authority under the control of State Government or which is subject to supervision, direction or control of State Government in respect of any matter or which can be suspended, superseded or dissolved by State Government;

“**Programme Agreement**” means the agreement executed between the Beneficiary Firm and the Government of India in connection with the Project, as provided in Schedule B to this Tripartite Agreement;

“**Project**” has the meaning ascribed to such term in Clause 1.4 of this Tripartite Agreement;

“**Respondents**” has the meaning ascribed to such term in Clause 11.2 of this Tripartite Agreement;

“**RFP**” has the meaning ascribed to such term in Clause 1.3 of this Tripartite Agreement;

“**Site**” has the meaning ascribed to such term in Clause 7.1.1 of this Tripartite Agreement;

“**SPV**” has the meaning ascribed to such term in Clause 1.3 of this Tripartite Agreement;

“**Subsidy**” has the meaning ascribed to such term in Clause 1.4 of this Tripartite Agreement; and

“**Tripartite Agreement**” means this tripartite agreement and all annexures, schedules and

appendices hereto, as amended or modified from time to time, in accordance with the terms hereof.

2.2 The words and expressions beginning with or in capital letters used in this Tripartite Agreement shall have the meaning respectively assigned to them herein or in the Programme Agreement.

2.3 In this Tripartite Agreement unless the context otherwise requires:

- (i) any reference to any statute or any statutory provision shall include any amendment or re-enactment or consolidation thereof;
- (ii) the words importing singular shall include plural and vice versa, and reference to a “person” and words denoting natural persons shall include partnerships, firms, companies, corporations, joint ventures, trusts, associations, organizations or other entities (whether or not having a separate legal entity) and shall include Government Agencies;
- (iii) the headings are for convenience of reference only and shall not be used in and shall not affect the construction or interpretation of this Tripartite Agreement;
- (iv) the words “include” and “including” are to be construed without limitation;
- (v) any reference to a “day” shall mean reference to a calendar day, and any reference to “month” shall mean reference to a calendar month;
- (vi) the annexures and appendices to this Tripartite Agreement form an integral part of this Tripartite Agreement and will be in full force and effect as though they were expressly set out in the body of this Tripartite Agreement;
- (vii) any reference at any time to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference provided that this clause shall not operate so as to increase liabilities or obligations of State Government or Beneficiary Firm hereunder or pursuant hereto in any manner whatsoever;
- (viii) references to Recitals, Clauses, Sub-clauses, Schedules, Annexures or Appendices in this Tripartite Agreement shall be deemed to be references to recitals, clauses, sub-clauses, schedules, annexures, and appendices of this Tripartite Agreement;
- (ix) any agreement, consent, approval, authorization, proposal, notice, communication, information or report required under or pursuant to this Tripartite Agreement from or by any Party shall be valid and effectual only if it is in writing and executed by duly authorized representative of such Party in this behalf and not otherwise; and
- (x) any reference to any period commencing “from” a specified day or date and “till” or “until” a specified day or date shall include both days or dates.

2.4 Priority of agreements

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

- (i) the Programme Agreement; and
 - (ii) this Tripartite Agreement;
- i.e., the documents at (i) will prevail over agreements and documents at (ii).

3. TERM

This Tripartite Agreement shall come into force from the date hereof and shall continue to be in effect for the term of the Programme Agreement, unless otherwise agreed between the Parties.

4. OBJECT & SCOPE

The object of this Tripartite Agreement is to set out the broad principles of cooperation and modalities to guide and govern the role of the Parties in the effective implementation of the Project in accordance with the terms and conditions of this Tripartite Agreement.

5. IMPLEMENTATION PERIOD

Works for the Project shall commence as provided under the Programme Agreement and the State Government shall be scheduled to extend its incentives to the Beneficiary Firm in accordance with Applicable Laws.

6. OBLIGATIONS OF THE GoI

The GoI hereby agrees to disburse the Subsidy as per the terms of the Programme Agreement.

7. OBLIGATIONS OF THE STATE GOVERNMENT⁴

The State Government hereby agrees to comply with and perform the following, either by itself or through any other Government Agency:

7.1 Provision of land]

7.1.1 The State Government shall acquire, lease or transfer at least [10 (ten)] Acres of land per GWh (in accordance with the capacity specified and approved in the Programme Agreement) for the Project, free from encumbrances and hand over the possession of such land to the Beneficiary Firm (“Site”) within [•] months from the date of execution of this Tripartite Agreement.

7.1.2 The Parties agree that for obtaining the Site, the State Government or any Government Agency shall, by way of an outright sale, transfer the Site to the Beneficiary Firm or lease the Site to the Beneficiary Firm by way of a long-term lease for a period of 99 (ninety-nine) years. In case of lease of the Site, the State Government agrees that the annual lease rental for the Site shall not exceed INR [•]⁵ per [Acre]. The State Government further agrees that in case of outright sale, the price payable by the Beneficiary Site in respect of the Site shall not exceed the lower of: (i) market price; or (ii) the circle rate, as the case may be.

⁴ **Note:** These are guidelines and may be mutually revised as agreed between the Parties. All provisions in the square parenthesis [] are to be agreed between the Parties and may be modified accordingly.

⁵ **Note:** The conveyance price shall not exceed the lower of the circle rate or market rate.

- 7.1.3 The State Government shall undertake adequate measures to ensure that any stamp duty payable on the Site transferred or leased to the Beneficiary Firm shall not be greater than 6% (six per cent) of the lower of sale consideration or the circle rate for the Site, as the case may be.

7.2 [Connectivity of Site]

- 7.2.1 The Site made available by the State Government to the Beneficiary Firm shall be located within 5 (five) kilometers of a national or state highway. The State Government further agrees that the Site shall be within [•] km of a [major] port and within 50 (fifty) kilometres of an airport, for transportation of necessary equipment, materials, and personnel, for the Project.]

7.3 [Provision of trunk infrastructure]

- 7.3.1 The State Government shall make available to the Beneficiary Firm, trunk infrastructure necessary for the Project. The trunk infrastructure shall include facilities such as access roads to the Site, sewage, water, electricity infrastructure, etc. as provided in Schedule-A to this Tripartite Agreement. The State Government further agrees that it shall either provide to or share the cost incurred by the Beneficiary Firm on common infrastructure, including without limitation, common effluent treatment plants.^{6]}

7.4 Clearances

- 7.4.1 The Beneficiary Firm shall obtain and, at all times, continue to maintain all Applicable Permits required under Applicable Laws for undertaking and implementing the Project.
- 7.4.2 The State Government shall grant and cause its instrumentalities to accord all necessary Applicable Permits, sanctions, no objection certificates etc. under a single window clearance mechanism, as necessary, within the relevant statutory period or within a reasonable time after the relevant application for the same is fully completed, under and in accordance with Applicable Laws. The State Government shall, where applicable, set up a single window clearance mechanism for obtaining Applicable Permits in connection with the Project no later than [•] months from the date of execution of this Tripartite Agreement. It is clarified that notwithstanding the single window clearance mechanism of the State Government, the Beneficiary Firm shall comply with and be responsible to obtain all Applicable Permits under and in accordance with Applicable Laws.

7.5 [Additional Incentives]

- 7.5.1 The State Government may provide subsidy to the Beneficiary Firm, over and above the incentives available to it under the National Programme on ACC Battery Storage, under and in accordance with Applicable Laws.]

7.6 [Other Obligations]

- 7.6.1 The State Government shall ensure that the entities owning the existing road, right of way or utilities on, under or above the land where the Project is situated allow continuous satisfactory use thereof.
- 7.6.2 The State Government shall undertake shifting of any utility including electric lines, water pipes, telephone cables or any other utilities as may be required, to an appropriate location or

⁶ **Note:** Any charges with respect to common infrastructure may be shared by the Beneficiary Firm and the State Government.

alignment within or outside the Site if such utility causes or shall cause material adverse effect on the Project.

- 7.6.3 The State Government agrees that it shall procure that the tariff for electricity payable by the Beneficiary Firm at the Project shall not exceed the [average cost of supply of electricity] of the utility supplying electricity at the Project. The State Government further agrees that if it is unable to ensure that the Beneficiary gets electricity at the tariff specified above, it shall reimburse the Beneficiary Firm, the difference in the invoiced amount and the [average cost of supply of electricity].
- 7.6.4 Subject to Clause 7.6.3 above, if the Beneficiary Firm does not procure electricity from the utility in the area of the Project and requires electricity through open access, the State Government shall, upon request made by the Beneficiary Firm, facilitate in obtaining such open access under and in accordance with Applicable Laws. The State Government further agrees that it shall facilitate in extending benefits in relation to transmission and wheeling charges for the Beneficiary Firm at discounted rates, under and in accordance with Applicable Laws.]
- 7.6.5 It is clarified that the State Government shall fulfil its obligations provided in this Article no later than [180 (One hundred and eighty)] days from the execution of this Tripartite Agreement (“**Effective Date**”).

8 OBLIGATIONS OF THE BENEFICIARY FIRM

Beneficiary Firm shall perform, observe, and comply with:

- (i) all Applicable Laws and Applicable Permits;
- (ii) its obligations, including without limitation to set up an ACC Project in accordance with the Programme Agreement;
- (iii) undertaking construction, development, operation, and maintenance of the Project and bearing expenses in relation thereto;
- (iv) its obligations under this Tripartite Agreement;
- (v) prescribed codes and specifications for various items for construction and operation as well as the safety standards prescribed under the Applicable Law; and
- (vi) be bound by such directions as the GoI may give in writing from time to time after giving due opportunity to Beneficiary Firm to express its views before giving any direction.

9 REPRESENTATIONS AND WARRANTIES

Each Party hereby represents and warrants to the other Parties hereto as follows:

- (i) It has power and authority to execute, deliver and perform its obligations under this Tripartite Agreement and to carry out the transactions contemplated hereby;
- (ii) It has taken all necessary governmental, corporate, and other action under Applicable Laws and its constitutional documents (as applicable) to authorize the execution, delivery, and performance of this Tripartite Agreement;

- (iii) This Tripartite Agreement constitutes its legal, valid, and binding obligation, enforceable against it in accordance with the terms hereof;
- (iv) It is subject to civil and commercial laws of India with respect to this Tripartite Agreement and it hereby expressly and irrevocably waives any immunity in any jurisdiction in respect thereof;
- (v) The execution, delivery and performance of this Tripartite Agreement will not conflict with, result in the breach of, constitute a default under or accelerate performance required by any of the terms of the charter documents (if applicable) or any Applicable Laws or Applicable Permits or any covenant, agreement, 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; and
- (vi) 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 judicial, quasi-judicial or other authority, the outcome of which may result in the breach of or constitute a default on its part under this Tripartite Agreement, or which individually or in the aggregate may result in any material adverse effect on its business, properties or assets or its condition, financial or otherwise, or in any impairment of its ability to perform its obligations and duties under this Tripartite Agreement.

10 SOVEREIGN IMMUNITY

10.1 The State Government hereby unconditionally and irrevocably:

- (i) agrees that the execution, delivery, and performance by it of this Tripartite Agreement do not constitute sovereign acts;
- (ii) agrees that should any proceedings be brought or any execution, attachment or any other legal process is made against it or its assets, property or revenues in any jurisdiction in relation to or arising out of this Tripartite Agreement or any transaction contemplated by this Tripartite Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings, execution, attachment or other legal process shall be claimed by or on behalf of the State Government or with respect to any of its assets, property or revenues;
- (iii) waives any right of immunity, which it or its assets property or revenues now has or may acquire in the future or which may be attributed to it in any jurisdiction; and
- (iv) consents generally to the enforcement of any judgment or award against it in any such proceedings including to the giving of any relief or the issue of any process in any jurisdiction in connection with any such proceedings including the making, enforcement or execution against it or any of its assets, properties or revenues, of any order, judgment or decree that may be made or given in connection therewith.

10.2 Notwithstanding anything to the contrary herein contained, such waiver of right of immunity shall not apply to:

- (i) property and assets of any consular or diplomatic mission or consulate; or
- (ii) property belonging to the defence services and such assets of the GoI.

11 GOVERNING LAW AND DISPUTE SETTLEMENT

11.1 This Tripartite Agreement shall be governed by and construed and interpreted in accordance

with the laws of India.

- 11.2 Any and all claims, dispute, difference or controversy between the Parties of whatever nature, arising out of, or in connection with, or in relation to this Tripartite Agreement, which is not resolved amicably within 90 (ninety) days of receipt of notice of such dispute, difference or controversy from a Party/ Parties (the “**Claimants**”) by the remaining Party/ Parties (the “**Respondents**”) in the first instance, the same shall be decided by reference to arbitration in accordance with the rules of the Delhi International Arbitration Centre (**DIAC**).
- 11.3 The seat and venue of arbitration shall be at New Delhi. The arbitration panel shall consist of [3 (three)] arbitrators to be appointed in accordance with the rules of DIAC. The language of the arbitration shall be English.
- 11.4 The Parties agree that they shall continue to perform their respective obligations under this Tripartite Agreement during such arbitration unless the performance or otherwise of such obligation is itself the subject matter of arbitration.
- 11.5 Subject to the provisions relating to dispute settlement and arbitration set out under Clause 11.2 and Clause 11.3 above, the courts at [•], shall have exclusive jurisdiction over all matters arising out of or relating to this Tripartite Agreement.

12 MISCELLANEOUS

12.1 Alteration of Terms

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

12.2 Time or Indulgence Allowed

An indulgence by a Party to any of the other Party in respect of any obligation or matter hereunder including time for performance to such other Party or to remedy any breach hereof shall not be construed as a waiver of any of its rights hereunder by the Parties, and any such indulgence may be on such terms and subject to such conditions as the Party giving it may specify and shall be without prejudice to the Party’s then accrued rights under this Tripartite Agreement, except to the extent expressly varied in writing.

12.3 Severability of Terms

If any provision of this Tripartite Agreement is declared to be invalid, unenforceable or illegal by any competent arbitration tribunal or court, such invalidity, unenforceability or illegality shall not prejudice or affect the remaining provisions of this Tripartite Agreement, which shall continue in full force and effect.

12.4 Language

All notices, certificates, correspondence, or other communications under or in connection with this Tripartite Agreement shall be in English language only.

12.5 Notices

- (i) Any notice or communication hereunder shall be in writing, signed by the Party giving

it and may be served by sending it by hand delivery, facsimile, e-mail, registered or speed post, or by reputed national courier service, addressed as follows (or to such other address as shall have been duly notified in accordance with this Clause):

If to the **GoI**:

Attn: [•]
Address: [•]
Fax no.: [•]
Email: [•]

If to the **State Government**:

Attn: [•]
Address: [•]
Fax no.: [•]
Email: [•]

If to **Beneficiary Firm**:

Attn: [•]
Address: [•]
Fax no.: [•]
Email: [•]

- (ii) All notices given in accordance with Sub-Clause (i) above shall be deemed to have been served as follows:
- (a) if delivered by hand, at the time of delivery, when proof of delivery has been obtained; or
 - (b) if sent by registered or speed-post or by a nationally recognized courier service, at the expiration of 7 (seven) days following posting; or
 - (c) if communicated by facsimile or e-mail, on receipt of confirmation of successful transmission and delivery.
- (iii) All notices communicated by facsimile or e-mail shall be followed by a copy thereof being sent by speed post to the addressee. A notice or other communication received on a day other than a business day, or after business hours in the place of receipt, shall be deemed to be given on the next following business day in such place.

12.6 Authorized Representatives

Each of the Parties shall by notice in writing designate their respective authorized 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 its authorized representative by similar notice.

12.7 Original Document

This Tripartite Agreement is made in one or more counterparts, each of which shall be deemed to be an original.

12.8 Conflict

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

12.8.2 Termination of this Tripartite Agreement shall not relieve any Party of any accrued rights,

obligations and liabilities arising out of, or caused by any act or omission of a Party, till the effective date of such termination or arising out of such termination.

- 12.8.3 State Government and Beneficiary Firm shall not assign their rights under this Tripartite Agreement without the prior written consent of the other Party. This Tripartite Agreement shall be binding on and shall inure to the benefit of successors-in interest and permitted assigns of the Parties.

[Signature page follows]

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

SIGNED SEALED AND DELIVERED BY

For Government of [•] _____ Name: Title:	For [•] _____ Name: Title:
For Department of Heavy Industry, Ministry of Heavy Industries & Public Enterprises, Government of India _____ Name: Title:	

Witnesses:

1. _____ Name: Address:	2. _____ Name: Address:
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SCHEDULE A

[Details of Trunk Infrastructure]

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SCHEDULE B
[Programme Agreement]

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SCHEDULE C
[Letter of Award]

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