

**Name of Work:**

**Selection of Developer for Strengthening, Upgradation, Augmentation, Establishment, Operation and Maintenance of Industrial Infrastructure on DBFOT basis for APSEZ Atchutapuram Industrial Area developed by APIIC, Anakapalli District, Andhra Pradesh**

**Volume – II**

**Concession Agreement**



ANDHRA PRADESH INDUSTRIAL INFRASTRUCTURE CORPORATION LTD  
9TH FLOOR, APIIC TOWERS, PLOT NO-1, IT PARK, MANGALAGIRI,  
GUNTUR DISTRICT, ANDHRA PRADESH - 522503  
Email: [chiefengineer3-ap@apiic.in](mailto:chiefengineer3-ap@apiic.in)

**Volume-II**  
**CONCESSION AGREEMENT**

## Table of Contents

Page No.

### **PART I - PRELIMINARY**

<b>1.</b>	<b>DEFINITIONS AND INTERPRETATIONS .....</b>	<b>15</b>
1.1.	DEFINITIONS.....	15
1.2.	INTERPRETATION .....	15
1.3.	MEASUREMENTS AND ARITHMETIC CONVENTIONS.....	18
1.4.	PRIORITY OF AGREEMENTS AND ERRORS/DISCREPANCIES.....	18
<b>2.</b>	<b>SCOPE OF THE PROJECT .....</b>	<b>21</b>
2.1.	BROAD METHODOLOGY OF THE PROJECT:.....	21
<b>3.</b>	<b>GRANT OF CONCESSION .....</b>	<b>25</b>
3.1.	THE CONCESSION .....	25
<b>4.</b>	<b>CONDITIONS PRECEDENT .....</b>	<b>26</b>
4.1.	CONDITIONS PRECEDENT .....	26
4.2.	DAMAGES FOR DELAY BY THE AUTHORITY.....	27
4.3.	DAMAGES FOR DELAY BY THE CONCESSIONAIRE.....	27
4.4.	COMMENCEMENT OF CONCESSION PERIOD .....	28
<b>5.</b>	<b>OBLIGATIONS OF THE CONCESSIONAIRE .....</b>	<b>29</b>
5.1.	OBLIGATIONS OF THE CONCESSIONAIRE.....	29
5.2.	OBLIGATIONS RELATING TO PROJECT AGREEMENTS .....	30
5.3.	OBLIGATIONS RELATING TO CHANGE IN OWNERSHIP .....	30
5.4.	EMPLOYMENT OF TRAINED PERSONNEL.....	32
5.5.	SOLE PURPOSE OF THE CONCESSIONAIRE.....	32
5.6.	BRANDING OF THE PROJECT .....	32
5.7.	BUSINESS RISKS .....	32
<b>6.</b>	<b>OBLIGATIONS OF THE AUTHORITY.....</b>	<b>33</b>
6.1.	OBLIGATIONS OF THE AUTHORITY .....	33
<b>7.</b>	<b>SECURITY AND ILLEGAL OFFTAKE.....</b>	<b>35</b>
<b>8.</b>	<b>REPRESENTATION AND WARRANTIES .....</b>	<b>36</b>
8.1.	REPRESENTATIONS AND WARRANTIES OF THE CONCESSIONAIRE .....	36
8.2.	REPRESENTATIONS AND WARRANTIES OF THE AUTHORITY .....	38
8.3.	DISCLOSURE.....	38
<b>9.</b>	<b>DISCLAIMER .....</b>	<b>40</b>
9.1.	DISCLAIMER .....	40
<b>10.</b>	<b>PERFORMANCE SECURITY.....</b>	<b>42</b>
10.1.	PERFORMANCE SECURITY .....	42
10.2.	APPROPRIATION OF PERFORMANCE SECURITY .....	42
10.3.	RELEASE OF PERFORMANCE SECURITY .....	43
10.4.	DEEMED PERFORMANCE SECURITY .....	43
10.5.	APPROPRIATION OF DEEMED PERFORMANCE SECURITY.....	43

10.6.	REFERENCES TO PERFORMANCE SECURITY .....	44
<b>11.</b>	<b>RIGHT OF WAY.....</b>	<b>45</b>
11.1.	THE SITE .....	45
11.2.	LICENSE, ACCESS AND RIGHT OF WAY .....	45
11.3.	PROCUREMENT OF THE SITE.....	46
11.4.	SITE TO BE FREE FROM ENCUMBRANCES .....	46
11.5.	PROTECTION OF SITE FROM ENCROACHMENTS .....	47
11.6.	SPECIAL / TEMPORARY RIGHT OF WAY .....	47
11.7.	ACCESS TO THE AUTHORITY AND INDEPENDENT ENGINEER .....	47
11.8.	GEOLOGICAL AND ARCHAEOLOGICAL FINDS .....	47
<b>12.</b>	<b>UTILITIES AND TREES .....</b>	<b>48</b>
12.1.	EXISTING UTILITIES.....	48
12.2.	SHIFTING OF OBSTRUCTING UTILITIES.....	48
12.3.	NEW UTILITIES .....	48
12.4.	FELLING OF TREES .....	48
<b>13.</b>	<b>IMPLEMENTATION OF THE PROJECT.....</b>	<b>50</b>
13.1.	OBLIGATIONS PRIOR TO COMMENCEMENT OF CONSTRUCTION .....	50
13.2.	DRAWINGS.....	50
13.3.	IMPLEMENTATION OF THE PROJECT .....	51
<b>14.</b>	<b>MONITORING OF CONSTRUCTION .....</b>	<b>53</b>
14.1.	MONTHLY PROGRESS REPORTS .....	53
14.2.	INSPECTION .....	53
14.3.	TESTS.....	53
14.4.	DELAYS DURING CONSTRUCTION .....	54
14.5.	VIDEO RECORDING .....	54
<b>15.</b>	<b>COMPLETION CERTIFICATE.....</b>	<b>55</b>
15.1.	TESTS .....	55
15.2.	COMPLETION CERTIFICATE.....	55
15.3.	COMPLETION OF PUNCH LIST ITEMS .....	56
15.4.	RESCHEDULING OF TESTS .....	56
<b>16.</b>	<b>PROJECT COMMENCEMENT DATE .....</b>	<b>57</b>
16.1.	PROJECT COMMENCEMENT DATE (PCD).....	57
<b>17.</b>	<b>CHANGE OF SCOPE.....</b>	<b>58</b>
17.1.	CHANGE OF SCOPE .....	58
17.2.	PROCEDURE FOR CHANGE OF SCOPE.....	58
17.3.	PAYMENT FOR CHANGE OF SCOPE .....	59
17.4.	RESTRICTION ON CERTAIN WORKS.....	59
<b>18.</b>	<b>OPERATION AND MAINTENANCE.....</b>	<b>60</b>
18.1.	O&M OBLIGATIONS OF THE CONCESSIONAIRE .....	60
18.2.	MAINTENANCE REQUIREMENTS.....	61
18.3.	MAINTENANCE MANUAL .....	61
18.4.	MAINTENANCE PROGRAMME.....	61

18.5.	DAMAGES FOR BREACH OF MAINTENANCE OBLIGATIONS .....	62
18.6.	AUTHORITY'S RIGHT TO TAKE REMEDIAL MEASURES .....	62
18.7.	OVERRIDING POWERS OF THE AUTHORITY .....	62
18.8.	RESTORATION OF LOSS OR DAMAGE TO PROJECT OR ITS COMPONENTS	63
18.9.	MODIFICATIONS TO THE PROJECT .....	63
18.10.	EXCUSE FROM PERFORMANCE OF OBLIGATIONS .....	63
18.11.	BARRIERS AND DIVERSIONS .....	64
<b>19.</b>	<b>SAFETY REQUIREMENTS.....</b>	<b>65</b>
19.1.	SAFETY REQUIREMENTS .....	65
19.2.	EXPENDITURE ON SAFETY REQUIREMENTS.....	65
<b>20.</b>	<b>MONITORING OF OPERATION AND MAINTENANCE.....</b>	<b>66</b>
20.1.	MONTHLY STATUS REPORTS .....	66
20.2.	INSPECTION .....	66
20.3.	TESTS.....	66
20.4.	REMEDIAL MEASURES .....	66
<b>21.</b>	<b>INDEPENDENT ENGINEER.....</b>	<b>68</b>
21.1.	APPOINTMENT OF INDEPENDENT ENGINEER .....	68
21.2.	DUTIES AND FUNCTIONS .....	68
21.3.	REMUNERATION .....	68
21.4.	TERMINATION OF APPOINTMENT .....	68
21.5.	AUTHORIZED SIGNATORIES .....	69
21.6.	DISPUTE RESOLUTION.....	69
21.7.	MONITORING AND SUPERVISION DURING OPERATION.....	69
21.8.	IMPLEMENTATION OF QUALITY/RISK MANAGEMENT SYSTEM AND WATER ENERGY AUDIT .....	71
<b>22.</b>	<b>FINANCIAL CLOSURE .....</b>	<b>73</b>
22.1.	FINANCIAL CLOSURE.....	73
22.2.	TERMINATION DUE TO FAILURE TO ACHIEVE FINANCIAL CLOSE .....	73
<b>23.</b>	<b>BID PROJECT COST .....</b>	<b>75</b>
23.1.	O&M PAYMENTS .....	75
<b>24.</b>	<b>ESCROW ACCOUNT.....</b>	<b>78</b>
24.1.	ESCROW ACCOUNT .....	78
24.2.	DEPOSITS INTO ESCROW ACCOUNT .....	78
24.3.	WITHDRAWALS DURING CONCESSION PERIOD.....	78
24.4.	WITHDRAWALS UPON TERMINATION.....	79
<b>25.</b>	<b>INSURANCE .....</b>	<b>80</b>
25.1.	INSURANCE DURING CONCESSION PERIOD.....	80
25.2.	INSURANCE COVER .....	80
25.3.	NOTICES TO THE AUTHORITY .....	80
25.4.	EVIDENCE OF INSURANCE COVER.....	81
25.5.	REMEDY FOR FAILURE TO INSURE .....	81
25.6.	WAIVER OF SUBROGATION .....	81

25.7.	CONCESSIONAIRE'S WAIVER .....	81
25.8.	APPLICATION OF INSURANCE PROCEEDS.....	82
25.9.	COMPLIANCE WITH CONDITIONS OF INSURANCE POLICIES .....	82
25.10.	INSURANCE DURING THE OPERATIONS PERIOD .....	82
<b>26.</b>	<b>ACCOUNTS AND AUDIT.....</b>	<b>83</b>
26.1.	AUDITED ACCOUNTS .....	83
26.2.	APPOINTMENT OF AUDITORS.....	83
26.3.	CERTIFICATION OF CLAIMS BY STATUTORY AUDITORS.....	84
26.4.	SET-OFF .....	84
26.5.	DISPUTE RESOLUTION .....	84
<b>27.</b>	<b>FORCE MAJEURE .....</b>	<b>86</b>
27.1.	FORCE MAJEURE .....	86
27.2.	NON-POLITICAL EVENT.....	86
27.3.	INDIRECT POLITICAL EVENT.....	87
27.4.	POLITICAL EVENT.....	87
27.5.	DUTY TO REPORT FORCE MAJEURE EVENT .....	88
27.6.	EFFECT OF FORCE MAJEURE EVENT ON THE CONCESSION .....	88
27.7.	ALLOCATION OF COSTS ARISING OUT OF FORCE MAJEURE .....	89
27.8.	TERMINATION NOTICE FOR FORCE MAJEURE EVENT .....	90
27.9.	TERMINATION PAYMENT FOR FORCE MAJEURE EVENT .....	90
27.10.	DISPUTE RESOLUTION .....	90
27.11.	EXCUSE FROM PERFORMANCE OF OBLIGATIONS .....	91
<b>28.</b>	<b>COMPENSATION FOR BREACH OF AGREEMENT.....</b>	<b>92</b>
28.1.	COMPENSATION FOR DEFAULT BY THE CONCESSIONAIRE.....	92
28.2.	AUTHORITY'S MATERIAL BREACH .....	92
28.3.	EXTENSION OF CONCESSION PERIOD .....	92
28.4.	COMPENSATION TO BE IN ADDITION .....	92
28.5.	MITIGATION OF COSTS AND DAMAGE .....	92
<b>29.</b>	<b>SUSPENSION OF CONCESSIONAIRE'S RIGHTS.....</b>	<b>93</b>
29.1.	SUSPENSION UPON CONCESSIONAIRE DEFAULT .....	93
29.2.	AUTHORITY TO ACT ON BEHALF OF CONCESSIONAIRE.....	93
29.3.	REVOCAION OF SUSPENSION.....	93
29.4.	SUBSTITUTION OF CONCESSIONAIRE .....	94
29.5.	TERMINATION .....	94
<b>30.</b>	<b>TERMINATION .....</b>	<b>95</b>
30.1.	TERMINATION FOR CONCESSIONAIRE DEFAULT .....	95
30.2.	TERMINATION FOR AUTHORITY DEFAULT .....	98
30.3.	TERMINATION PAYMENT .....	98
30.4.	CERTAIN LIMITATIONS ON TERMINATION PAYMENT.....	100
30.5.	EXTENSION OF CONCESSION PERIOD .....	101
30.6.	OTHER RIGHTS AND OBLIGATIONS OF THE AUTHORITY.....	101
30.7.	SURVIVAL OF RIGHTS.....	102

<b>31.</b>	<b>DIVESTMENT OF RIGHTS AND INTEREST .....</b>	<b>103</b>
31.1.	DIVESTMENT REQUIREMENTS .....	103
31.2.	INSPECTION AND CURE .....	104
31.3.	COOPERATION AND ASSISTANCE ON TRANSFER OF PROJECT .....	104
31.4.	VESTING CERTIFICATE .....	105
31.5.	DIVESTMENT COSTS, ETC. ....	105
<b>32.</b>	<b>DEFECTS LIABILITY AFTER TERMINATION.....</b>	<b>106</b>
32.1.	LIABILITY FOR DEFECTS AFTER TERMINATION.....	106
32.2.	RETENTION IN ESCROW ACCOUNT.....	106
<b>33.</b>	<b>ASSIGNMENT AND CHARGES.....</b>	<b>109</b>
33.1.	RESTRICTIONS ON ASSIGNMENT AND CHARGES .....	109
33.2.	PERMITTED ASSIGNMENT AND CHARGES .....	109
33.3.	SUBSTITUTION AGREEMENT.....	109
33.4.	ASSIGNMENT BY THE AUTHORITY .....	110
<b>34.</b>	<b>CHANGE IN LAW .....</b>	<b>111</b>
34.1.	INCREASE IN COSTS.....	111
34.2.	REDUCTION IN COSTS.....	111
34.3.	PROTECTION OF NPV .....	112
34.4.	RESTRICTION ON CASH COMPENSATION .....	112
<b>35.</b>	<b>LIABILITY AND INDEMNITY .....</b>	<b>113</b>
35.1.	GENERAL INDEMNITY .....	113
35.2.	INDEMNITY BY THE CONCESSIONAIRE.....	113
35.3.	NOTICE AND CONTEST OF CLAIMS .....	114
35.4.	DEFENSE OF CLAIMS.....	114
35.5.	NO CONSEQUENTIAL CLAIMS.....	116
35.6.	SURVIVAL ON TERMINATION .....	116
<b>36.</b>	<b>RIGHTS AND TITLE OVER THE SITE.....</b>	<b>117</b>
36.1.	LICENSEE RIGHTS.....	117
36.2.	ACCESS RIGHTS OF THE AUTHORITY AND OTHERS.....	117
36.3.	PROPERTY TAXES.....	117
<b>37.</b>	<b>DISPUTE RESOLUTION.....</b>	<b>118</b>
37.1.	DISPUTE RESOLUTION .....	118
37.2.	CONCILIATION.....	118
37.3.	ARBITRATION .....	118
<b>38.</b>	<b>DISCLOSURE.....</b>	<b>120</b>
38.1.	DISCLOSURE OF SPECIFIED DOCUMENTS .....	120
38.2.	DISCLOSURE OF DOCUMENTS RELATING TO SAFETY .....	120
<b>39.</b>	<b>FINANCIAL AND PROJECT INFORMATION.....</b>	<b>121</b>
39.1.	PERIODIC INFORMATION.....	121
39.2.	CONSTRUCTION PERIOD REPORTS.....	121
39.3.	OPERATION PERIOD REPORT .....	122
39.4.	INDEPENDENT ENGINEER REPORTS .....	123

<b>40.</b>	<b>MISCELLANEOUS .....</b>	<b>124</b>
40.1.	GOVERNING LAW AND JURISDICTION .....	124
40.2.	WAIVER OF IMMUNITY .....	124
40.3.	DEPRECIATION .....	124
40.4.	DELAYED PAYMENTS.....	124
40.5.	WAIVER .....	125
40.6.	LIABILITY FOR REVIEW OF DOCUMENTS AND DRAWINGS .....	125
40.7.	EXCLUSION OF IMPLIED WARRANTIES ETC.....	126
40.8.	SURVIVAL.....	126
40.9.	ENTIRE AGREEMENT .....	126
40.10.	SEVERABILITY .....	126
40.11.	NO PARTNERSHIP .....	127
40.12.	THIRD PARTIES.....	127
40.13.	SUCCESSORS AND ASSIGNS .....	127
40.14.	NOTICES .....	127
40.15.	LANGUAGE .....	128
40.16.	COUNTERPARTS .....	128
<b>41.</b>	<b>DEFINITIONS .....</b>	<b>129</b>
41.1.	DEFINITIONS.....	129
	<b>SCHEDULE – A: SITE OF THE PROJECT .....</b>	<b>144</b>
	<b>SCHEDULE-A2- SPECIFICATIONS AND STANDARDS .....</b>	<b>151</b>
	<b>SCHEDULE A3 - GUARANTEES.....</b>	<b>162</b>
	<b>SCHEDULE A4- LIQUIDATED DAMAGES.....</b>	<b>165</b>
	<b>SCHEDULE A5 - O&amp;M: ESTIMATED NUMBERS OF STAFF TO BE PROVIDED DURING THE OPERATION AND MAINTENANCE PERIOD OF 30 YEARS FROM THE APPOINTED DATE. ....</b>	<b>170</b>
	<b>SCHEDULE – B: APPLICABLE PERMITS .....</b>	<b>181</b>
	<b>SCHEDULE – C: PERFORMANCE SECURITY.....</b>	<b>182</b>
	<b>SCHEDULE – D: PROJECT COMPLETION SCHEDULE .....</b>	<b>186</b>
	<b>SCHEDULE – E: DRAWINGS .....</b>	<b>194</b>
	<b>SCHEDULE – F: TESTS.....</b>	<b>195</b>
	<b>SCHEDULE – G: COMPLETION CERTIFICATE .....</b>	<b>197</b>
	<b>SCHEDULE – H: SAFETY REQUIREMENTS.....</b>	<b>198</b>
	<b>SCHEDULE – I: REPORTING REQUIREMENTS .....</b>	<b>202</b>
	<b>SCHEDULE – J: SELECTION OF INDEPENDENT ENGINEER.....</b>	<b>203</b>
	<b>SCHEDULE – K: TERMS OF REFERENCE FOR INDEPENDENT ENGINEER ..</b>	<b>204</b>
	<b>SCHEDULE – L: ESCROW AGREEMENT .....</b>	<b>211</b>
	<b>SCHEDULE – M: INFLUENT / EFFLUENT TREATMENT / WATER QUALITY ...</b>	<b>226</b>
	<b>SCHEDULE – N: PANEL OF CHARTERED ACCOUNTANTS.....</b>	<b>229</b>
	<b>SCHEDULE – O: SUBSTITUTION AGREEMENT .....</b>	<b>231</b>
	<b>SCHEDULE – P: VESTING CERTIFICATE.....</b>	<b>242</b>



**SCHEDULE – Q: MAINTENANCE REQUIREMENTS ..... 243**

**PART-I PRELIMINARY**

## CONCESSION AGREEMENT

**THIS AGREEMENT** is entered into on this the \_\_\_\_\_ day of \_\_\_\_\_ 2023

### BETWEEN

1. Andhra Pradesh Industrial Infrastructure Corporation Ltd. represented by \_\_\_\_\_ the 9th Floor, APIIC Towers, Plot No-1, IT Park, Mangalagiri, Guntur District, Andhra Pradesh - 522503 (herein after referred to as the "Authority" which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) of One Part;

### AND

- 2 **M/s** \_\_\_\_\_, India, represented by \_\_\_\_\_ (herein after referred to as the "**the Concessionaire**" which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns and substitutes) of the Other Part.

### WHEREAS:

- A. Government of Andhra Pradesh had entrusted to the Authority (Andhra Pradesh Industrial Infrastructure Corporation Ltd.) for Selection of Developer for Strengthening, Upgradation, Augmentation, Establishment, Operation and Maintenance of Industrial Infrastructure on DBFOT basis for APSEZ Atchutapuram Industrial Area developed by APIIC, Anakapalli District, Andhra Pradesh.

The Authority had resolved for "Selection of Developer for Strengthening, Upgradation, Augmentation, Establishment, Operation and Maintenance of Industrial Infrastructure on DBFOT basis for APSEZ Atchutapuram Industrial Area developed by APIIC, Anakapalli District, Andhra Pradesh".

- B. PROJECT".

The Authority had accordingly invited proposals by its Notice/Request for Bid No. eTender Notice No \_\_\_\_\_ dated: \_\_\_\_\_ for short listing of Bidders for Selection of Developer for Strengthening, Upgradation, Augmentation, Establishment, Operation and Maintenance of Industrial Infrastructure on DBFOT basis for APSEZ Atchutapuram Industrial Area developed by APIIC, Anakapalli District, Andhra Pradesh. PROJECT on DBFOT Basis and shortlisted certain Bidders including, inter alia, the Selected Bidder comprising **M/s** \_\_\_\_\_.

- C. The Authority had prescribed the technical and commercial terms and conditions, and invited bids (the "**Request for Bid**") from the Bidders for undertaking the Project.

- D. After evaluation of the bids received, the Authority had accepted the bid of **M/s** \_\_\_\_\_, and issued its Letter of Award by \_\_\_\_\_, Andhra Pradesh Industrial Infrastructure Corporation Ltd., vide LOA Lr. No \_\_\_\_\_, dated: \_\_\_\_\_ (Herein after called the “**LOA**”) to the selected Bidder requiring, inter alia, the execution of this Concession Agreement within 30 days of the date of issue thereof.
- E. The selected Bidder has promoted and incorporated the Concessionaire as a limited liability company under the Companies Act 2013, and has requested the Authority to accept the Concessionaire as the entity which shall undertake and perform the obligations and exercise the rights of the selected Bidder under the LOA, including the obligation to enter into this Concession Agreement pursuant to the LOA for executing the Project.
- F. By its letter dated: \_\_\_\_\_ the Concessionaire has also joined in the said request of the selected Bidder to the Authority to accept it as the entity which shall undertake and perform the obligations and exercise the rights of the selected Bidder including the obligation to enter into this Concession Agreement pursuant to the LOA. The Concessionaire has further represented to the effect that it has been promoted by the selected Bidder for the purposes hereof.
- G. The Authority has agreed to the said request of the selected Bidder and the Concessionaire, and has accordingly agreed to enter into this Concession Agreement with the Concessionaire for execution of the Project on DBFOT basis, subject to and on the terms and conditions set forth hereinafter.
- H. The following documents shall be deemed to form and be read and construed as part of this Agreement, viz.,:
- (a) Concession Agreement
  - (b) Performance Security
  - (c) Letter of Acceptance
  - (d) Work Order
  - (e) Tenderer’s Techno-commercial offer dated...
  - (f) RFP Documents

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

SIGNED, SEALED AND DELIVERED.

By the said  
Name:

By the said  
Name:

Authorized Signatory  
M/s \_\_\_\_\_

India

on behalf of the Concessionaire  
in the presence of:  
Name \_\_\_\_\_  
Address \_\_\_\_\_

Andhra Pradesh Industrial  
Infrastructure Corporation Ltd.  
9<sup>th</sup> Floor, APIIC Towers, Plot No-1, IT  
Park, Mangalagiri, Guntur District,  
Andhra Pradesh - 522503

on behalf of the Employer  
in the presence of:  
Name \_\_\_\_\_  
Address \_\_\_\_\_

## 1. DEFINITIONS AND INTERPRETATIONS

### 1.1. DEFINITIONS

The words and expressions beginning with capital letters and defined in this Agreement (including those in Article-40) shall, unless the context otherwise requires, have the meaning ascribed there to here in, and the words and expressions defined in the Schedules and used there in shall have the meaning ascribed there to in the Schedules.

### 1.2. INTERPRETATION

1.2.1. In this Agreement, unless the context otherwise specified:

- a) references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such as such legislation or any provision thereof so far as amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into here under;
- b) references to law 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 on the territory of India and as from time to time may be amended, modified, supplemented, extend, or reenacted;
- c) references to a **“person”** and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and shall include successors and assigns;
- d) References to **“the Project”** includes any of the Project Components of this Project of Selection of Developer for Strengthening, Upgradation, Augmentation, Establishment, Operation and Maintenance of Industrial Infrastructure on DBFOT basis for APSEZ Atchutapuram Industrial Area developed by APIIC, Anakapalli District, Andhra Pradesh.
- e) the table of contents, heading or sub heading in this Agreement are for convenience reference only and shall not be used in, and shall not affect the construction or interpretation of this Agreement;
- f) The words **“include”** and **“including”** are to be construed without imitation and shall be deemed to be followed by **“without limitation”** or **“but not limited to”** whether or not they are followed by such phrases;

- g) 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;
- h) References to “**development**” include, unless the context otherwise requires, design, construction, renovation, refurbishing, augmentation, upgradation and other activities incidental thereto, and “**develop**” shall be construed accordingly;
- i) Any references to any period of time shall mean a reference to that according to Indian Standard Time;
- j) Any reference to day shall mean a reference to a Calendar day;
- k) references to a “**business day**” shall be construed as a reference to a day (other than a Sunday) on which Andhra Pradesh Industrial Infrastructure Corporation Ltd. is generally open for business;
- l) Any references to month shall mean a reference to a Calendar month as per the Gregorian calendar;
- m) References to any date, period of Project Milestone shall mean and include such date, period or Project Milestone as may be extended pursuant to this Agreement;
- n) Any reference to any period commencing “**from**” a specified day or date and “**till**” or “**until**” a specified day or date shall include both such days or dates; provided that if the last day of any period computed under this Agreement is not a business day, then the period shall run until the end of the next business day;
- o) The words importing singular shall include plural and vice versa;
- p) Reference to any gender shall include the other and the natural gender;
- q) “**Lakh**” means a hundred thousand (100,000) and “**crore**” means a ten million (10,000,000)
- r) “**Indebtedness**” shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;

- s) reference to the “winding-up”, “dissolution”, “insolvency” or “re-organization” of a company or corporation shall be construed so as to include any equivalent or analogous proceeding under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, re-organization, dissolution, arrangement, protection or relief of debtors;
- t) save and except as otherwise provided in this Agreement, any reference, at any time, to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference ; provided that this Sub-clause shall not operate so as to increase liabilities or obligations of the Authority here under or pursuant here to in any manner whatsoever;
- u) any agreement, consent, approval, authorization, notice, communication, information, or report required under or pursuant to this Agreement from or by any Party or the Independent Engineer shall be valid and effective only if it is in writing under the hand of a duly authorized representative of such Party or the Independent Engineer, as the case may be, in this behalf and not otherwise;
- v) the Schedules and Recitals to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
- w) reference to Recitals, Article, Clauses, Sub-clauses or Schedules in this Agreement shall, except where the context otherwise requires , mean reference to Recitals , Articles , Clauses, Sub-clauses and Schedules of or to this Agreement as reference to a paragraph shall, subject to any contrary indication , be construed as reference to a paragraph of this Agreement or of the Schedule in which such reference appears ; and
- x) the damages payable by either Party to the other of them, as set forth in this Agreement, whether on *per diem* basis or otherwise , are mutually agrees genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the “**Damages**”).
- y) Time shall be of the essence in the performance of the Parties’ respective obligations. If any time period specified here in extended, such extended time shall also be of the essence.



- 1.2.2. Unless expressly provided other in this Agreement, any Documentation required to be provided or furnished by the Concessionaire to the Authority and/ or the Independent Engineer shall be provided free of Cost and in 5(five) Copies, and if the Authority and/or the Independent Engineer is required to return any such Documentation with their comments and/or approval, they shall be entitled to retain two copies thereof.
- 1.2.3. The rule of Construction, if any, that a contract should be interpreted against the parties responsible for the drafting and preparation thereof, shall not apply.
- 1.2.4. Any word or expression used in this Agreement shall, unless otherwise defined or construct in his Agreement, bear its ordinary English meaning and. For this purpose, 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 be in grounded up and below 5 (five) being rounded down.

### **1.4. PRIORITY OF AGREEMENTS AND ERRORS/DISCREPANCIES**

1.4.1 This Agreement, and all other agreements and documents forming part of 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 here of shall, in the event to any conflict between them, be in the following order:

(a) This Agreement; and

(b) All other agreements and documents forming part here of; i.e. the Agreement at (a) above shall prevail over the agreements and documents at (b) above.

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 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, this Clauses shall prevail and between Schedules and Annexes, the Schedules shall prevail;
- c) Between any two Schedules, the Schedule relevant to the issue shall prevail

- d) Between the written description on the Drawings and the Specifications and Standards, the latter shall prevail;
- e) Between the dimension scaled from the Drawing and its specific written dimension, the latter shall prevail; and
- f) Between any value written in numerals and that in words, the value in words will prevail;

**PART – II**  
**THE CONCESSION**

## 2. SCOPE OF THE PROJECT

The scope of the Project (the "Scope of the Project") shall mean and include, during the Concession Period:

### 2.1. BROAD METHODOLOGY OF THE PROJECT:

Following is the broad Methodology of the Project:

#### 2.1.1. Assessment of the existing Infrastructure in the Industrial Areas: Existing infrastructure is classified into

- a) Civil Infrastructure
- b) Environmental Infrastructure and
  - a) **Civil Infrastructure:**
    - (i) Electrical Infrastructure including HT (33KV / 11KV as the case may be) underground distribution System, Receiving and Substations, External Illumination & Telecommunication Data Networks conduiting including Area Lighting works.
    - (ii) Road and Transportation Infrastructure including existing Road infrastructure, Civil structures including Minor Bridges and Culverts, Weigh Bridges, Truck Terminals, Parking areas, Logistics Parks,
    - (iii) Water Supply Infrastructure including Potable Water Supply Network, Clear water Sump and Pump House, Overhead Tank (OHT), Pumping Mains and gravity mains and the distribution network for potable, non-potable, including valves, valve chambers.
    - (iv) Effluent Collection System
  - b) **Environmental Infrastructure:**
    - (i) Water and Waste water Management system including Treatment, Recycling and Reuse of Treated water
    - (ii) Liquid Waste Management: Effluent Treatment and safe disposal, environmental monitoring, Solid Waste and hazardous waste management facilities, pollution control services, improvement of green cover, etc. complete.

#### 2.1.2. Identification of Infrastructure Scope

Infrastructure Scope Includes:

#### **A. Common Effluent Treatment Plant (CETP): depend on module**

- Upgradation of Existing CETP capacity of 825 KLD (450 KL HTDS, 375 KL LTDS) to 2000 KLD capacity i.e., 1125 KL HTDS and 875 KL LTDS)
- Establishment of new 5.0 MLD CETP i.e., 2.0 MLD HTDS and 3.0 MLD LTDS
- Recycling of CETP treated water of atleast 50%.
- APIIC to advise the industries for buyback of recycled water to the extent possible
- Conveyance system of LTDS and HTDS
- Conveyance of recycled water network
- Online monitoring system

#### **B. Water Treatment Plant (WTP):**

- Establishment of Water treatment plant of 20 MLD capacity etc.
- Pipeline from WTP shall be connected to existing conveyance system.

#### **C. Solid Waste Management:**

- Any solid waste including hazardous waste generated from the AP SEZ Industrial area shall be scientifically treated at common solid waste management facility.

#### **2.1.3. Project Procurement Strategy**

Preparation of Project Development Plan which includes Financial Feasibility, Project Viability, Business & Financial Models, Procurement Strategy, Phasing Strategy.

#### **2.1.4. Proposed Structure of the Project:**

- a) The project is structured on DBFOT (Design, Build, Finance & Operate and Transfer) basis, where Developer will invest the Capex and recover investment through user charges.
- b) A User pay Model will be implemented for various services including: water treatment, effluent water treatment & disposal, Solid waste management and maintenance of civil infrastructure etc.);
- c) The Project shall be developed in various phases depending on the actual requirement to meet international standards. IALA to act as a Nodal Agency to monitor the above. In addition to User Fee, the Project can also be supported through VGF or through Government of India or Government of Andhra Pradesh grants.

**2.1.5. Sources of Revenue:** The Sources of Revenue envisaged for the Developer are as follows:

- a) Collection of User charges for Park maintenance to enable provision of utility services like water treatment, effluent treatment, Solid Waste Management etc.
- b) Any subsidy or grant available under any scheme from Government of India or the State Government

The prioritization and phasing for redevelopment shall be based on the outcome of Stakeholder consultations and as agreed with the Authority. The Project Development Plan is finalized after discussions with APIIC and the stakeholders and after approval becomes the 'PROJECT' as mentioned elsewhere in the Agreement.

### **2.1.6. Responsibilities of the Selected Bidder**

The Selected Bidder shall be entirely responsible for:

- a) Submission of Project Development Plan (PDP) within 90 days (extendable up to 120 days in case of any hardship) days from the date of issuance of Letter of Award (LoA) by APIIC. The PDP shall cover details including, but not limited to scope identification as defined in RFP of existing support infrastructure, identification of components of each category of infrastructure requiring repair / replacement / refurbishment requirement based on accepted International Standards and improvement requirements and also the fund requirements, International Bench Marking studies to provide the cutting edge to the Industrial Estates going forward based on present and future requirements established based on the Case Studies and Stake Holder consultations and shall form the basis for preparing the long term Action Plan for Upgradation, Operation and Maintenance Programme., etc.;

APIIC shall reserve the right to solicit any clarifications/ modifications to the PDP and suggest modifications to the technical specifications of the Project. APIIC shall examine the PDP in order to verify whether the PDP adheres to the general guidelines (as specified in the RFP) for development of the Project and specific approval for the Upgradation, Operation and Maintenance Programme needs to be obtained from the concerned authorities.

- b) Mobilizing funds for the Project and achievement of financial closure within 6 (six) months from the Commencement Date;
- c) Procurement of all necessary approvals, sanctions, permits etc. as and when required for implementing the Project;
- d) Start Operation and Maintenance Programme within 3 (three) months from the Commencement Date;
- e) It is clarified that the Developer is expected to undertake development at least to the extent as per the Gap Assessment.

- f) Implementation of the Project as per specifications given in the RFP & subsequently in the Agreement;
- g) Operation and maintenance of the Project safely and securely as per the standards to provide the required levels of service to its users;
- h) The upkeep of safety and quality standards for all infrastructure facilities of the Project;
- i) Collection, appropriation and allocation of revenue, fees, charges from the users of the Project;
- j) Payment of all dues under the Agreement to APIIC.

#### **2.1.7. Role of APIIC**

- a) Allotment, transfer of designated Industrial Estate to the Selected Bidder on “as is where is basis”, in accordance with the terms and conditions of the Agreement provided as Volume – 2, “Concession Agreement” of the RFP, provided that the Concessionaire shall have given a bank guarantee/FDR to the APIIC as Bid Security / Performance Security in accordance with the terms hereof.
- b) Provide reasonable support and assistance to the Selected Bidder in procuring Applicable Permits required from any Government Instrumentality for implementation, operation, and maintenance of the Project
- c) Provide reasonable assistance to the Selected Bidder in obtaining access to all necessary infrastructure facilities and utilities, including water and electricity at rates and on terms no less favourable to the Selected Bidder than those generally available to commercial customers receiving substantially equivalent services. Developing Industrial infrastructure facilities up to battery limits
- d) APIIC has to arrange the allocated land for the establishment of 5 MLD CETP and 20 MLD WTP before date of appointment.

### 3. GRANT OF CONCESSION

#### 3.1. THE CONCESSION

**3.1.1.** Subject to and in accordance with the provisions of this Agreement, the Applicable Laws and the Applicable permits, the Authority hereby grants to the Concessionaire the concession set forth herein including the exclusive right, license and authority during the subsistence of this Agreement to Selection of Developer for Strengthening, Upgradation, Augmentation, Establishment, Operation and Maintenance of Industrial Infrastructure on DBFOT basis for APSEZ Atchutapuram Industrial Area developed by APIIC, Anakapalli District, Andhra Pradesh, and the Concessionaire hereby accepts the Concession and agrees to implement the Project subject to and in accordance with the terms and conditions set forth herein.

**3.1.2.** Subject to and in accordance with the provisions of this Agreement, the Concession hereby granted shall oblige or entitle (as the case may be) the Concessionaire to:

- a) Right of Way, access and license to the Site for the purpose of and to the extent conferred by the provisions of this Agreement;
- b) PROJECT Selection of Developer for Strengthening, Upgradation, Augmentation, Establishment, Operation and Maintenance of Industrial Infrastructure on DBFOT basis for APSEZ Atchutapuram Industrial Area developed by APIIC, Anakapalli District, Andhra Pradesh
- c) Manage, operate and maintain the PROJECT and regulate the use thereof by third parties;
- d) Perform and fulfil all of the Concessionaire's obligations under and in accordance with this Concession Agreement(CA);
- e) Save as otherwise expressly provided in this Agreement, bear and pay all costs, expenses and charges in connection with or incidental to the performance of the obligations of the Concessionaire under this Agreement; and
- a. Neither assign, transfer or sublet or create any lien or Encumbrance on this Agreement, on this Agreement, or the Concession hereby granted or on the whole or any part of the PROJECT nor transfer, lease or part possession thereof, save and except as expressly permitted by this Agreement or the Substitution Agreement.



## 4. CONDITIONS PRECEDENT

### 4.1. CONDITIONS PRECEDENT

**4.1.1.** Save and except as expressly provided in Articles 4, 5, 6, 8, 9, 10, 11, 22, 27, 37 and 39, or unless the context otherwise requires, the respective rights and obligations of the Parties under this Agreement shall be subject to the satisfaction in full of the conditions precedent specified in this Clause 4.1 (the "Conditions Precedent").

**4.1.2.** The Concessionaire may, upon providing the Performance Security to the Authority in accordance with Article 10, at any time after 30 (thirty) days from the date of this Agreement or on an earlier day acceptable to the Authority, by notice require the Authority to satisfy all of the Conditions Precedent set forth in this Clause 4.1.2 within a period of 120 (one hundred and twenty) days thereafter. The Conditions Precedent required to be satisfied by the Authority shall be deemed to have been fulfilled when the Authority shall have:

- a) Procured for the Concessionaire the Right of Way to the Site in accordance with the provisions of Clauses 11.3.1 and 11.3.2;
- b) Procured all Applicable Permits relating to environmental protection, and Conservation if any in respect land forming part of the Right of Way under Clause 11.3.1 and 11.3.2;
- c) procured forest clearance if any for and in respect land forming part of the Right of Way under Clause 11.3.1 and 11.3.2, save and except permission for cutting trees; and
- d) Procured approval of the General Arrangement Drawings for the pipes at level crossings on the Project.

Provided that the Authority shall be entitled to an additional period, not exceeding 90 (ninety) days beyond the period of 150 days without being liable for payment of any damages, for fulfillment of the Conditions Precedent set forth in this Clause.

**4.1.3.** The Conditions Precedent required to be satisfied by the Concessionaire within a period of 180 (one hundred and eighty) days from the date of this Agreement shall be deemed to have been fulfilled when the Concessionaire shall have:

- a) Provided Performance Security to the Authority within 30 days of signing of this Agreement. For the avoidance of doubt it is clarified and agreed that the Concessionaire is required to provide the Performance Security and the Additional Performance Security, if required.
- b) Executed and procured execution of the Escrow Agreement;

- c) Executed and procured execution of the Substitution Agreement;
  - d) Procure all the Applicable Permits that may be required for commencement of construction;
  - e) Executed the Financing Agreements and delivered to the Authority 3 (three) true copies thereof, duly attested by a Director of the Concessionaire;
  - f) Delivered to the Authority 3 (three) true copies of the Financial Package and the Financial Model, duly attested by a Director of the Concessionaire, along with 3 (three) soft copies of the Financial Model in MS Excel version or any substitute thereof, which is acceptable to the Senior Lenders; and
- 4.1.4.** Each Party shall make all reasonable endeavors to satisfy the Conditions Precedent within the time stipulated and shall provide the other Party with such reasonable cooperation as may be required to assist that Party in satisfying the Conditions Precedent for which that Party is responsible. Subject only to payment of Damages, it is agreed between the Parties that the obligation to fulfill each parties' Conditions Precedent is an independent obligation of the respective Party.
- 4.1.5.** The Parties shall notify each other in writing at least once a month on the progress made in satisfying the Conditions Precedent. Each Party shall promptly inform the other Party when any Condition Precedent for which it is responsible has been satisfied.

**4.2. DAMAGES FOR DELAY BY THE AUTHORITY**

In the event that (i) the Authority does not procure fulfillment of any or all of the Conditions Precedent set forth in Clause 4.1.2 within the period specified in respect thereof, and (ii) the delay has not occurred as a result of breach of this Agreement by the Concessionaire or due to Force Majeure, the Authority shall pay to the Concessionaire Damages in an amount calculated at the rate of 0.02% (zero point zero two per cent) of the Performance Security for each day's delay until the fulfillment of such Conditions Precedent, subject to the maximum limit equal to the amount of the Bid Security and upon reaching such limit, the Concessionaire may, in its sole discretion terminate the Agreement. The Damages payable hereunder shall be the sole remedy available to the Concessionaire for delay by the Authority.

Provided further that in the event of delay by the Concessionaire in procuring fulfillment of the Conditions Precedent specified in Clause 4.1.3, no Damages shall be due or payable by the Authority under this Clause 4.2 until the date on which the Concessionaire shall have procured fulfillment of the Conditions Precedent specified in Clause 4.1.3.

**4.3. DAMAGES FOR DELAY BY THE CONCESSIONAIRE**

In the event that (i) the Concessionaire does not procure fulfillment of any or all of the Conditions Precedent set forth in Clause 4.1.3 within the period specified in respect

thereof, and (ii) the delay has not occurred as a result of failure to fulfill the obligations under Clause 4.1.2 or other breach of this Agreement by the Authority, or due to Force Majeure, the Concessionaire shall pay to the Authority Damages in an amount calculated at the rate of 0.02% (zero point zero two per cent) of the Performance Security for each day's delay until the fulfillment of such Conditions Precedent. Provided, however, that the Damages payable hereunder shall be subject to the maximum limit equal to the amount of the Bid Security and upon reaching such limit, the Authority may, in its sole discretion and subject to the provisions of Clause 10.2, terminate the Agreement. Provided further that in the event of delay by the Authority in procuring fulfillment of the Conditions Precedent specified in Clause 4.1.2, no Damages shall be due or payable by the Concessionaire under this Clause 4.3 until the date on which the Authority shall have procured fulfillment of the Conditions Precedent specified in Clause 4.1.2.

#### **4.4. COMMENCEMENT OF CONCESSION PERIOD**

The date on which Financial Close is achieved and all the Conditions Precedent specified in Clause 4.1 are satisfied shall be the Appointed Date which shall be the date of commencement of the Concession Period. For the avoidance of doubt, the Parties agree that the Concessionaire may, upon occurrence of the Appointed Date hereunder, by notice convey the particulars thereof to the Authority, and shall thereupon be entitled to commence construction on the Project.

## 5. OBLIGATIONS OF THE CONCESSIONAIRE

### 5.1. OBLIGATIONS OF THE CONCESSIONAIRE

- 5.1.1.** Subject to and on the terms and conditions of this Agreement, the Concessionaire shall at its own cost and expense procure finance for and undertake the design, engineering, procurement, construction, operation, and maintenance of the Project and observe, fulfill comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 5.1.2.** The Concessionaire shall comply with all Applicable Laws and Applicable Permits (including renewals as required) in the performance of its obligations under this Agreement.
- 5.1.3.** Subject to the provisions of Clauses 5.1.1 and 5.1.2, the Concessionaire shall discharge its obligations in accordance with Good Industry Practice and as a reasonable and prudent person.
- 5.1.4.** The Concessionaire shall, at its own cost and expense, in addition to and not in derogation of its obligation elsewhere set out in this Agreement:
- a) Make, or cause to be made, necessary applications to the relevant Government Instrumentalities with such particulars and details as may be required for obtaining Applicable Permits (other than those set forth in Clause 4.1.2), and obtain and keep in force and effect such Applicable Permits in conformity with the Applicable Laws;
  - b) Procure, as required, the appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes, and systems used or incorporated into the Development, Operation and Maintenance of the Industrial Park;
  - c) Perform and fulfil its obligations under the Financing Agreements;
  - d) Make reasonable efforts to maintain harmony and good industrial relations among the personnel employed by it or its Contractors in connection with the performance of its obligations under this Agreement;
  - e) Make reasonable efforts to facilitate the acquisition of land required for the purpose of the Agreement;
  - f) Ensure and procure that its Contractors comply with all Applicable Permits and Applicable Laws in the performance by them of any of the Concessionaire's obligations under this Agreement;
  - g) Discuss and finalize the Minimum Draw down Level in consultation with the Authority from time to time;
  - h) Not do or omit to do any act, deed or thing which may in any manner be violat of any of the provisions of this Agreement;
  - i) Support, cooperate with and facilitate the Authority in the implementation and operation of the Project in accordance with the provisions of this Agreement; and

- j) Transfer the Industrial Park including all Utilities, Transportation system, Facilities developed during the concession period to the Authority upon Termination of this Agreement, in accordance with the provisions thereof.

## **5.2. OBLIGATIONS RELATING TO PROJECT AGREEMENTS**

**5.2.1.** The Concessionaire shall submit to the Authority the drafts of all Project Agreements or any amendments or replacements there to for its review and comments, and the Authority shall have the right but not the obligation to undertake such review and provide its comments, if any, to the Concessionaire within 15 (fifteen) days of the receipt of such drafts. Within 7 (seven) days of execution of any Project Agreement or amendment there to, the Concessionaire shall submit to the Authority a true copy thereof, duly attested by a Director of the Concessionaire, for its record. For the avoidance of doubt, it is agreed that the reviews and comments here under shall be limited to ensuring compliance with the terms of this Agreement. It is further agreed that no review and/or observation of the Authority and/or its failure to review and/or convey its obligations on any document shall relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Authority be liable for the same in any manner what so ever.

**5.2.2.** The Concessionaire shall not make any addition, replacement or amendments to any of the Financing Agreements without the prior written consent of the Authority if such addition, replacement or amendment as, or may have, the effect of imposing or increasing any financial liability or obligation on the Authority, and in the event that any replacement or amendment is made without such consent, the Concessionaire shall not enforce such replacement or amendment nor permit enforcement thereof against the Authority. For the avoidance of doubt, the Authority acknowledges and agrees that it shall not unreasonably withhold its consent for restructuring or rescheduling of the Debt Due.

## **5.3. OBLIGATIONS RELATING TO CHANGE IN OWNERSHIP**

**5.3.1.** The Concessionaire shall not undertake or permit any Change in Ownership, except with the prior approval of the Authority.

**5.3.2.** Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire agrees and acknowledges that:

- (i) All acquisitions of Equity by an acquirer, either by himself or with any person acting in concert, directly or indirectly, including by transfer of the direct or indirect legal or beneficial ownership or control of any Equity, in aggregate of not less than 51% (fifty one percent) of the total Equity of the Concessionaire; or

- (ii) Acquisition of any control directly or indirectly of the Board of Directors of the Concessionaire by any person either by himself or together with any person or persons acting in concert with him

Shall constitute a Change in Ownership requiring prior approval of the Authority from national security and public interest perspective, the decision of the Authority in this behalf being final, conclusive, and binding on the Concessionaire, and undertakes that it shall not give effect to any such acquisition of Equity or control of the Board of Directors of the Concessionaire without such prior approval of the Authority. For the avoidance of doubt, it is expressly agreed that approval of the Authority hereunder shall be limited to national security and public interest perspective, and the Authority shall endeavor to convey its decision thereon expeditiously. It is also agreed that the Authority shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the Concessionaire or its Contractors from any liability or obligation under this Agreement. For the purposes of this Clause 5.3.2:

- a) The expression “acquirer”, “control” and “person acting in concert” shall have the meaning ascribed thereto in the securities and Exchange Board of India (Substantial Acquisition of Shares and Takeover) Regulations, 1997 or any statutory re-enactment thereof as in force as on date of acquisition of Equity, or the control of the Board of Directors, as the case may be, of the Concessionaire;
- b) The indirect transfer or control of legal or beneficial ownership of Equity shall mean transfer of the direct or indirect beneficial ownership or control of any company or companies whether in India or abroad which results in the acquire requiring control over the share so voting rights of shares of the Concessionaire; and
- c) Power to appoint, whether by Concessionaire by virtue of control or acquisition of share of any company holding directly or through on or more companies (whether situate in India or abroad) the Equity of the Concessionaire, not less than half of the directors on the Board of Directors of the Concessionaire or any company, directly or indirectly whether situated in India or abroad, having ultimate control of not less than 51% (fifty-one percent) of the Equity of the Concessionaire shall constitute acquisition of control, directly or indirectly, of the Board of Directors of the Concessionaire.

#### **5.4. EMPLOYMENT OF TRAINED PERSONNEL**

The Concessionaire shall ensure that the personnel engaged by it in the performance of its obligations under this Agreement are at all times properly trained for their respective functions.

#### **5.5. SOLE PURPOSE OF THE CONCESSIONAIRE**

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

#### **5.6. BRANDING OF THE PROJECT**

The PROJECT or any part there of shall not be branded in any manner to advertise, display or reflect the name or identity of the Concessionaire or its shareholders. The Concessionaire undertakes that it shall not, in any manner, use the name or entity of the Project to advertise or display its own identity, brand equity or business interests, including those of its shareholders, save and except as may be necessary in the normal course of business. For the avoidance of doubt, it is agreed that the Concessionaire may display its own name at a spot where other public notices are displayed for the Users. It is further agreed that the Project shall be known, promoted, displayed and advertised by the name of Andhra Pradesh Industrial Infrastructure Corporation Ltd.

#### **5.7. BUSINESS RISKS**

Subject to the terms of this Agreement, the Concessionaire shall bear all business risks that are inherent in the development, construction, operation and maintenance of the Facilities.

## 6. OBLIGATIONS OF THE AUTHORITY

### 6.1. OBLIGATIONS OF THE AUTHORITY

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

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

- a) Upon written request from the Concessionaire, and subject to the Concessionaire complying with Applicable Laws, provide reasonable support and assistance to the Concessionaire in procuring applicable Permits required from any Government Instrumentality for implementation and operation of the Project;
- b) Upon written request from the Concessionaire, provide reasonable assistance to the Concessionaire in obtaining access to all necessary infrastructure facilities and utilities, including water and electricity at rates and on terms no less favorable to the Concessionaire than those generally available to commercial customers receiving substantially equivalent services;
- c) Procure that no barriers are erected or placed on the PROJECT by Government Instrumentality or persons claiming through or under it, except for reasons of Emergency, national security, law and order or collection of inter-state taxes;
- d) Not do or omit to do any act, deed or thing which may in any manner be violate of any of the provisions of this Agreement;
- e) Support, cooperate with and facilitate the Concessionaire in the implementation and operation of the Project in accordance with the provisions of this Agreement;
- f) Discuss and finalize the minimum Draw down Level in consultation with the Concessionaire from time to time;
- g) Upon written request from the Concessionaire and subject to the provisions of Clause 5.4, provide reasonable assistance to the Concessionaire and any expatriate personnel of the Concessionaire or its Contractors to obtain applicable visas and work permits for the purposes of discharge by the



Concessionaire or its Contractors their obligations under this Agreement and the Project Agreements;

## **7. SECURITY AND ILLEGAL OFFTAKE**

The Concessionaire shall maintain security in relation to the Project Site and the Project Facilities. This will include procedures to monitor and identify the illegal connectivity on the pipeline and to take such action as is available to it (and which it can lawfully perform) in order to prevent such illegal off take. Upon written request from the Concessionaire, the Authority may provide reasonable assistance to the Concessionaire in order to prevent such illegal off take.

All the byproducts at the PROJECT under this project are the property of Concessionaire and its disposal vests with Concessionaire.

## 8. REPRESENTATION AND WARRANTIES

### 8.1. REPRESENTATIONS AND WARRANTIES OF THE CONCESSIONAIRE

The Concessionaire represents and warrants to the Authority that:

- a) It is duly organized and validly existing under the laws of India, and has full power and authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- b) It has taken all necessary corporate and other actions under Applicable Laws to authorize the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- c) 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 here of, 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 here under;
- 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 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 in terms of which individually or in the aggregate may result in any material impairment of its ability to perform any of its material obligations under this Agreement;

- i) It has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate or may have a material adverse effect on its ability to perform its obligations under this Agreement;
- j) It shall at no time under take or permit any Change in Ownership except in accordance with the provisions of Clause 5.3 , hold not less than 51% (fifty one percent) of its issued and paid up Equity as on the date of this Agreement; ;
- k) The selected Bidder/ have the financial standing and resources to fund the required Equity and to raise the debt necessary for undertaking and implementing the Project in accordance with this Agreement;
- l) The selected Bidder is duly organized and validly existing under the laws of the jurisdiction of its incorporation, and has requested the Authority to enter into this Agreement with the Concessionaire pursuant to the Letter of Award, and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;
- m) All its rights and interests in the PROJECT shall pass to and vest in the Authority on the Transfer Date free and clear of all liens, claims and Encumbrances, without any further act or deed on its part or that of the Authority, and that none of the Project Assets shall be acquired by it, subject to any agreement under which a security interest or other lien or Encumbrance is retained by any person, save and except as expressly provided in this Agreement;
- n) No representation or warranty by it contained herein or in any other document furnished by it to the Authority or to any Government Instrumentality in relation to Applicable Permits contains or will contain any un true or misleading statement of material factor omits or will omit to state a material fact necessary to make such representation or warranty; and
- 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 Concession or entering into this Agreement or for influencing or attempting to influence any officer or employee of the Authority in connection there with.
- p) All information provided by the {selected Bidder } in response to the Request for Qualification and Request for Proposals or otherwise, is to the best of its knowledge and belief, true and accurate in all material respects;

## **8.2. REPRESENTATIONS AND WARRANTIES OF THE AUTHORITY**

The Authority represents and warrants to the Concessionaire 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 the Applicable Laws to authorize the execution, delivery, and performance of this Agreement;
- c) It has the financial standing and capacity to perform its obligations under this Agreement;
- d) This Agreement constitutes a legal, valid, and binding obligation enforceable against it in accordance with the terms hereof;
- e) There are no actions, suits or proceedings 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 default or breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform its obligations under this Agreement;
- f) It has no knowledge of any violation order fault with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Instrumentality which may result in any material adverse effect on the Authority's ability to perform its obligations under this Agreement;
- g) It has complied with Applicable Laws in all material respects;
- h) It has good and valid right to the Site, and has power and authority to grant a license in respect there to the Concessionaire. All information provided by it in response to the Request for Proposals, including amendments thereto or disclosures there under, in connection with the Project is, to the best of its knowledge and belief, true and accurate in all material aspects;

## **8.3. DISCLOSURE**

In the event that any occurrence or circumstance comes to the attention of either Party that renders any of it's a fore said 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 remedy in any breach of the representation nor warranty that has been found

to be untrue or incorrect nor shall it adversely affect or waive any obligation of either Party under this Agreement.

## **9. DISCLAIMER**

### **9.1. DISCLAIMER**

- 9.1.1.** The Concessionaire acknowledges that prior to the execution of this Agreement, the Concessionaire has, after a complete and careful examination, made an independent evaluation of the Bid Document (Volume-I), Scope of the Project, Specifications and Standards, Site and current state of Infrastructure, Local conditions, source of Raw Effluent, and all information provided by the Authority, and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations here under.
- 9.1.2.** In the event that Authority becomes aware of any mistake or error relating to any of the matters set forth in Clause 9.1.1 above, that Authority shall immediately notify the Concessionaire, specifying the mistake or error. In the event of failure to notify the error or fault to the Concessionaire, the Authority shall be liable to pay the damages and the losses that may occur on the Concessionaire.

**PART- III**  
**DEVELOPMENT AND OPERATIONS**



## **10. PERFORMANCE SECURITY**

### **10.1. PERFORMANCE SECURITY**

**10.1.1.** The Concessionaire shall, for the performance of its obligations hereunder, provide to the Authority no later than 30 (thirty) days from the date of this Agreement, an irrevocable and unconditional guarantee from a Bank for a sum of INR. 15 Crores in the form set forth in Schedule-C (the "Performance Security"). Until such time the Performance Security is provided by the Concessionaire 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 Authority shall release the Bid Security to the Concessionaire.

**10.1.2.** Notwithstanding anything to the contrary contained in this Agreement, in the event Performance Security is not provided by the Concessionaire within a period of 30(thirty) days from the date of this Agreement, the Authority may en-cash the Bid Security upon serving a cure notice of 30 (Thirty) days on the Concessionaire and failure to remedy within the cure period or a period mutually agreed upon by the Parties, thereafter the Authority appropriate the proceeds thereof as Damages, and thereupon all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, and this Agreement shall be deemed to have been terminated by mutual agreement of the Parties.

### **10.2. APPROPRIATION OF PERFORMANCE SECURITY**

Upon occurrence of a Concessionaire Default including Conditions Precedent, the Authority shall, without prejudice to its other rights and remedies hereunder or in law or Concessionaire's failure to cure the default within the above-mentioned cure notice by the Concessionaire, be entitled to encash and appropriate from the Performance Security. Upon such encashment and appropriation from the Performance Security, the Concessionaire shall, within 30 (thirty) days thereof, replenish, in case of partial appropriation, to the original level of the Performance Security, and in case of appropriation of the entire Performance Security provide a fresh Performance Security, as the case may be, failing which the Authority shall be entitled to terminate this Agreement in accordance with Article 30. Provided that upon appropriation on account of Concessionaire's Default the Concessionaire shall replenish the Performance Security and upon such replenishment or furnishing of a fresh Performance Security, as the case may be, the Concessionaire shall be entitled to an additional Cure Period of 120 (one hundred and twenty) days for remedying the Concessionaire Default and in the event of the Concessionaire not curing its default within such Cure Period, the Authority shall be

entitled to encash and appropriate such Performance Security as Damages, and to terminate this Agreement in accordance with Article 30.

### **10.3. RELEASE OF PERFORMANCE SECURITY**

The Performance Security shall remain in force and effect for a period of one year from the Appointed Date, but shall be released earlier upon the Concessionaire expending on Project construction an aggregate sum that is not less than 20% (twenty percent) of the Project Cost as per the approved Project Development Plan; provided, however, that the Performance Security shall not be released and shall be kept alive by the Concessionaire if the Concessionaire is in breach of this Agreement. Upon request made by the Concessionaire for release of the Performance Security along with the particulars which establish satisfaction of the requirements specified in this Clause 10.3, the Authority shall release the Performance Security forthwith.

### **10.4. DEEMED PERFORMANCE SECURITY**

The Parties expressly agree that upon release of the Performance Security in accordance with the provisions of Clause 10.3, a substitute Performance Security for a like amount shall be deemed to be created under this Clause 10.4, as if it is a Performance Security under Clause 10.1 or and in respect of the remaining Concession Period (the "**Deemed Performance Security**"). The Deemed Performance Security shall be unconditional and irrevocable, and shall, notwithstanding anything to the contrary contained in Clause 24.3, constitute the first and exclusive charge on an equivalent balance in the Escrow Account, subject only to the statutory dues and Taxes and on all amounts due and payable by the Authority to the Concessionaire, and the Authority shall be entitled to enforce the Deemed Performance Security through a withdrawal from the Escrow Account or by making a deduction from the amounts due and payable by it to the Concessionaire in accordance with the provisions of Clause 10.5. For the avoidance of doubt, the Parties agree that no amounts shall be earmarked, frozen or withheld in the Escrow Account for Securing payment of any potential Damages that may fall due at a subsequent date, and only the amounts which shall have become due and payable by the Concessionaire upon occurrence of Concessionaire Default shall be liable to appropriation hereunder.

### **10.5. APPROPRIATION OF DEEMED PERFORMANCE SECURITY**

Upon occurrence of a Concessionaire Default, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, are entitled to appropriate the relevant amounts from the Deemed Performance Security as Damages for Concessionaire Default. For the avoidance of doubt, the Parties expressly agree that upon the Deemed Performance Security being appropriated, in whole or in part, it shall be deemed to be replenished to the extent of such appropriation.

#### **10.6. REFERENCES TO PERFORMANCE SECURITY**

References to Performance Security occurring in this Agreement for and in respect of any period prior to the delivery of the Performance Security by the Concessionaire to the Authority, or in respect of any period subsequent to the expiry or release thereof, as the case may be, shall be construed solely for the purposes of calculating the amount of damages payable by the Concessionaire, and the amount so determined shall be appropriated from the Bid Security or Deemed Performance Security, as the case may be.

## **11. RIGHT OF WAY**

### **11.1. THE SITE**

The site of the PROJECT shall comprise the real estate described in Schedule-A and respect of which the Right of Way shall be provided and granted by the Authority to the Concessionaire as a licensee under in accordance with this Agreement (the “**Site**”). For the avoidance of doubt, it is hereby acknowledged and agreed that references to the Site shall be construed as references to the real estate required for the PROJECT on the Site set forth in Schedule-A.

### **11.2. LICENSE, ACCESS AND RIGHT OF WAY**

**11.2.1.** The Authority here by grants to the Concessionaire access to the Site for carrying out any surveys, investigations, and soil tests that the Concessionaire may deem necessary during the Development Period.

**11.2.2.** This Agreement and the covenants and warranties on the part of the Concessionaire herein contained, the Authority, in accordance with the terms and conditions set forth herein, hereby grants to the Concessionaire, commencing from the Appointed Date, leave and license rights in respect of all the land (along with any buildings, constructions, if any, thereon) comprising the Site which is described, delineated and shown in Schedule-A hereto (the “Licensed Premises”), on an “as is where is” basis, free of any Encumbrances, to develop, operate and maintain the said Licensed Premises, together with all and singular rights, liberties, privileges, easements and appurtenances whatsoever to the said Licensed Premises, hereditaments or premises or any part thereof belonging to ordinary way appurtenant thereto enjoyed there with, for the duration of the Concession Period and, for the purposes permitted under this Agreement, and for no other purpose whatsoever.

**11.2.3.** Any License, Access and Right of Way granted under this Agreement shall remain valid until expiry of validity of this Agreement or upon early termination by either Parties.

**11.2.4.** The Concessionaire hereby irrevocably appoints the Authority (or its nominee) to be its true and lawful attorney, to execute and sign in the name of the Concessionaire a transfer or surrender of the license granted here under at any time after the Concession Period has expired or has been terminated earlier in terms hereof, a sufficient proof of which will be the declaration of any duly authorized officer of the Authority, and the Concessionaire consents to it being registered for this purpose.

**11.2.5.** It is expressly agreed that trees on the Site are property of the Authority except that the Concessionaire shall be entitled to exercise usufructuary rights there of.

### **11.3. PROCUREMENT OF THE SITE**

- 11.3.1.** Pursuant to the notice specified in Clause 4.1.2, the Authority Representative and the Concessionaire shall, on a mutually agreed date and time, inspect the Site and prepare a memorandum containing an inventory of the Site including the vacant and unencumbered land, buildings, structures, road works, trees and any other immovable property on or attached to the Site. Such memorandum shall have appended there to an appendix (the "Appendix") specifying in reasonable detail those parts of the Site to which vacant access and Right of Way has not been granted to the Concessionaire. Signing of the memorandum, in two counter parts (each of which shall constitute an original), by the authorized representatives of the Parties shall be deemed to constitute a valid license and right of Way to the Concessionaire for free and unrestricted use and development of the vacant and unencumbered Sited using the Concession Period under and in accordance with the provisions of this Agreement and for no other purpose whatsoever.
- 11.3.2.** Without prejudice to the provisions of Clause 11.3.1, the Parties hereto agree that on or prior to the Appointed Date, the Authority shall have granted vacant access and Right of Way in full of the total area of the Site required and necessary for the PROJECT, and in the event Financial Close is delayed on account of delaying Grant to such vacant access and Right of Way, the Authority shall be liable to payment Damages to the Concessionaire in accordance with the provisions of Clause 4.2.
- 11.3.3.** On and after signing the memorandum and after the Transfer Date, the Concessionaire shall maintain a round-the-clock vigil over the Site and shall ensure and procure that no encroachment there on takes place, and in the event of any encroachment or occupation on any part thereof, the Concessionaire shall report such encroachment or occupation forth with to the Authority. The Authority will acquire the land at its own cost for the project.
- 11.3.4.** The Authority shall make best efforts to provide and grant the Right of Way to the Concessionaire in respect of all and include in the Appendix, and in the even to delay for any reason other than Force Majeure or breach of this Agreement by the Concessionaire, it shall pay to the Concessionaire Damages in a sum calculated at the rate of Rs. 10,000 (Rupees Ten Thousand) per day for every 1,000 (One Thousand) square meters or part thereof, commencing from the 91<sup>st</sup> (ninety first) day of the Appointed Date and until such Right of Way is procured. The Concessionaire may at option terminate the Concession in the event of delay in such Grant by the Authority beyond 60 days from the 91<sup>st</sup> day of the Appointed Date.

### **11.4. SITE TO BE FREE FROM ENCUMBRANCES**

Subject to the provisions of Clause 11.3, the Site shall be made available by the Authority to the Concessionaire pursuant here to free from all Encumbrances and occupations and without the Concessionaire being required to make any payment to the Authority on

account of any costs, compensation, expenses and charges for the acquisition and use of such Site for the duration of the Concession Period, except in of as otherwise expressly provided in this Agreement.

#### **11.5. PROTECTION OF SITE FROM ENCROACHMENTS**

During the Concession Period, the Concessionaire shall protect the Site from any and all occupations, encroachments or Encumbrances, and shall not place or create nor permit any Contractor or other person claiming through or under the Concessionaire to place or create any Encumbrance or security interest overall or any part of the Site or the Project Assets, or on any rights of the Concessionaire therein or under this Agreement, save and except as otherwise expressly set for thin this Agreement.

#### **11.6. SPECIAL / TEMPORARY RIGHT OF WAY**

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

#### **11.7. ACCESS TO THE AUTHORITY AND INDEPENDENT ENGINEER**

The license, right of way and right to the Site granted to the Concessionaire here under shall always be subject to the right of access of the Authority and the Independent Engineer and their employees and agents for inspection, viewing and exercise of their rights and performance of their obligations under this Agreement.

#### **11.8. GEOLOGICAL AND ARCHAEOLOGICAL FINDS**

It is expressly agreed that mining, geological or archaeological rights do not form part of the license granted to the Concessionaire under this Agreement and the Concessionaire hereby acknowledges that it shall not have any mining rights or interest in the underlying minerals ,fossils, antiquities, structures or other remnants or things either of particular geological or archaeological interest and that such rights, interest and property on or under the Site shall vest in and belong to the Authority or the concerned Government Instrumentality. The Concessionaire shall take all reasonable precautions to prevent its workmen or any other person from removing or damaging such interest or property and shall inform the Authority forthwith of the discovery there of and comply with such instructions as the concerned Government Instrumentality may reasonably give for the removal of such property. For the avoidance of doubt, it is agreed that any reasonable expenses incurred by the Concessionaire here under shall be reimbursed by the Authority. It is also agreed that the Government shall procure that the instructions hereunder are issued by the concerned Government Instrumentality within are as on able period.

## **12. UTILITIES AND TREES**

### **12.1. EXISTING UTILITIES**

Notwithstanding anything to the contrary contained herein, the Concessionaire shall ensure that the respective entities owning the existing roads, right of way or utilities on, under or above the Site are enabled by it to keep such utilities in continuous satisfactory use.

### **12.2. SHIFTING OF OBSTRUCTING UTILITIES**

The Concessionaire shall, subject to Applicable Laws and with assistance of the Authority, undertake shifting of any utility including electric lines, water pipes and telephone cables, to an appropriate location or alignment within or outside the Site if and only if such utility causes or shall cause a material adverse effect on the construction, operation, or maintenance of the Project. The cost of such shifting shall be borne by the Authority or by the entity owning such utility, if the Authority so directs, and in the event of any delay in shifting thereof, the Concessionaire shall be excused for failure to perform any of its obligations here under if such failure is a direct consequence of delay on the part of the entity owning such electric lines, water pipes or telephone cables, as the case may be.

### **12.3. NEW UTILITIES**

**12.3.1.** The Concessionaire shall allow, subject to such conditions as the Authority may specify, access to, and use of the Site for laying telephone lines, water pipes, electric cables or other public utilities. Where such access or use causes any financial loss to the Concessionaire, it may require the user of the Site to pay compensation or damages as per Applicable Laws.

**12.3.2.** The Authority may, by notice require the Concessionaire to connect any adjoining area road to the PROJECT, and the connecting portion thereof falling within the Site shall be constructed by the Concessionaire at the Authority's cost in accordance with Article 17. The maintenance of such connecting portion shall be undertaken by the Concessionaire in accordance with the provisions of Schedule E.

### **12.4. FELLING OF TREES**

The Authority shall assist the Concessionaire in obtaining the Applicable Permits for felling of trees to be identified by the Authority for this purpose if and only if such trees cause a material adverse effect on the construction, operation, or maintenance of the PROJECT. The cost of such felling shall be borne by the Authority, and in the event of any delay in felling thereof or reasons beyond the control of the Concessionaire, it shall be excused for failure to perform any of its obligations hereunder if such failure is a direct

sequence of delay in the felling of trees. For the avoidance of doubt, the Parties here to agree that the felled trees shall be deemed to be owned by the Authority and shall be disposed in such manner and subject to such conditions as the Authority may in its sole discretion deem appropriate.



## **13. IMPLEMENTATION OF THE PROJECT**

### **13.1. OBLIGATIONS PRIOR TO COMMENCEMENT OF CONSTRUCTION**

Prior to commencement of Construction Works, the Concessionaire shall:

- a) Submit to the Authority and the Independent Engineer/ Chief Engineer its detailed design, drawings, construction methodology, quality assurance procedures, and the procurement, engineering and construction time schedule for completion of the Project and its components in accordance with the Project Completion Schedule as set forth in Schedule-D;
- b) Appoint its representative duly authorized to deal with the Authority in respect of all matters under or arising out of relating to this Agreement;
- c) Undertake, do and perform as such acts, deeds and things as may be necessary or required before commencement of construction under and in accordance with the Agreement, the Applicable Laws and Applicable Permits;
- d) Make its own arrangements for quarrying of materials needed for the Project under and in accordance with the Applicable Laws and Applicable Permits;
- e) The Concessionaire shall submit the comprehensive work plan within 60 (sixty) days from the date of signing of this Agreement. Within 15 (fifteen) days from the submission of the comprehensive work plan, the Authority and the Independent Engineer/ Chief Engineer shall review and give comments, if any. The Concessionaire shall finalize the comprehensive work plan after taking into account the comments of the Authority and IE or give reasons with full justification, in case of disagreement, if any.

### **13.2. DRAWINGS**

In respect of the Concessionaire's obligations with respect to the Drawings of the PROJECT as set forth in Schedule-D, the following shall apply:

- a) The Concessionaire shall prepare and submit, with reasonable promptness and in such sequence as is consistent with the Project Completion Schedule 5 (five) copies each of all Drawings to the Independent Engineer / Chief Engineer for review;
- b) By submitting the Drawings for review to the Independent Engineer/ Chief Engineer, the Concessionaire shall be deemed to have represented that it has determined and verified that the design and engineering, including field

construction criteria related there to, are in conformity with the Scope of the Project and the Specifications and Standards;

- c) Within 15(fifteen) days of the receipt of the Drawings, the Independent Engineer/ Chief Engineer shall review the same and convey its observations to the Concessionaire with particular reference to their conformity or otherwise with the Scope of the Project and the Specifications and Standards. The Concessionaire shall not be obliged to await the observations of the Independent Engineer / Chief Engineer on the Drawings submitted pursuant hereto beyond the said 15 (fifteen) days period and may begin or continue Construction Works at its own discretion;
- d) If the aforesaid observations of the Independent Engineer/ Chief Engineer indicate that the Drawings are not in conformity with the Scope of the Project or the Specifications and Standards, such Drawings shall be revised by the Concessionaire and resubmitted to the Independent Engineer / Chief Engineer for review. The Independent Engineer / Chief Engineer shall give its observations, if any, within 7 (seven) days of receipt of the revised Drawings;
- e) Within 90 (ninety) days of the Project Completion Date, the Concessionaire shall furnish to the Authority and the Independent Engineer/ Chief Engineer a complete set of as-built Drawings, in 2 (two) hard copies and in micro film form or in such other mediums as may be acceptable to the Authority, reflecting the PROJECT as actually design , engineer and constructed including an as-built survey illustrating the layout of the Project and setback lines, if any, of the buildings and structures forming part of Project Facilities.

### **13.3. IMPLEMENTATION OF THE PROJECT**

**13.3.1.** The Concessionaire shall complete construction of the PROJECT within 24 Months from the Appointed Date (the "Scheduled PROJECT Date").

**13.3.2.** The Concessionaire shall undertake the PROJECT in accordance with the Project Completion Schedule set forth in Schedule-D. In the event that the Concessionaire fails to achieve any of the Project Milestones within a period of 90 (ninety)days from the date set forth for such Milestones in Schedule-D, unless such failure has occurred due to Force Majeure or for reasons solely attributable to the Authority, it shall pay Damages to the Authority in a sum calculated at the rate of 0.1%(zero point one percent)of the amount of Performance Security for delay of each day until such Milestone is achieved; provided that if any or all Project Milestones or the Scheduled PROJECT Date are extended in accordance with the provisions of this Agreement, the dates set forth in Schedule- D shall be deemed to be modified accordingly and the provisions of this Agreement shall apply as if Schedule-D has been amended as above; provided further that in the event Project

Completion Dates are achieved on or before the Scheduled Date, the Damages paid under this Clause 13.3.2 shall be refunded by the Authority to the Concessionaire.

**13.3.3.** In the event that the PROJECT and its components as per Phase I based on module wise of Project Development Plan (PDP) are not completed within 24 months from the Appointed Date, unless the delay is on account of reasons solely attributable to the Authority or due to Force Majeure, the Authority shall be entitled to terminate this Agreement.

## 14. MONITORING OF CONSTRUCTION

### 14.1. MONTHLY PROGRESS REPORTS

During the Construction Period, the Concessionaire shall, no later than 7 (seven) days after the close of each month, furnish to the Authority and the Independent Engineer / Chief Engineer a monthly report on progress of the Construction Works and shall promptly give such other relevant information as may be required by the Independent Engineer/ Chief Engineer.

### 14.2. INSPECTION

During the Construction Period, the Independent Engineer shall inspect the PROJECT at least once a month and make a report of such inspection (the “**Inspection Report**”) stating in a reasonable detail the defects or deficiencies, if any, with particular reference to the Scope of the Project and Specifications and Standards. It shall send a copy of the Inspection Report to the Authority and the Concessionaire within 7 (seven) days of such inspection and upon receipt thereof, the Concessionaire shall rectify and remedy the defects or deficiencies, if any, stated in the Inspection Report. Such inspection or submission of Inspection Report by the Independent Engineer / Chief Engineer shall not relieve or absolve the Concessionaire of its obligations and liabilities here under in any manner whatsoever.

### 14.3. TESTS

**14.3.1.** For determining that the Construction Works conform to the Specifications and Standards and also being under taken in accordance with the Project Requirements, the Independent Engineer/ Chief Engineer shall require the Concessionaire to carry out or cause to be carried out tests, at such time and frequency and in such manner as maybe specified by the Independent Engineer/ Chief Engineer from time to time, in accordance with Good Industry Practice for quality assurance. The Concessionaire shall, with due diligence, carry out or cause to be carried out all the tests in accordance with the instructions of the Independent Engineer /Chief Engineer and furnish the results thereof to the Independent Engineer. One half of the costs incurred on such tests, and to the extent certified by the Independent Engineer Chief Engineer as reasonable, shall be reimbursed by the Authority to the Concessionaire. For the avoidance of doubt, the costs to be incurred on any Test which is undertaken for determining the rectification of any defect or deficiency in construction shall be borne solely by the Concessionaire.

**14.3.2.** In the event that results of any tests conducted under this Clause 14.3 establish any defects or deficiencies in the Construction Works, the Concessionaire shall carry out remedial measures and furnish a report to the Independent Engineer /Chief Engineer in this behalf.

The Independent Engineer/ Chief Engineer shall require the Concessionaire to carry out or cause to be carried out tests to determine that such remedial measures have brought the Construction Works into compliance with the Specifications and Standards, and the procedure set forth in this Clause 14.3 shall be repeated until such Construction Works conform to the Specifications and Standards. For the avoidance of doubt, it is agreed that tests pursuant to this Clause 14.3 shall be undertaken in addition to and independent of the tests that shall be carried out by the Concessionaire for its own quality assurance in accordance with Good Industry Practice. It is also agreed that a copy of the results of such tests shall be sent by the Concessionaire to the Independent Engineer / Chief Engineer / forthwith.

#### **14.4. DELAYS DURING CONSTRUCTION**

Without prejudice to the provisions of Clause 13.3.2, if the Concessionaire does not achieve any of the Project Milestones or the Independent Engineer /Chief Engineer shall have reasonably determined that the rate of progress of Construction Works is such that PROJECT or any of the components as per the Project Development Plan is not likely to be achieved by the Scheduled PROJECT completion Date, it shall notify the Concessionaire to this effect, and the Concessionaire shall, within 15 (fifteen) days of such notice, by a communication inform the Independent Engineer in reasonable detail about the steps it proposes to take in order to expedite progress and the period within which it shall achieve the Project Completion Date.

#### **14.5. VIDEO RECORDING**

During the Construction Period, the Concessionaire shall provide to the Authority for every calendar quarter, a video recording, which will be compiled or digital video disc, as the case may be, covering the status and progress of Construction Works in that quarter. The first such video recording shall be provided to the Authority within 7(seven) days of the Appointed Date and thereafter, no later than 15(fifteen) days after the close of each quarter.

## **15. COMPLETION CERTIFICATE**

### **15.1. TESTS**

**15.1.1.** At least 30(thirty) days prior to the likely completion of the respective Project components, the Concessionaire shall notify the Independent Engineer/ Chief Engineer of its intent to subject the respective Project components to Tests. The date and time of each of the Tests shall be determined by the Independent Engineer/ Chief Engineer in consultation with the Concessionaire, and notified to the Authority who may designate its representative to witness the Tests. The Concessionaire shall provide such assistance as the Independent Engineer/ Chief Engineer may reasonably require for conducting the Tests. In the event of the Concessionaire and the Independent Engineer / Chief Engineer failing to mutually agree on the dates for conducting the Tests, the Concessionaire shall fix the dates by not less than 10 (ten) days' notice to the Independent Engineer/ Chief Engineer.

**15.1.2.** All Tests shall be conducted in accordance with Annexure I. The Independent Engineer / Chief Engineer shall observe, monitor and review the results of the Tests to determine compliance of the PROJECT components with Specifications and Standards and if it is reasonably anticipated or determined by the Independent Engineer / Chief Engineer during the course of any Test that the performance of the respective Project component or any part thereof does not meet the Specifications and Standards, it shall have the right to suspend or delay such Test and require the Concessionaire to remedy and rectify the defects or deficiencies. Upon completion of each Test, the Independent Engineer / Chief Engineer shall provide to the Concessionaire and the Authority copies of all Test data including detailed Test results. For the avoidance of doubt, it is expressly agreed that the Independent Engineer / Chief Engineer may require the Concessionaire to carry out or cause to be carried out additional Tests, in accordance with Good Industry Practice, for determining the compliance of the Project and its components with Specifications and Standards.

### **15.2. COMPLETION CERTIFICATE**

Upon completion of Construction Works, whether in part or full as the case may be, and the Independent Engineer / Chief Engineer determining the Tests to be successful, it shall forthwith recommend the Authority to issue Completion Certificate (as set forth in Schedule-G herein) to the Concessionaire and the Authority shall within 7 (Seven) days from the receipt of such recommendation from the Independent Engineer/Chief Engineer shall issue the Completion Certificate in favour of the Concessionaire . Authority may issue part Completion Certificate wherever mutually agreed upon by the Parties.

### **15.3. COMPLETION OF PUNCH LIST ITEMS**

**15.3.1.** All items in the Punch List shall be completed by the Concessionaire within 120 (One Hundred Twenty) days from the date of issuance of the Completion Certificate and for any delay solely attributable to the Concessionaire the Authority shall be entitled to recover Damages from the Concessionaire to be calculated and paid for each day of delay until all items are completed, at 0.1% (zero point one percent) of the cost of completing such punch list items as estimated by the Concessionaire. Subject to payment of such Damages, the Concessionaire shall be entitled to a further period not exceeding 120 (one hundred and twenty) days for completion of the Punch List items. If the completion of any punch list item is delayed for reasons solely attributable to the Authority or due to Force Majeure, the completion date for punch list items thereof shall be determined mutually by the Concessionaire and the Independent Engineer / Chief Engineer in accordance with Good Industry Practice.

### **15.4. RESCHEDULING OF TESTS**

If the Independent Engineer / Chief Engineer certifies to the Authority and the Concessionaire that it is unable to issue the Completion Certificate, because of events or circumstances on account of which the Tests could not be held or had to be suspended, the Concessionaire shall be entitled to re-schedule the Tests and hold the same as soon as reasonably practicable.

## **16. PROJECT COMMENCEMENT DATE**

### **16.1. PROJECT COMMENCEMENT DATE (PCD)**

The respective Project components shall be deemed to be complete when the Completion Certificate is issued under the provisions of Article 15 and accordingly the Project Commencement Date of the Project shall be the date on which such Completion Certificate is issued for all the Works under the Project (the “**PCD**”).



## 17. CHANGE OF SCOPE

### 17.1. CHANGE OF SCOPE

17.1.1. The Authority may, notwithstanding anything to the contrary contained in this Agreement, require the provision of additional works and services which are not included in the Scope of the Project as contemplated by this Agreement (“**Change of Scope**”). Any such Change in Scope shall be made in accordance with the provisions of this Article 17 and the costs thereof shall be expended by the Concessionaire and reimbursed to it by the Authority in accordance with Clause 17.3.

17.1.2. If the Concessionaire determines at any time that a Change of Scope is necessary for providing improved services to the Member Industries or to enhance the economic efficiency of the Project or such other reason related to the performance of services or the Project, it shall by notice in writing require the Authority to consider such Change of Scope. The Authority shall, within 15 (fifteen) days of receipt of such notice, either accept such Change of Scope with modifications, if any, and initiate proceedings therefore in accordance with this Article 17 or inform the Concessionaire in writing of its reasons for not accepting such Change of Scope.

17.1.3. Any works or services which are provided under and in accordance with this Article 17 shall form part of the PROJECT and the provisions of this Agreement shall apply *mutatis mutandis* to such works or services.

### 17.2. PROCEDURE FOR CHANGE OF SCOPE

17.2.1. In the event of the Authority determining that a Change of Scope is necessary, it shall issue to the Concessionaire a notice specifying in reasonable detail the works and services contemplated there under (the “**Change of Scope Notice**”).

17.2.2. Upon receipt of a Change of Scope Notice, the Concessionaire shall, with due diligence, provide to the Authority such information as is necessary, together with preliminary Documentation in support of:

- (a) The impact, if any, which the Change of Scope is likely to have on the Project Completion Schedule if the works or services are required to be carried out during the Construction Period; and
- (b) The options for implementing the proposed Change of Scope with option wise associated additional costs and time, a detailed breakdown of work, classifications, estimated material and labour costs (calculated in accordance with the applicable Schedule of Rates) ; subject to that the cost incurred by the Concessionaire in providing such information on options shall be reimbursed by the Authority.

**17.2.3.** Upon receipt of information set forth in Clause 17.2.2, if the Authority decides to proceed with the Change of Scope, it shall convey its preferred option to the Concessionaire, and the Parties shall, with assistance of the Independent Engineer/ Chief Engineer, there upon make good faith efforts to agree upon the time and costs for implementation thereof. Upon reaching an agreement, the Authority shall issue an order (the “**Change of Scope Order**”) requiring the Concessionaire to proceed with the performance thereof.

**17.2.4.** The Provisions of this Agreement, in so far as they relate to Construction Works and Tests, shall apply *mutatis mutandis* to the works undertaken by the Concessionaire under this Article 17.

### **17.3. PAYMENT FOR CHANGE OF SCOPE**

**17.3.1.** Within 7 (seven) days of issuing a Change of Scope Order, the Authority shall make an advance payment to the Concessionaire in a sum equal to 20% (twenty percent) of the cost of Change of Scope as agreed here under, and in the event of a Dispute, 20% (twenty percent) of the cost assessed by the Independent Engineer/ Chief Engineer. The Concessionaire shall, after commencement of work, present to the Authority bills for payment in respect of the works in progress or completed works, as the case may be, supported by such Documentation as is reasonably sufficient for the Authority to determine the accuracy thereof. Within 30 (thirty) days of receipt of such bills, the Authority shall disburse to the Concessionaire such amounts as are certified by the Independent Engineer / Chief Engineer as reasonable and after making a proportionate deduction for the advance payment made here under, and in the event of any Dispute, final adjustments there to shall be made under and in accordance with the Dispute Resolution Procedure.

**17.3.2.** Not with standing anything to the contrary contained in Clause 17.3.1, all costs arising out of any Change of Scope Order issued during reimbursed by the Authority in accordance with Clause 17.3.1.

### **17.4. RESTRICTION ON CERTAIN WORKS**

**17.4.1.** Notwithstanding anything to the contrary contained in this Article 17, the Authority shall not require the Concessionaire to undertake any works or services if such works or services are likely to delay completion of the PROJECT and its components; provided that in the event that the Authority considers such works or services to be essential, it may issue a Change of Scope Order, subject to the condition that the works forming part of or affected by such Order shall not be reckoned for the purposes of determining completion of PROJECT or its components and issuing the Completion Certificate.

## **18. OPERATION AND MAINTENANCE**

### **18.1. O&M OBLIGATIONS OF THE CONCESSIONAIRE**

**18.1.1.** During the Operation Period, the Concessionaire shall, operate and maintain the PROJECT and its components in accordance with this Agreement either by itself, or through the O&M Contractor and if required, modify, repair or otherwise make improvements to the PROJECT or its components to comply with the provisions of this Agreement, Applicable Laws and Applicable Permits, and conform to Specifications and Standards and Good Industry Practice. The obligations of the Concessionaire here under shall include:

- a) Preventing, with the assistance of the concerned law enforcement agencies, any Unauthorized use of the PROJECT;
- b) Protection of the environment and provision of equipment and materials thereof
- c) Operation and maintenance of all communication, control and administrative systems necessary for the efficient operation of the PROJECT
- d) Complying with Safety Requirements in accordance with Article 19.

**18.1.2.** The Concessionaire shall in order to monitor the treated effluent quality, at its own cost, sample and test the water samples at the source, at treatment in accordance with the provision of Annexure I.

**18.1.3.** The Concessionaire shall, at its own cost, plan for replacement of equipment well ahead of the end of the useful life thereof and replace such equipment in accordance with Good Industry Practice.

**18.1.4.** The condition of the PROJECT and its components as transferred to the Authority on the expiration of the Concession Period or on the Termination Date shall be such that they are fully operational as intended under this Agreement and require only a continuation of the programme of continuous maintenance, as performed regularly by the Concessionaire during the Concession Period, in order to maintain this fully operational condition. If the PROJECT are not in fully operational condition at the time of transfer, the Authority shall direct the Concessionaire to make the PROJECT operational as envisaged in this Agreement and if the Concessionaire fails to comply with the same within a reasonable time frame, then the Authority has the right to carry out repairs to bring them up to such condition. The Concessionaire shall indemnify the Authority for any such costs (and any such costs may be deducted from amounts payable to the Concessionaire)

## **18.2. MAINTENANCE REQUIREMENTS**

The Concessionaire shall procure that all times during the Operation Period; the PROJECT and its components conforms to the maintenance requirements set forth in Schedule-Q (the “**Maintenance Requirements**”).

## **18.3. MAINTENANCE MANUAL**

**18.3.1.** Not later than 180(one hundred and eighty) days prior to the Scheduled PROJECT completion Date for respective components, the Concessionaire shall, in consultation with the Independent Engineer/ Chief Engineer, evolve a repair and maintenance manual (the “**Maintenance Manual**”) for the regular and preventive maintenance of the PROJECT and its components in conformity with the Maintenance Requirements, Safety Requirements and Good Industry Practice, and shall provide 5 (five) copies thereof to the Authority and 2 (two) copies to the Independent Engineer/ Chief Engineer. The Maintenance Manual shall be revised and updated once every 3 (three) years and the provisions of this Clause 18.3 shall apply, mutatis mutandis, to such revision.

**18.3.2.** Without prejudice to the provision of Clause 18.3.1, the Maintenance Manual shall, in particular, include provisions for maintenance of Project Assets and shall provide for life cycle maintenance, routine maintenance and reactive maintenance which may be reasonably necessary for maintenance and repair of the Project Assets, including replacement thereof, such that its overall condition conforms to Good Industry Practice.

## **18.4. MAINTENANCE PROGRAMME**

**18.4.1.** Not later than 45 (forty five) days prior to the beginning of each Accounting Year during the Operation Period, the Concessionaire shall provide to the Authority and the Independent Engineer/ Chief Engineer, its proposed annual programme of preventive, urgent and other scheduled maintenance (the “**Maintenance Programme**”) to comply with the Maintenance Requirements, Maintenance Manual and Safety Requirements. Such Maintenance Programme shall include:

- a) Preventive Maintenance Requirements;
- b) Arrangements and procedures for carrying out urgent repairs;
- c) Criteria to be adopted for deciding maintenance needs;
- d) Intervals and procedures for carrying out inspection of all elements of the PROJECT;
- e) Intervals at which the Concessionaire shall carryout periodic maintenance;
- f) arrangements and procedures for carrying out safety related measures; and
- g) Intervals for major maintenance works and the scope thereof.

**18.4.2.** Within 15 (fifteen) days of receipt of the Maintenance Programme, the Independent Engineer/ Chief Engineer shall review the same and convey its comments to the

Concessionaire with particular reference to its conformity with the Maintenance Requirements, Maintenance Manual and Safety Requirements.

**18.4.3.** The Concessionaire may modify the Maintenance Programme as may be reasonable in the circumstances, and the procedure specified in Clauses 18.4.1 and 18.4.2 shall apply *mutatis mutandis* to such modifications.

## **18.5. DAMAGES FOR BREACH OF MAINTENANCE OBLIGATIONS**

**18.5.1.** In the event that the Concessionaire fails to repair or rectify any defect or deficiency set forth in the Maintenance Requirements within the period specified therein, it shall be deemed to be in breach of this Agreement and the Authority shall be entitled to recover Damages, to be calculated and paid for each day of delay until the breach is cured, at the higher of (a) 0.5% (zero point five per cent) of Average Daily Fee, and (b) 0.1% (zero point one percent) of the cost of such repair or rectification as estimated by the Independent Engineer/ Chief Engineer. Recovery of such Damages shall be without prejudice to the rights of the Authority under this Agreement.

**18.5.2.** The Damages set forth in Clause 18.5.1 may be assessed and specified forthwith by the Independent Engineer/ Chief Engineer; provided that the Authority may, in its discretion, demand a smaller sum as Damages, if in its opinion, the breach has been cured promptly and the Concessionaire is otherwise in compliance with its obligations here under. The Concessionaire shall pay such Damages forth with and in the event that it contests such Damages, the Dispute Resolution Procedure shall apply.

## **18.6. AUTHORITY'S RIGHT TO TAKE REMEDIAL MEASURES**

**18.6.1.** In the event the Concessionaire does not maintain and/or repair the PROJECT or any part thereof in conformity with the Maintenance Requirements, the Maintenance Manual or the Maintenance Programme, as the case may be, and fails to commence remedial works within 15(fifteen)days of receipt of the O&M Inspection Report or a notice in this behalf from the Authority or the Independent Engineer / Chief Engineer, as the case may be, the Authority shall, without prejudice to its rights under this Agreement including Termination thereof, be entitled to undertake such remedial measures at the risk and cost of the Concessionaire, and to recover its cost from the Concessionaire.

## **18.7. OVERRIDING POWERS OF THE AUTHORITY**

**18.7.1.** If in the reasonable opinion of the Authority, the Concessionaire is in material breach of its obligations under this Agreement and, in particular, the Maintenance Requirements, and such breach is causing or likely to cause material hardship or danger to the Users, the Authority may, without prejudice to any of its rights under this Agreement including

Termination thereof, by notice require the Concessionaire to take reasonable measures immediately for rectifying or removing such hardship or danger, as the case may be.

**18.7.2.** In the event of a national emergency, civil commotion or any other act specified in Clause 27.3, the Authority may take over the performance of any or all the obligations of the Concessionaire to the extent deemed necessary by it or as directed by the Government, and exercise such control over the PROJECT or give such directions to the Concessionaire as may be deemed necessary; provided that the exercise of such overriding powers by the Authority shall be of no greater scope and of no longer duration than is reasonably required in the circumstances which caused the exercise of such overriding power by the Authority. For the avoidance of doubt, the consequences of such action shall be dealt in accordance with the provisions of Article 27.

**18.8. RESTORATION OF LOSS OR DAMAGE TO PROJECT OR ITS COMPONENTS**

Save and except as otherwise expressly provided in this Agreement, in the event that the PROJECT or any part thereof suffers any loss or damage during the Concession Period from reasons attributable to the Concessionaire, the Concessionaire shall, at its cost and expense, rectify and remedy such loss or damage forth with so that the PROJECT conforms to the provisions of this Agreement.

**18.9. MODIFICATIONS TO THE PROJECT**

The Concessionaire shall not carry out any material modifications to the PROJECT or its components save and except where such modifications are necessary for the PROJECT or its components to operate in conformity with the Maintenance Requirements, Good Industry Practice and Applicable Laws; provided that the Concessionaire shall notify the Independent Engineer / Chief Engineer of the proposed modifications along with particulars thereof at least 15(fifteen) days before commencing work on such modifications and shall reasonably consider any suggestions that the Independent Engineer may make within 15 (fifteen) days of receiving the Concessionaire's proposal.

**18.10. EXCUSE FROM PERFORMANCE OF OBLIGATIONS**

The Concessionaire shall not be considered in breach of its obligations under this Agreement if Effluent from Member Industries is not treated on account of any of the following for the duration thereof:

- a) An event of Force Majeure;
- b) measures taken to ensure the safe use of the PROJECT components except when unsafe conditions occurred because of failure of the Concessionaire to perform its obligations under this Agreement; or

- c) Compliance with a request from the Authority or the directions of any Government Instrumentality, the effect of which is to close all or any part of the PROJECT.

#### **18.11. BARRIERS AND DIVERSIONS**

The Authority shall procure that during the Operations Period, no barriers are erected or placed by any Government Instrumentality on the PROJECT or its components except for reasons of Emergency, national security, law and order.

## **19. SAFETY REQUIREMENTS**

### **19.1. SAFETY REQUIREMENTS**

The Concessionaire shall comply with the provisions of this Agreement, Applicable Laws and Applicable Permits and conform to Good Industry Practice for securing the safety of the Users. In particular, the Concessionaire shall develop, implement, and administer a surveillance and safety programme for providing a safe environment on or about the *PROJECT and its components*, and shall comply with the safety requirements (the “**Safety Requirements**”).

### **19.2. EXPENDITURE ON SAFETY REQUIREMENTS**

Unless otherwise expressly provided in this Agreement, all costs and expenses arising out of or relating to Safety Requirements shall be borne by the Concessionaire to the extent such costs and expenses form part of the works and services included in the Scope of the Project, and works and services.



## **20. MONITORING OF OPERATION AND MAINTENANCE**

### **20.1. MONTHLY STATUS REPORTS**

During Operation Period, the Concessionaire shall, no later than 7(seven) days after the close of each month, furnish to the Authority and the Independent Engineer/ Chief Engineer a monthly report stating in reasonable detail the condition of the PROJECT and its components including its compliance or otherwise with the Maintenance Requirements, Maintenance Manual, Maintenance Programme and Safety Requirements, and shall promptly give such other relevant information as may be required by the Independent Engineer/ Chief Engineer . In particular, such report shall separately identify and state in reasonable detail the defects and deficiencies that require rectification.

### **20.2. INSPECTION**

The Independent Engineer/ Chief Engineer shall inspect the PROJECT at least once a month. It shall make a report of such inspection (the “**O&M Inspection Report**”) stating in reasonable detail the defects or deficiencies, if any, with particular reference to the Maintenance Requirements, Maintenance Manual, the Maintenance Programme and Safety Requirements, and send a copy thereof to the Authority and the Concessionaire within 7 (seven) days of such inspection.

### **20.3. TESTS**

For determining that the PROJECT AND ITS COMPONENTS conforms to the Maintenance Requirements, the Independent Engineer/ Chief Engineer shall require the Concessionaire to carryout, or cause to be carried out, tests specified by it in accordance with Good Industry Practice. The Concessionaire shall, with due diligence, carry out or cause to be carried out all such tests in accordance with the instructions of the Independent Engineer/ Chief Engineer and furnish the results of such tests forthwith to the Independent Engineer/ Chief Engineer . One half of the costs incurred on such tests, and to the extent certified by the Independent Engineer/ Chief Engineer as reasonable, shall be reimbursed by the Authority to the Concessionaire.

### **20.4. REMEDIAL MEASURES**

**20.4.1.** The Concessionaire shall repair or rectify the defects or deficiencies, if any, set forth in the O&M Inspection Report or in the test results referred to in Clause 20.3 and furnish a report in respect thereof to the Independent Engineer/ Chief Engineer and the Authority within 15 (fifteen) days of receiving the O&M Inspection Report or the test results, as the case may be; provided that where the remedying of such defects or deficiencies is likely to take more

than 15 (fifteen) days, the Concessionaire shall submit progress reports of their pair works once every week until such works are completed in conformity with this Agreement.

**20.4.2.** The Independent Engineer/ Chief Engineer shall require the Concessionaire to carry out or cause to be carried out tests, at its own cost, to determine that such remedial measures have brought the PROJECT and its components into compliance with the Maintenance Requirements and the procedure set forth in this Clause 20.4 shall be repeated until the PROJECT and its components conforms to the Maintenance Requirements. In the event that remedial measures are not completed by the Concessionaire in conformity with the provisions of this Agreement, the Authority shall be entitled to recover Damages from the Concessionaire under and in accordance with the provisions of Clause 18.5.

## **21. INDEPENDENT ENGINEER**

### **21.1. APPOINTMENT OF INDEPENDENT ENGINEER**

The Authority shall appoint a consulting engineering firm or bodies corporate constituted by the Authority substantially in accordance with the selection criteria set forth in Schedule-N, to be the independent consultant under this Agreement (the “**Independent Engineer**”). The appointment shall be made no later than 30 (Thirty) days from the date of this Agreement and shall be for the period of construction. On expiry or termination of the aforesaid period, the Authority may in its discretion renew the appointment, or appoint another firm from afresh panel constituted pursuant to Schedule-N to be the Independent Engineer.

### **21.2. DUTIES AND FUNCTIONS**

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

The Independent Engineer shall submit regular periodic reports (at least once every month) to the Authority in respect of its duties and functions set forth in Schedule-I.

### **21.3. REMUNERATION**

The remuneration, cost and expenses of the Independent Engineer shall be paid by the Authority and subject to the limits set forth in Schedule-J.

### **21.4. TERMINATION OF APPOINTMENT**

**21.4.1.** The Authority 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 21.1.

**21.4.2.** If the Concessionaire 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 Authority and seek termination of the appointment of the Independent Engineer. Upon receipt of such representation, the Authority shall hold a tripartite meeting with the Concessionaire and Independent Engineer for an amicable resolution of the Dispute, and if any difference or disagreement between the Authority and the Concessionaire 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 here under, the Authority shall appoint forth with another Independent Engineer in accordance with Clause 21.1.

## **21.5. AUTHORIZED SIGNATORIES**

The Authority shall require the Independent Engineer to designate and notify to the Authority and the Concessionaire 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.

## **21.6. 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.

## **21.7. MONITORING AND SUPERVISION DURING OPERATION**

**21.7.1.** The Concessionaire shall undertake periodic inspection of the PROJECT Assets as per the maintenance Program, Specifications and Standards and this agreement and shall submit reports including compliance or otherwise with maintenance manual of such inspection ("Maintenance Reports") to Independent Engineer and the Authority's Engineer.

**21.7.2.** The Independent Engineer (IE) shall review the Maintenance Reports and inspect the PROJECT jointly with concessionaire at least once a month during the Operations Period and make out an inspection Report of such inspection (the "O&M Inspection Report"). The Independent Engineer (IE) shall send a copy of its O&M Inspection Report to Andhra Pradesh Industrial Infrastructure Corporation Ltd. and the Concessionaire. The Concessionaire shall within 30(thirty) days of the receipt of the O&M Inspection Report remedy the detects and deficiencies if any, set forth in such O&M Inspection Report and submit its report in respect thereof to the Independent Engineer (IE) and Andhra Pradesh Industrial Infrastructure Corporation Ltd. within the said 30 (thirty) days period. Where the remedying of such defects or deficiencies is likely to take more than 30 (thirty) days in accordance with Good Industry Practice, the Concessionaire shall undertake the works in accordance with such practice and submit progress reports of such works every fortnight. The O&M Inspection Report may also require the Concessionaire to undertake such tests as may be specified by the Independent Engineer (IE) for the purpose of determining that the PROJECT AND ITS COMPONENTS is at all times in conformity With the Specifications and Standards. The Concessionaire shall undertake such Tests without any delay and furnish a copy of the results thereof to the Independent Engineer (IE) and Andhra Pradesh Industrial Infrastructure Corporation Ltd. along with a written statement specifying in reasonable detail the measures, if any, that it proposes to undertake for curing the defaults or deficiencies indicated in such report. Such inspection or submission of O&M

Inspection Report by the Independent Engineer (IE) or submission of O&M Inspection Compliance Report by the Concessionaire shall not relieve or absolve the Concessionaire of its obligations and liabilities here under in any manner whatsoever.

**21.8. IMPLEMENTATION OF QUALITY/RISK MANAGEMENT SYSTEM AND WATER ENERGY AUDIT**

- i) The Concessionaire shall adopt and implement quality/Risk management system and get it certified from BIS or any ISO (Organization for International standardization) accredited body.
- ii) The Concessionaire shall also conduct water and energy audit by appointing independent agency through mutual agreement
- iii) The cost incurred for implementation of QMS and conducting water and energy audit will be borne by Concessionaire.

*NOTE: ALL the suggestions/ recommendations/ observations identified by the Independent Engineer shall be informed to the department and upon the approval, the concessionaire shall proceed.*

**PART- IV**  
**FINANCIAL COVENANTS**

## **22. FINANCIAL CLOSURE**

### **22.1. FINANCIAL CLOSURE**

**22.1.1.** The Concessionaire hereby agrees and undertakes that it shall achieve Financial Closure within 180 (One Hundred and Eighty) days from the date of this Agreement. In the event of delay in achieving the Financial Close, the Concessionaire shall be entitled to a further period not exceeding 60 (sixty) days, subject to payment of Damages to the Authority in a sum calculated at the rate of 0.05% (zero point zero five per cent) of the Performance Security for each day of delay, provided that the Damages specified herein shall be payable every week in advance and the period beyond the said 90 (ninety) days shall be granted only to the extent of Damages so paid. In the event of delay in achieving the Financial Close beyond 240 (two hundred and forty) days from the date of this Agreement, the Concessionaire shall be entitled to a further period not exceeding 95 (ninety five) days, subject to payment of Damages to the Authority in a sum calculated at the rate of 0.1% (zero point one per cent) of the Performance Security for each day of delay, provided that the Damages specified herein shall be payable every week in advance and the period beyond the said 240 (two hundred and forty) days shall be granted only to the extent of Damages so paid; provided further that no Damages shall be payable if such delay in Financial Close has occurred due to Force Majeure. For the avoidance of doubt, the Damages payable hereunder by the Concessionaire shall be in addition to the Damages, if any, due and payable under the provisions of Clause 4.3. Financial Closure may not be required, if the Concessionaire is a sole Bidder and shall have a capacity to execute the Project through internal accruals, in such case the Concessionaire shall submit Statutory Auditor Certificate to the Authority.

**22.1.2.** The Concessionaire shall, upon occurrence of Financial Close, notify the Authority forthwith, and shall have provided to the Authority, at least 2 (two) days prior to the Financial Close, 3 (three) true copies of the Financial Package and the Financial Model, duly attested by a Director of the Concessionaire, along with 3 (three) soft copies of the Financial Model in MS Excel version or any substitute thereof, which is acceptable to the Senior Lenders.

### **22.2. TERMINATION DUE TO FAILURE TO ACHIEVE FINANCIAL CLOSE**

**22.2.1.** Notwithstanding anything to the contrary contained in this Agreement, but subject to Clause 27.6.1, in the event that Financial Close does not occur, for reasons solely attributable to the Concessionaire, within the period set forth in Clause 22.1.1 or the extended period provided there under, all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, and the Concession Agreement shall be terminated by mutual agreement of the Parties.



**22.2.2.** Upon Termination under Clause 22.2.1, the Authority shall be entitled to encash the Bid Security and appropriate the proceeds thereof as Damages; provided, however, that if Financial Close has occurred due to Force Majeure, it shall, upon Termination, release the Bid Security or Performance Security, as the case may be. For the avoidance of doubt, it is expressly agreed that if the Bid Security shall have been substituted by the Performance Security, the Authority shall be entitled to encash there from an amount equal to the Bid Security.

**22.2.3.** Financial Closure may not be required, if the Concessionaire is a sole Bidder and shall have a capacity to execute the Project through internal accruals, in such case the Concessionaire shall submit Statutory Auditor Certificate to the Authority.

## **23. BID PROJECT COST**

### **23.1. O&M PAYMENTS**

- 23.1.1.** The Parties acknowledge and agree that all O&M Expenses and expenditure towards development of Capex shall be borne by the Concessionaire and in lieu thereof The Concessionaire shall be entitled to levy user charges from the industrial units basis the schedule of charges as approved by the VC&MD, APIIC.
- 23.1.2.** The Parties hereto acknowledge and agree that the Charges on Regulated Services i.e. (effluent treatment charges, water treatment charges and hazardous waste treatment charges) shall be revised every year and effective date for such first revision shall be one year from Project Commencement Date (PCD) for the Project and every one year thereafter. The Fixed Tariff for treatment of effluent, water treatment and hazardous waste treatment charges shall be revised by 5% every year and revision in User Charges for supply of recycled water shall be as decided by the Operations Committee. The Operations Committee shall comprise of the Zonal Manager, APIIC, Anakapalli zone, along with one member from Concessionaire and two members representing the industrial units operating in Atchutapuram SEZ. Such Committee shall meet once in every three months to discuss operational issues
- 23.1.3.** To protect the interests of the Concessionaire, a Tariff Review Committee (the "Tariff Review Committee") shall be formed where one representative from the Concessionaire, two representatives representing the industrial units in Atchutapuram SEZ, one representatives from the AP Pollution Control Board and the Vice Chairman and Managing Director, APIIC would be the members. The Tariff Review Committee, during the Concession Period, shall meet once in a year or when it is necessitated due to abnormal variations in input costs for Plant operations to firm up the Tariff. In case it is required, the Concessionaire shall have to share books of accounts to the Tariff Review Committee. The Tariff Review Committee can either approve the applicable Tariff as per the provisions of the Concession Agreement or fix a different Tariff or such periods as it may deem fit, if so warranted, taking into consideration the abnormal variations in input costs. For the sake of clarity, it is noted that the subsequent revisions in normal circumstances shall be as per the provisions of the Concession Agreement only.
- 23.1.4.** The Concessionaire, 3 (three) months prior to Scheduled Completion Date, shall have to submit to Tariff Review Committee, Plant operational costs giving complete break up of all the input costs per KL of effluent treatment along with three competitive quotations obtained in this regard. For the sake of clarity and for avoidance of doubt, any expenses towards maintenance of plant & machinery shall not be considered as operational input costs. The Tariff Review Committee shall review the costs submitted by the

Concessionaire, and if so required, may obtain fresh quotations for the input costs to validate the quotes submitted and to arrive at the input costs as on that day which shall become the base reference costs (the “Base Reference Costs”) for any future revision. The Tariff Review Committee shall ascertain any feature abnormal variations in input costs for Plant operations with reference to this Base Reference Costs only and to firm up the Tariff as it may deem fit.

- 23.1.5. Bid project cost is approximate 500 Crores.
- 23.1.6. Concessionaire shall collect all O&M charges as per Bid Price from Industrial units including treatment of their effluent water, treated water from WTP, and charges for recycled water if applicable.
- 23.1.7. The Authority shall provide information to the Concessionaire regarding the allotments made to Industrial units (prospective Users) and the details of the member units.
- 23.1.8. The Developer shall coordinate with industrial units for signing of the off-take agreements with Industrial units duly giving APIIC an option to be or not to be a member of such agreements.
- 23.1.9. The Concessionaire is entitled to collect a fixed Membership Fee and Advance towards the Operation Charges. The Developer is entitled to charge a Membership Fee from the Users while entering into an agreement with Member Industry units (APIIC may choose to be a participating entity for this tripartite agreement as per its own volition).
- 23.1.10. Maximum membership fee that can be charged shall not be more than Rs. 50,000 / KL and maximum Advance O&M charges that can be collected shall be for 3 months of average estimated billing.
- 23.1.11. The membership fee shall be non-refundable.
- 23.1.12. The Concessionaire may levy and recover an additional service charge for and in respect of any additional facility or service provided by it subject to approval of APIIC.
- 23.1.13. If “Member Unit” fails to pay the treatment charges **within 15 days from the receipt of respective Invoice**, the **interest shall applicable at 18% P.A.**
- 23.1.14. The PROJECT operator can adjust the amount from O&M Advance available until it fully consumed.

- 23.1.15.** The Developer can reject the Effluent by cancelling the Membership. If the member wants to revive the membership, charges applicable at **50%** of the prevailing membership fee.
- 23.1.16. Interest due to delay in payment:** Unless specified in the Agreement, Payments due from one Party to the other Party shall be made within 30 days. In the event of delay, the defaulting Party shall pay interest @ **(RBI) + 5%**
- 23.1.17.** Concessionaire shall also be responsible for storage and treatment of Toxic materials and collection of respective user charges towards treatment of toxic materials from the Industrial Units.
- 23.1.18.**
- 23.1.19.** Member Industries shall intimate in writing to the Concessionaire 30 days prior to the end of the Financial Year, the yearly demand of the effluent to be treated by the Concessionaire in the immediately succeeding Financial Year provided however that the demand in Financial Year cannot be less than the immediately preceding Financial Year except under justifiable grounds acceptable to the Concessionaire. The yearly demand shall not be more than the CFO quantity of the respective Member Industry. The Member Industries shall pay the minimum charges of 80% of the yearly effluent demand. For the purpose of calculation, the monthly average effluent demand shall be considered and computed to arrive at the minimum charges per month
- 23.1.20. TSS>1000ppm and Ammonia >50ppm shall be paid at a rate of Rs. \_\_\_\_per KL and Rs. \_\_\_\_ per KL respectively.**

Total Project cost as per the project plan development

## 24. ESCROW ACCOUNT

### 24.1. ESCROW ACCOUNT

**24.1.1.** The Concessionaire shall, prior to the Appointed Date, open and establish an Escrow Account with a Bank (the "**Escrow, Bank**") in accordance with this Agreement read with the Escrow Agreement. Opening and Establishment of Escrow Account is optional if the Concessionaire is a sole Bidder.

**24.1.2.** The nature and scope of the Escrow Account are fully described in the agreement (the "**Escrow Agreement**") to be entered into amongst the Concessionaire, the Authority, the Escrow Bank and the Senior Lenders through the Lenders' Representative, which shall be substantially in the form set forth in Schedule-L.

### 24.2. DEPOSITS INTO ESCROW ACCOUNT

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

- a) All funds constituting the Financial Package;
- b) All revenues from or in respect of the Project, including the proceeds of any rentals, deposits, capital receipts or insurance claims; and
- c) All payments by the Authority, after deduction of any outstanding payments.

### 24.3. WITHDRAWALS DURING CONCESSION PERIOD

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

- a) All taxes due and payable by the Concessionaire for and in respect of the Project;
- b) Any amount due on account of the appropriation of the Deemed Performance Security under Clause 10.2 of this Agreement
- c) All payments relating to construction of the Project, subject to and in accordance with the conditions, if any, set forth in the Financing Agreements;
- d) O&M Expenses, subject to the ceiling, if any, set forth in the Financing Agreements
- e) O&M Expenses and other costs and expenses incurred by the Authority in accordance with the provisions of this Agreement, and certified by the Authority as due and payable to it;

- f) Any amounts due and payable to the Authority (other than under Clause 10.2);
- g) Monthly proportionate provision of Debt Service due in an Accounting Year;
- h) All payments and Damages certified by the Authority as due and payable to it by the Concessionaire;
- i) Monthly proportionate provision of debt service payments due in an Accounting Year in respect of Subordinated Debt;
- j) Any reserve requirements set forth in the Financing Agreements; and
- k) Balance, if any, in accordance with the instructions of the Concessionaire.

**24.3.2.** The Concessionaire shall not in any manner modify the order of payment specified in Clause 24.3.1, except with the prior written approval of the Authority.

#### **24.4. WITHDRAWALS UPON TERMINATION**

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

- a) All taxes due and payable by the Concessionaire for and in respect of the Project;
- b) Any amount due on account of the appropriation of the Deemed Performance Security under Clause 10.2 of this Agreement;
- c) Percentage of Debt Due excluding Subordinated Debt if required to be as per the terms of this Agreement;
- d) Outstanding payments due to the Authority;
- e) All payments and Damages certified by the Authority as due and payable to it by the Concessionaire;
- f) Retention and payments relating to the liability for defects and deficiencies set forth in Article 29;
- g) Outstanding Debt Service, including the balance of Debt Due;
- h) Outstanding Subordinated Debt;
- i) Incurred or accrued O&M Expenses;
- j) Any other payments required to be made under this Agreement; and
- k) Balance, if any, in accordance with the instructions of the Concessionaire;
- l) Provided that no appropriations shall be made under Sub-clause (k) of this Clause 24.4.1 Until a Vesting Certificate has been issued by the Authority under the provisions of Article 31.

**24.4.2.** The provisions of this Article 24 and the instructions contained in the Escrow Agreement shall remain in full force and effect until the obligations set forth in Clause 24.4.1 have been discharged.

## **25. INSURANCE**

### **25.1. INSURANCE DURING CONCESSION PERIOD**

The Concessionaire shall effect and maintain at its own cost, during the Construction Period and the Operation Period, such insurances for such maximum sums as may be required under the Financing Agreements and Applicable Laws, and such insurances as may be necessary or prudent in accordance with Good Industry Practice. The Concessionaire shall also effect and maintain such insurances as may be necessary for mitigating the risks that may devolve on the Authority as a consequence of any act or omission of the Concessionaire during the Construction Period. The Concessionaire shall procure that in each insurance policy, the Authority shall be a co-insured and that the insurer shall pay the proceeds of insurance into the Escrow Account. For the avoidance of doubt, the level of insurance to be maintained by the Concessionaire after repayment of Senior Lenders' dues in full shall be determined on the same principles as applicable for determining the level of insurance prior to such repayment of Senior Lenders' dues.

### **25.2. INSURANCE COVER**

Without prejudice to the provisions contained in Clause 25.1, the Concessionaire shall, during the Operation Period, procure and maintain Insurance Cover including but not limited to the following:

- a) Loss, damage or destruction of the Project Assets, including assets handed over by the Authority to the Concessionaire, at replacement value;
- b) Comprehensive third party liability insurance, including injury to or death of personnel of the Authority or others caused by the Project;
- c) The Concessionaire's general liability arising out of the Concession;
- d) Liability to third parties for goods or property damage;
- e) Workmen's compensation insurance; and
- f) Any other insurance that may be necessary to protect the Concessionaire and its employees, including all Force Majeure Events that are insurable at commercially reasonable premiums and not otherwise covered in items (a) to (e) above.

### **25.3. NOTICES TO THE AUTHORITY**

No later than 45 (forty five) days prior to commencement of the Construction Period or the Operation Period, as the case may be, the Concessionaire shall by notice, furnish to the authority, in reasonable detail, information in respect of the insurances that it proposes to effect and maintain in accordance with this Article 25. Within 30 (thirty) days of receipt of such notice, the Authority may require the Concessionaire to effect and maintain such other insurances as may be necessary pursuant hereto, and in the event

of any difference or disagreement relating to any such insurance, the Dispute Resolution Procedure shall apply.

#### **25.4. EVIDENCE OF INSURANCE COVER**

All insurances obtained by the Concessionaire in accordance with this Article 25 shall be maintained by insurers in terms consistent with Good Industry Practice. Within 15 (fifteen) days of obtaining any insurance cover, the Concessionaire shall furnish to the Authority, notarized true copies of the certificate(s) of insurance, copies of insurance policies and premium payment receipts in respect of such insurance, and no such insurance shall be cancelled, modified, or allowed to expire or lapse until the expiration of at least 45 (forty five) days after notice of such proposed cancellation, modification or nonrenewal has been delivered by the Concessionaire to the Authority.

#### **25.5. REMEDY FOR FAILURE TO INSURE**

If the Concessionaire shall fail to effect and keep in force all insurances for which it is responsible pursuant hereto, the Authority shall have the option to either keep in force any such insurances, and pay such premier and recover the costs thereof from the Concessionaire, or in the event of computation of a Termination Payment, treat an amount equal to the Insurance Cover as deemed to have been received by the Concessionaire.

#### **25.6. WAIVER OF SUBROGATION**

All insurance policies in respect of the insurance obtained by the Concessionaire pursuant to this Article 25 shall include a waiver of any and all rights of subrogation or recovery of the insurers there under against, inter alia, the Authority, and its assigns, successors, undertakings and their subsidiaries, affiliates, employees, insurers and underwriters, and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy or in any way connected with any loss, liability or obligation covered by such policies of insurance.

#### **25.7. CONCESSIONAIRE'S WAIVER**

The Concessionaire hereby further releases, assigns and waives any and all rights of subrogation or recovery against, inter alia, the Authority and its assigns, undertakings and their subsidiaries, affiliates, employees, successors, insurers and underwriters, which the Concessionaire may otherwise have or acquire in or from or in any way connected with any loss, liability or obligation covered by policies of insurance maintained or required to be maintained by the Concessionaire pursuant to this Agreement (other than third party liability insurance policies) or because of deductible clauses in or inadequacy of limits of any such policies of insurance.



#### **25.8. APPLICATION OF INSURANCE PROCEEDS**

The proceeds from all insurance claims, except life and injury, shall be paid to the Concessionaire by credit to the Escrow Account and it shall, notwithstanding anything to the contrary contained in Clause 24.3, apply such proceeds for any necessary repair, reconstruction, reinstatement, replacement, improvement or delivery of the Project, and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Agreements.

#### **25.9. COMPLIANCE WITH CONDITIONS OF INSURANCE POLICIES**

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

#### **25.10. INSURANCE DURING THE OPERATIONS PERIOD**

The Concessionaire shall at its own expenses and cost, purchase and maintain during the Operations Period insurance in joint name of Concessionaire and Andhra Pradesh Industrial Infrastructure Corporation Ltd. to cover against:

- a) Loss damage or destruction of the project Facility at replacement value:
- b) The Concessionaire's general liability arising out of the Concession:
- c) Liability to third parties, and
- d) Accident
- e) Property(all Properties)
- f) Treatment, hospitalization(contingent liability)
- g) Death, injury, grievances & minor out of accident or any of the incidences and
- h) Any other insurance that may be necessary to protect the Andhra Pradesh Industrial Infrastructure Corporation Ltd., Concessionaire and its employees including all Force Majeure Events that are insurable and not otherwise covered in items (a) to (g).

The said policy certificate shall be deposited with Andhra Pradesh Industrial Infrastructure Corporation Ltd.

## **26. ACCOUNTS AND AUDIT**

### **26.1. AUDITED ACCOUNTS**

- 26.1.1.** The Concessionaire shall maintain books of accounts recording all its receipts (including all revenues derived/collected by it from or on account of the Project and/or its use), income, expenditure, payments (including payments from the Escrow Account), assets and liabilities, in accordance with this Agreement, Good Industry Practice, Applicable laws and Applicable Permits. The Concessionaire 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 Auditors, within 180 (one hundred and eighty) days of the close of the Accounting Year to which they pertain and such audited accounts, save and except where expressly provided to the contrary, shall form the basis of payments by either Party under this Agreement. The Authority shall have the right to inspect the records of the Concessionaire during office hours and require copies of relevant extracts of books of accounts, duly certified by the Statutory Auditors, to be provided to the Authority for verification of basis of payments, and in the event of any discrepancy or error being found, the same shall be rectified and such rectified account shall form the basis of payments by either Party under this Agreement.
- 26.1.2.** The Concessionaire shall, within 30 (thirty) days of the close of each quarter of an Accounting Year, furnish to the Authority its unaudited financial results in respect of the preceding quarter, in the manner and form prescribed by the Securities and Exchange Board of India for publication of quarterly results by the companies listed on a stock exchange.
- 26.1.3.** On or before the thirty-first day of May each Year, the Concessionaire shall provide to the Authority, for the preceding Accounting Year, a statement duly audited by its Statutory Auditors giving summarized information on revenues derived from the Project,) and such other information as the Authority may reasonably require.

### **26.2. APPOINTMENT OF AUDITORS**

- 26.2.1.** The Concessionaire shall appoint, and have during the subsistence of this Agreement as its Statutory Auditors, a firm chosen by it from the mutually agreed list of 5 (five) reputable firms of chartered accountants (the "Panel of Chartered Accountants"), such list to be prepared substantially in accordance with the criteria set forth in Schedule-N. All fees and expenses of the Statutory Auditors shall be borne by the Concessionaire.
- 26.2.2.** The Concessionaire may terminate the appointment of its Statutory Auditors after a notice of 45 (forty five) days to the Authority, subject to the replacement Statutory Auditors being appointed from the Panel of Chartered Accountants.

**26.2.3.** Notwithstanding anything to the contrary contained in this Agreement, the Authority shall have the right, but not the obligation, to appoint at its cost from time to time and at any time, another firm (the "Additional Auditors") from the Panel of Chartered Accountants to audit and verify all those matters, expenses, costs, realizations and Things which the Statutory Auditors are required to do, undertake or certify pursuant to this Agreement.

**26.3. CERTIFICATION OF CLAIMS BY STATUTORY AUDITORS**

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

**26.4. SET-OFF**

In the event any amount is due and payable by the Authority to the Concessionaire, it may set-off any sums payable to it by the Concessionaire and pay the balance remaining. Any exercise by the Authority of its rights under this Clause 26.4 shall be without prejudice to any other rights or remedies available to it under this Agreement or otherwise.

**26.5. DISPUTE RESOLUTION**

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

**PART-V**

**FORCE MAJEURE AND TERMINATION**

## **27. FORCE MAJEURE**

### **27.1. FORCE MAJEURE**

As used in this Agreement, the expression "Force Majeure" or "Force Majeure Event" shall, save and except as expressly provided otherwise, mean occurrence in India of any or all of Non-Political Event, Indirect Political Event and Political Event, as defined in Clauses 27.2, 27.3 and 27.4 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.

### **27.2. 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 ionizing radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Site);
- (b) Strikes or boycotts (other than those involving the Concessionaire, Contractors or their respective employees/representatives, or attributable to any act or omission of any of them) interrupting supplies and services to the Project for a continuous period of 24 (twenty four) hours and an aggregate period exceeding 7 (seven) days in an Accounting Year, and not being an Indirect Political Event Set forth in Clause 27.3;
- (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 Concessionaire by or on behalf of such Contractor;
- (d) Any judgment or order of any court of competent Jurisdiction or statutory authority made against the Concessionaire in any proceedings for reasons other than (i) failure of the Concessionaire to comply with any Applicable Law or Applicable Permit, or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or (iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by the Authority;
- (e) The discovery of geological conditions, toxic contamination or archaeological remains on the Site that could not reasonably have been expected to be discovered through a site inspection; or
- (f) Any event or circumstances of a nature analogous to any of the foregoing.

### **27.3. 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 statewide strikes or industrial action for a continuous period of 24 (twenty four) hours and exceeding an aggregate period of 7 (seven) days in an Accounting Year;
- (d) Failure of the Authority to permit the Concessionaire 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;
- (e) 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 Concessionaire by or on behalf of such Contractor;
- (f) Any Indirect Political Event that causes a Non-Political Event: or
- (g) Any event or circumstances of a nature analogous to any of the foregoing.
- (h) Any Pandemic like COVID which can cause shut down of the Park

### **27.4. 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 34 and its effect, in financial terms, exceeds the sum specified in Clause 34.1;
- (b) Compulsory acquisition in national interest or expropriation of any Project Assets or rights of the Concessionaire or of the Contractors;
- (c) unlawful or unauthorized or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, license, permit, authorization, no objection certificate, consent, approval or exemption required by the Concessionaire or any of the Contractors to perform their respective obligations under this Agreement and the Project Agreements; provided that such delay, modification, denial, refusal or revocation did not result from the concessionaire's or any Contractor's inability or failure to

comply with any condition relating to grant, maintenance or renewal of such clearance grant, maintenance or renewal of such clearance ,license, authorization, 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 Concessionaire by or on behalf of such Contractor; or
- (e) Any event or circumstance of a nature analogous to any of the foregoing.

## **27.5. DUTY TO REPORT FORCE MAJEURE EVENT**

**27.5.1.** 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 27 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 in alleviating the impact of such Force Majeure Event; an
- (d) Any other information relevant to the Affected Party's claim.

**27.5.2.** 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.

**27.5.3.** For so long as the Affected Party continues to claim to be materially affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) reports containing information as required by Clause 27.5.1, and such other information as the other Party may reasonably request the Affected Party to provide.

## **27.6. EFFECT OF FORCE MAJEURE EVENT ON THE CONCESSION**

**27.6.1.** Upon the occurrence of any Force Majeure Event prior to the Appointed Date, the period set forth in Clause 4.1 for fulfillment of Conditions Precedent and in Clause 22.1.1 for

achieving Financial Close shall be extended by a period equal in length to the duration of the Force Majeure Event.

**27.6.2.** at any time after the Appointed Date, if any Force Majeure Event occurs:

- (a) Before PCD, the Construction Period and the dates set forth in the Project Completion Schedule shall be extended by a period equal in length to the duration for which such Force Majeure Event subsists; or
- (b) After PCD, the Concessionaire shall be entitled to receive Monthly Payments plus interest due and payable under this Agreement.  
Provided any payment to be made under this clause shall be subject to deduction of outstanding dues of the Authority, if any

## **27.7. ALLOCATION OF COSTS ARISING OUT OF FORCE MAJEURE**

**27.7.1.** 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.

**27.7.2.** 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 Nonpolitical 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 Cover for the such Indirect Political Event, shall be borne by the Concessionaire, and to the extent Force Majeure Costs exceed such Insurance Cover, one half of such excess amount shall be reimbursed by the Authority to the Concessionaire; and
- (c) Upon occurrence of a Political Event, all Force Majeure Costs attributable to such Political Event shall be reimbursed by the Authority to the Concessionaire.

For the avoidance of doubt, Force Majeure Costs shall include interest payments on Debt Due, O&M Expenses, any increase in the cost of Construction Works on account of inflation and all other costs directly attributable to the Force Majeure Event, but shall not include any costs which are expressly covered under any provision of this Agreement or debt repayment obligations, and for determining such costs, information contained in the Financial Package may be relied upon to the extent that such information is relevant.

**27.7.3.** Save and except as expressly provided in this Article 27, 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.

#### **27.8. TERMINATION NOTICE FOR FORCE MAJEURE EVENT**

If a Force Majeure Event subsists for a period of 180 (one hundred and eighty) days or more within a continuous period of 365 (three hundred and sixty five) days, 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 24, and upon issue of such Termination Notice, this Agreement shall, notwithstanding anything to the contrary contained herein, stand terminated forthwith; provided that before issuing such Termination Notice, the Party intending to issue the Termination Notice shall inform the other Party of such intention and grant 15 (fifteen) days' time to make a representation, and may after the expiry of such 15 (fifteen) days period, whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice.

#### **27.9. TERMINATION PAYMENT FOR FORCE MAJEURE EVENT**

**27.9.1.** If Termination is on account of a Non-Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount equal to [90% (ninety per cent)] of the Debt Due less Insurance Cover.

**27.9.2.** If Termination is on account of an Indirect Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount equal to:

- a) Debt Due less Insurance Cover; provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then [80% (eighty per cent)] of such unpaid claims shall be included in the computation of Debt Due; and
- b) [110% (one hundred and ten per cent)] of the Adjusted Equity.

**27.9.3.** If Termination is on account of a Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount that would be payable under Article 30.3.2 as if it were an Authority Default.

#### **27.10. 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

#### **27.11. EXCUSE FROM PERFORMANCE OF OBLIGATIONS**

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

## **28. COMPENSATION FOR BREACH OF AGREEMENT**

### **28.1. COMPENSATION FOR DEFAULT BY THE CONCESSIONAIRE**

Subject to the provisions of Clause 28.5, in the event of the Concessionaire being in material default or breach of this Agreement, it shall pay to the Authority by way of compensation, all direct costs suffered or incurred by the Authority as a consequence of such material default, within 30(thirty) days of receipt of the demand supported by necessary particulars thereof; provided that no compensation shall be payable under this Clause 28.1 for any breach or default in respect of which Damages are expressly specified and payable under this Agreement.

### **28.2. AUTHORITY'S MATERIAL BREACH**

Subject to the provisions of Clause 28.5, in the event of the Authority being in material default or breach of this Agreement at any time after the Appointed Date, it shall pay to the Concessionaire by way of compensation, all direct costs suffered or incurred by the Concessionaire as a consequence of such material default within 30 (thirty)days of receipt of the demand supported by necessary particulars thereof; provided that no such compensation shall be payable for any breach or default in respect of which Damages have been expressly specified in this Agreement. For the avoidance of doubt, compensation payable may include interest payments on debt, O&M Expenses, any increase in capital costs on account of inflation and all other costs directly attributable to such material default but shall not include loss of Fee revenues or debt repayment obligations, ad for determining such compensation, information contained in the Financial Package and Financial Model may be relied upon to the extent it is relevant.

### **28.3. EXTENSION OF CONCESSION PERIOD**

Subject to the provisions of Clause 28.5, in the event that a material default tor breach of this Agreement set forth in Clause 28.2 causes delay in achieving PCD, the Authority shall, in addition to payment of compensation under Clause 28.2, extend the Concession Period, such extension being equal in duration to the period by which PCD was delayed.

### **28.4. COMPENSATION TO BE IN ADDITION**

Compensation payable under this Article 28 shall be in addition to, and not in substitution for, or derogation of, Termination Payment, if any.

### **28.5. MITIGATION OF COSTS AND DAMAGE**

The Affected Party shall make all reasonable efforts to mitigate or limit the costs and damage arising out of or as a result of breach of Agreement by the other Party.

## **29. SUSPENSION OF CONCESSIONAIRE'S RIGHTS**

### **29.1. SUSPENSION UPON CONCESSIONAIRE DEFAULT**

Upon occurrence of a Concessionaire Default, the Authority shall be entitled, without prejudice to its other rights and remedies under this Agreement including its rights of Termination hereunder, to (a) suspend all rights of the Concessionaire under this Agreement, and pursuant hereto, and (b) exercise such rights itself and perform the obligations hereunder or authorize any other person to exercise or perform the same on its behalf during such suspension (the "Suspension"). Suspension hereunder shall be effective forthwith upon issue of notice by the Authority to the Concessionaire and may extend up to a period not exceeding 180 (one hundred and eighty) days from the date of issue of such notice; provided that upon written request from the Concessionaire and the Lenders Representative as applicable, the Authority shall extend the aforesaid period of 180 (one hundred and eighty) days by a further period not exceeding 90 (ninety) days.

### **29.2. AUTHORITY TO ACT ON BEHALF OF CONCESSIONAIRE**

**29.2.1.** During the period of Suspension, the Authority shall, on behalf of the Concessionaire, collect all revenues under and in accordance with this Agreement and deposit the same in the Escrow Account. The Authority shall be entitled to make withdrawals from the Escrow Account for meeting the O&M Expenses and for meeting the costs incurred by it for remedying and rectifying the causes of the Suspension, and thereafter for defraying the expenses specified in Clause 24.3.

**29.2.2.** During the period of Suspension hereunder, all rights and liabilities vested in the Concessionaire in accordance with the provisions of this Agreement shall continue to vest in the Concessionaire and all things done or actions taken, including expenditure incurred by the Authority for discharging the obligations of the Concessionaire under and in accordance with this Agreement and the Project Agreements, shall be deemed to have been done or taken for and on behalf of the Concessionaire and the Concessionaire undertakes to indemnify the Authority for all costs incurred- during such period. The Concessionaire hereby licenses and sub licenses respectively, the Authority or any other person authorized by it under Clause 29.1 to use during Suspension, all intellectual Property belonging to or licensed to the Concessionaire with respect to the Project and its design, engineering, construction, operation and maintenance, and which is used or created by the Concessionaire in performing its obligations under the Agreement.

### **29.3. REVOCATION OF SUSPENSION**

**29.3.1.** In the event that the Authority shall have rectified or removed the cause of Suspension within a period not exceeding 90 (ninety) days from the date of Suspension, it shall revoke

the Suspension forthwith and restore all rights of the Concessionaire under this Agreement. For the avoidance of doubt, the Parties expressly agree that the Authority may, in its discretion, revoke the Suspension at any time, whether or not the cause of the suspension has been rectified or removed hereunder.

**29.3.2.** Upon the Concessionaire having cured the Concessionaire Default within a period not exceeding 90 (ninety) days from the date of Suspension, the Authority shall revoke the Suspension forthwith and restore all rights of the Concessionaire under this Agreement.

#### **29.4. SUBSTITUTION OF CONCESSIONAIRE**

At any time during the period of Suspension, the Lenders' Representative, on behalf of Senior Lenders, shall be entitled to substitute the Concessionaire under and in accordance with the Substitution Agreement, and upon receipt of notice there under from the Lenders' Representative, the Authority shall withhold Termination for a period not exceeding 180 (one hundred and eighty) days from the date of Suspension, and any extension thereof under Clause 29.1, for enabling the Lenders' Representative to exercise its rights of substitution on behalf of Senior Lenders.

#### **29.5. TERMINATION**

**29.5.1.** At any time during the period of Suspension under this Article 29, the Concessionaire may by notice require the Authority to revoke the Suspension and issue a Termination Notice. Subject to the rights of the Lenders' Representative to undertake substitution in accordance with the provisions of this Agreement and within the period specified in Clause 29.4, the Authority shall, within 15 (fifteen) days of receipt of such notice, terminate this Agreement under and in accordance with Article 30 as if it is a Concessionaire Default under Clause 30.1.

**29.5.2.** Notwithstanding anything to the contrary contained in this Agreement, in the event that Suspension is not revoked within 180 (one hundred and eighty) days from the date of Suspension hereunder or within the extended period, if any, set forth in Clause 29.1, the Concession Agreement shall, upon expiry of the aforesaid period, be deemed to have been terminated by mutual agreement of the Parties and all the provisions of this Agreement shall apply, mutatis mutandis, to such Termination as if a Termination Notice had been issued by the Authority upon occurrence of a Concessionaire Default.

## 30. TERMINATION

### 30.1. TERMINATION FOR CONCESSIONAIRE DEFAULT

**30.1.1.** Save as otherwise provided in this Agreement, in the event that any of the defaults specified below shall have occurred, and the Concessionaire fails to cure the default within the Cure Period set forth below, or where no Cure Period is specified, then within a Cure Period of 60 (sixty) days, the Concessionaire shall be deemed to be in default of This Agreement (the "Concessionaire Default"), unless the default has occurred as a Result of any breach of this Agreement by the Authority or due to Force Majeure. The defaults referred to herein shall include the following:

- a) The Performance, Security has been encashed and appropriated in accordance with Clause 10.2 and the Concessionaire fails to replenish or provide fresh Performance, Security within a Cure Period of 15 (fifteen) days;
- b) Subsequent to the replenishment or furnishing of fresh Performance, Security in accordance with Clause 10.2, the Concessionaire fails to meet any Condition Precedent or cure the Concessionaire Default, as the case may be, for which whole or part of the Performance Security was appropriated, within a Cure Period of 120 (one hundred and twenty) days;
- c) The Concessionaire does not achieve the latest outstanding Project Milestone due in accordance with the provisions of Schedule-D and continues to be in default for 120 (one hundred and twenty) days;
- d) The Concessionaire abandons or manifest intention to abandon the Construction or operation of the Project without the prior written consent of the Authority;
- e) PCD does not occur within the period specified in Clause 13.3.3;
- f) The Concessionaire is in breach of the Maintenance Requirements or the Safety Requirements, as the case may be;
- g) Concessionaire has failed to make any payment to the Authority within the period specified in this Agreement;
- h) An Escrow Default has occurred and the Concessionaire fails to cure the default Within a Cure Period of 15 (fifteen) days;
- i) Upon occurrence of a Financial Default, the Lenders' Representative has by notice required the Authority to undertake Suspension or Termination, as the case may be, in accordance with the Substitution Agreement and the Concessionaire fails to cure the default within the Cure Period specified hereinabove;
- j) A breach of any of the Project Agreements by the Concessionaire has caused a Material Adverse Effect;
- k) The Concessionaire creates any Encumbrance in breach of this Agreement;
- l) The Concessionaire repudiates this Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by the Agreement;
- m) A Change in Ownership has occurred in breach of the provisions of Clause 5.3;

- n) There is a transfer; pursuant to law either of (i) the rights and/or obligations of the Concessionaire under any of the Project Agreements, or of (ii) all or part of the assets or undertaking of the Concessionaire, and such transfer cause a Material Adverse Effect;
- o) An execution levied on any of the assets of the Concessionaire has caused a Material Adverse Effect;
- p) The Concessionaire is adjudged bankrupt or insolvent, or if a trustee or receiver is appointed for the Concessionaire or for the whole or a material part of its assets that has a material bearing on the Project;
- q) The Concessionaire has been, or is in the process of being liquidated, dissolved, wound-up, amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of the Authority, a Material Adverse Effect;
- r) A resolution for winding up of the Concessionaire is passed, or any petition for winding up of the Concessionaire is admitted by a court of competent jurisdiction and a provisional liquidator or receiver is appointed and such order has not been set aside within 90 (ninety) days of the date thereof or the Concessionaire is ordered to be wound up by a court except for the purpose of amalgamation or reconstruction; provided that, as part of such amalgamation or reconstruction, the entire property, assets and undertaking of the Concessionaire are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Concessionaire under this Agreement and the Project Agreements; and provided that:
  - i) The amalgamated or reconstructed entity has the capability and operating experience necessary for the performance of its obligations under this Agreement and the Project Agreements;
  - ii) The amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and the Project Agreements and has a credit worthiness at least as good as that of the Concessionaire as at the Appointed Date; and
  - iii) Each of the Project Agreements remains in full force and effect;
- s) Any representation or warranty of the Concessionaire herein contained which is, as of the date hereof, found to be materially false, incorrect or misleading or the Concessionaire is at any time hereafter found to be in breach thereof;
- t) The Concessionaire submits to the Authority any statement, notice or other document, in written or electronic form, which has a material effect on the Authority's rights, obligations or interests and which is false in material particulars;
- u) The Concessionaire has failed to fulfill any obligation, for which failure Termination has been specified in this Agreement;
- v) The Concessionaire issues a Termination Notice in violation of this Agreement;
- w) The Concessionaire commits a default in complying with any other provision of this Agreement if such default causes a Material Adverse Effect on the Authority.

- 30.1.2.** Without prejudice to any other rights or remedies which the Authority may have under this Agreement, upon occurrence of a Concessionaire Default, the Authority shall be entitled to terminate this Agreement by issuing a Termination Notice to the Concessionaire; provided that before issuing the Termination Notice, the Authority shall by a notice inform the Concessionaire of its intention to issue such Termination Notice and grant 15 (fifteen) days to the Concessionaire to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice, subject to the provisions of Clause 30.1.3
- 30.1.3.** The Authority shall, if there be Senior lenders, send a copy of its notice of intention to issue a Termination Notice referred to in Clause 30.1.2 to inform the lenders' Representative and grant 15 (fifteen) days to the lenders' Representative, for making a representation on behalf of the Senior lenders stating the intention to substitute the Concessionaire in accordance with the Substitution Agreement. In the event the Authority receives such representation on behalf of Senior lenders, it shall, in its discretion, either withhold Termination for a period not exceeding 180 (one hundred and eighty) days from the date of such representation or exercise its right of Suspension, as the case may be, for enabling the lenders' Representative to exercise the Senior lenders' right of substitution in accordance with the Substitution Agreement.

Provided that the lenders' Representative may, instead of exercising the Senior lenders' right of substitution, procure that the default specified in the notice is cured within the aforesaid period of 180 (one hundred and eighty) days, and upon such curing thereof, the Authority shall withdraw its notice referred to above and restore all the rights of the Concessionaire.

Provided further that upon written request from the Lenders' Representative and the Concessionaire, the Authority shall extend the aforesaid period of 180 (one hundred and eighty) days by such further period not exceeding 90 (ninety) days, as the Authority may deem appropriate.



## **30.2. TERMINATION FOR AUTHORITY DEFAULT**

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

- (a) The Authority commits a material default in complying with any of the provisions of this Agreement and such default has a Material Adverse Effect on the Concessionaire;
- (b) The Authority has failed to make any payment to the Concessionaire within the period specified in this Agreement;
- (c) The Authority fails to provide, within a period of 180 (one hundred and eighty days) from the Appointed Date, statutory clearances required for construction of The Project or its components; or
- (d) The Authority repudiates this Agreement or otherwise takes any action that amounts to or manifests an irrevocable intention not to be bound by this Agreement.

**30.2.2.** Without prejudice to any other right or remedy which the Concessionaire may have under this Agreement, upon occurrence of an Authority Default, the Concessionaire shall, subject to the provisions of the Substitution Agreement, be entitled to terminate this Agreement by issuing a Termination Notice to the Authority; provided that before issuing the Termination Notice, the Concessionaire shall by a notice inform the Authority of its intention to issue the Termination Notice and grant 15 (fifteen) days to the Authority to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice.

## **30.3. TERMINATION PAYMENT**

**30.3.1.** Upon Termination on account of a Concessionaire Default during the Operations Period, the Authority shall pay to the Concessionaire, by way of Termination Payment, an amount equal to:

- a) [90% (ninety per cent)] of Debt Due less Insurance Cover; and
- b) [70% (seventy per cent)] of the amount representing the Additional Termination Payment: Provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then [70% (seventy per cent)] of such unpaid claims shall be included in the computation of Debt Due. For avoidance of doubt, the Concessionaire hereby acknowledges that no Termination Payment shall be due or payable on account of a Concessionaire Default occurring prior to the [Project PCD], save and except as provided in Article 30.3.3.

- 30.3.2.** Upon Termination on account of an Authority Default, the Authority shall pay to the Concessionaire, by way of Termination Payment, an amount equal to: (i) Debt Due; (ii) [150% (one hundred and fifty per cent)] of the Adjusted Equity; and (iii) [115% (one hundred and fifteen per cent)] of the amount representing the Additional Termination Payment.
- 30.3.3.** Upon Termination on account of the Concessionaire Default at any time prior to [Project PCD], no Termination Payment shall be due and payable for expenditure comprising the first [40% (forty per cent)] of the Total Project Cost and in the event of the expenditure exceeding such [40% (forty per cent)] and forming part of Debt Due, the provisions of Article 30.3.1 shall, to the extent applicable to Debt Due, apply in respect of the expenditure exceeding such [40% (forty per cent)]. For avoidance of doubt and by way of illustration, if the total expenditure incurred prior to the Transfer Date is [90% (ninety per cent)] of the Total Project Cost, the expenditure eligible for computation of Termination Payment hereunder shall be [50% (fifty per cent)] of the Total Project Cost and the Termination Payment due and payable in such event shall not exceed [45% (forty five per cent)] of the Total Project Cost. The Parties further agree that for the purposes of this Article 30.3.3 Total Project Cost shall mean the amount specified in Sub-Article (b) of the definition of Total Project Cost in Article 41.1. The Parties also agree that for determining the Termination Payment under this Article 30.3.3, the expenditure comprising the latest Project Milestone shall also be reckoned.
- 30.3.4.** Termination Payment shall become due and payable to the Concessionaire within [15 (fifteen)] days of a demand being made by the Concessionaire to the Authority with the necessary particulars, and in the event of any delay, the Authority shall pay interest at a rate equal to [3% (three per cent) above the Bank Rate] on the amount of Termination Payment remaining unpaid; provided that such delay shall not exceed [90 (ninety)] days. For avoidance of doubt, it is expressly agreed that Termination Payment shall constitute full discharge by the Authority of its payment obligations in respect thereof hereunder.
- 30.3.5.** Upon Termination on expiry of the Concession Period by efflux of time, no Termination Payment shall be due and payable to the Concessionaire; provided that in the event any Project Assets, essential for the efficient, economic and safe operation of the Project Facilities, shall have been acquired and installed after the [25th (twenty fifth)] anniversary of Project PCD, with prior written consent of the Authority (which consent shall not be unreasonably denied), a Termination Payment equal to [50% (fifty per cent)] of the Adjusted Depreciated Value of such Project Assets shall, notwithstanding the provisions of Article 35.2.1, be made by the Authority to the Concessionaire.
- 30.3.6.** Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Article 30.3.5, in the event any Project Assets, essential for the efficient, economic and safe operations of the Project Facilities, shall have been acquired and installed after the [25th (twenty fifth)] anniversary of the Appointed Date, with prior written

consent of the Authority, which consent shall not be unreasonably denied, a sum equal to [75% (seventy five per cent)] of the Adjusted Depreciated Value thereof shall be deemed to be Debt Due for the purposes of Termination Payment.

**30.3.7.** The Concessionaire expressly agrees that Termination Payment under this Article 30 shall constitute a full and final settlement of all claims of the Concessionaire on account of Termination of this Agreement for any reason whatsoever and that the Concessionaire or any shareholder thereof shall not have any further right or claim under any law, treaty, convention, contract or otherwise.

#### **30.4. CERTAIN LIMITATIONS ON TERMINATION PAYMENT**

**30.4.1.** Termination Payment, due and payable under this Agreement shall be limited to the Debt Due and Adjusted Equity, as the case may be, which form part of the Total Project Cost, in accordance with the provisions of this Agreement. For avoidance of doubt, it is agreed that within a period of [60 (sixty)] days from [Project PCD], the Concessionaire shall notify to the Authority, the Total Project Cost and its disaggregation between Debt Due and Equity, and only the amounts so conveyed shall form the basis of computing Termination Payment, and it is further agreed that in the event such disaggregation is not notified to the Authority, the Equity and Debt Due shall be arrived at by adopting the proportion between debt and equity as specified in the Financing Agreements.

**30.4.2.** The amount payable in respect of any Debt Due expressed in foreign currency shall be computed at the Reference Exchange Rate for conversion into the relevant foreign currency as on the date of Termination Payment. Provided, however, that the provisions of this Article 30.4.2 shall not apply if the Concessionaire does not notify the particulars of any foreign currency loans within [60 (sixty)] days of the date of conversion of such foreign currency loans into Indian currency. Provided further that all borrowings in foreign currency shall be restricted to the financing of the Total Project Cost and any borrowings in excess thereof shall not qualify for computation of Termination Payment.

**30.4.3.** Additional Termination Payment due and payable in respect of Specified Assets, forming part of the Project Facilities which are constructed, acquired, or installed after the 5th (fifth) anniversary of [Project PCD], but no later than the 30th (thirtieth) anniversary of the Appointed Date, shall be limited to the lowest of:

- (a) Adjusted Depreciated Value;
- (b) The replacement value thereof, as assessed by the Approved Valuer, who shall be selected and appointed by the Authority, within [15 (fifteen)] days of Termination, for submitting his assessment within [30 (thirty)] days of his appointment hereunder; and
- (c) [40% (forty per cent)] of the sum of the Total Project Cost.

### **30.5. EXTENSION OF CONCESSION PERIOD**

Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire may, at any time no earlier than [2 (year) years], but no later than [6 months] prior to the completion of the Concession Period, by a notice issued to the Authority require an extension of the Concession Period as specified therein. Upon expiry of the extended Concession Period hereunder, the Project Facilities shall vest in the Authority under and in accordance with the provisions of this Agreement, and no Termination Payment shall be due and payable to the Concessionaire for and in respect of the transfer of the Project Facilities to the Authority hereunder. Provided that in the event of an extension hereunder, the provisions of this Agreement and this Article 30.5, shall apply mutatis mutandis to the extended Concession Period.]

### **30.6. OTHER RIGHTS AND OBLIGATIONS OF THE AUTHORITY**

Upon Termination for any reason whatsoever, the Authority shall:

- (a) Be deemed to have taken possession and control of the Project forthwith;
- (b) Take possession and control of all materials, stores, implements, construction plants and equipment on or about the Site;
- (c) Be entitled to restrain the Concessionaire and any person claiming through or under the Concessionaire from entering upon the Site or any part of the Project;
- (d) Require the Concessionaire to comply with the Divestment Requirements set forth in Clause 31.1; and
- (e) succeed upon election by the Authority, without the necessity of any further action by the Concessionaire, to the interests of the Concessionaire under such of the Project Agreements as the Authority may in its discretion deem appropriate, and shall upon such election be liable to the Contractors only for compensation accruing and becoming due and payable to them under the terms of their respective Project Agreements from and after the date the Authority elects to succeed to the interests of the Concessionaire. For the avoidance of doubt, the Concessionaire acknowledges and agrees that all sums claimed by such Contractors as being -due and owing for works and services performed or accruing on account of any act, omission or event prior to such date shall constitute debt between the Concessionaire and such Contractors, and the Authority shall not in any manner be liable for such sums. It is further agreed that in the event the Authority elects to cure any outstanding defaults under such Project Agreements, the amount expended by the Authority for this purpose shall be deducted from the Termination Payment.

### **30.7. SURVIVAL OF RIGHTS**

Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 30.3.5, any Termination pursuant to the provisions of this Agreement shall be without prejudice to the accrued rights of either Party including its right to claim and recover money damages, insurance proceeds, Performance Security, and other rights and remedies, which it may have in law or contract. All rights and obligations of either Party under this Agreement, including Termination Payments and Divestment Requirements, shall survive the Termination to the extent such survival is necessary for giving effect to such rights and obligations.

## **31. DIVESTMENT OF RIGHTS AND INTEREST**

### **31.1. DIVESTMENT REQUIREMENTS**

**31.1.1.** Upon Termination, the Concessionaire shall comply with and conform to the following Divestment Requirements:

- (a) Notify to the Authority forthwith the location and particulars of all Project assets.
- (b) Deliver forth with the actual or constructive possession of the Project, free and clear of all Encumbrances, save and except to the extent set forth in the Substitution Agreement;
- (c) Cure all Project Assets of all defects and deficiencies so that the Project is compliant with the Maintenance Requirements; provided that in the event of Termination during the Construction Period, all Project Assets shall be handed over on 'as is where is' basis after bringing them to a safe condition;
- (d) Deliver and transfer relevant records, reports, Intellectual Property and other licenses pertaining to the Project and its design, engineering, construction, operation and maintenance, including all programmers and manuals pertaining thereto, and complete 'as built' Drawings as on the Transfer Date. For the avoidance of doubt, the Concessionaire represents and warrants that the Intellectual Property delivered hereunder shall be adequate and complete for the design, engineering, construction, operation and maintenance of the Project and shall be assigned to the Authority free of any Encumbrance;
- (e) Transfer and/or deliver all Applicable Permits to the extent permissible under applicable Laws;
- (f) Execute such deeds of conveyance, documents and other writings as the Authority may reasonably require for conveying, divesting and assigning all the rights, title and interest of the Concessionaire in the Project Assets, including manufacturers' warranties in respect of any plant or equipment and the right to receive outstanding insurance claims to the extent due and payable to the Authority, absolutely unto the Authority or its nominee; and
- (g) Comply with all other requirements as may be prescribed or required under Applicable laws for completing the divestment and assignment of all rights, title and interest of the Concessionaire in the Project, free from all Encumbrances, absolutely unto the Authority or to its nominee.

**31.1.2.** Subject to the exercise by the Authority of its rights under this Agreement or under any of the Project Agreements to perform or procure the performance by a third party of any of the obligations of the Concessionaire, the Parties shall continue to perform their Obligations under this Agreement, notwithstanding the issuance of any Termination Notice, until the Termination of this Agreement becomes effective in accordance with its terms.

### **31.2. INSPECTION AND CURE**

Not earlier than 90 (ninety) days prior to Termination but not later than 15 (fifteen) days prior to the effective date of such Termination, the Independent Engineer/ Chief Engineer shall verify, after giving due notice to the Concessionaire specifying the time, date and place of such verification and/or inspection, compliance by the Concessionaire with the Maintenance Requirements, and if required, cause appropriate tests to be carried out at the Concessionaire's cost for this purpose. Defaults, if any, in the Maintenance Requirements shall be cured by the Concessionaire at its cost and the provisions of Article 36 shall apply, mutatis mutandis, in relation to curing of defects or deficiencies under this Article 35.

### **31.3. COOPERATION AND ASSISTANCE ON TRANSFER OF PROJECT**

**31.3.1.** The Parties shall cooperate on a best effort basis and take all necessary measures, in good faith, to achieve a smooth transfer of the Project in accordance with the provisions of this Agreement so as to protect the safety of and avoid undue delay or inconvenience to the Users, other members of the public or the lawful Concessionaires of any part of the Site.

**31.3.2.** The Parties shall provide to each other, 9 (nine) months prior to the Transfer Date in the event of Termination by efflux of time and immediately in the event of either Party conveying to the other Party its intent to issue a Termination Notice, as the case may be, as much information and advice as is reasonably practicable regarding the proposed arrangements for the operation of the Project following the Transfer Date. The Concessionaire shall further provide such reasonable advice and assistance as the Authority, its concessionaire or agent may reasonably require for the operation of the Project until the expiry of 6 (six) months after the Transfer Date.

**31.3.3.** The Authority shall have the option to purchase or hire from the Concessionaire at a fair market value and free from any encumbrance all or any part of the plant and machinery used in connection with the Project but which does not form part of the assets specified in Clause 31.1.1 and is reasonably required in connection with the operation of the Project. For the avoidance of doubt, in the event of dispute or difference relating to fair market value, the Dispute Resolution Procedure shall apply.

#### **31.4. VESTING CERTIFICATE**

The divestment of all rights, title and interest in the Project shall be deemed to be complete on the date when all of the Divestment Requirements have been fulfilled, and the Authority shall, without unreasonable delay, thereupon issue a certificate substantially (the "Vesting Certificate"), which will have the effect of constituting evidence of divestment by the Concessionaire of all of its rights, title and interest in the Project, and their vesting in the Authority pursuant hereto. It is expressly agreed that any defect or deficiency in the Divestment Requirements shall not in any manner be construed or interpreted as restricting the exercise of any rights by the Authority or its nominee on, or in respect of, the Project on the footing that all Divestment Requirements have been complied with by the Concessionaire.

#### **31.5. DIVESTMENT COSTS, ETC.**

**31.5.1.** The Concessionaire and Authority shall jointly bear and pay all costs incidental to divestment of all of the rights, title and interest of the Concessionaire in the Project Assets in favor of the Authority upon Termination, save and except that all stamp duties payable on any deeds or Documents executed by the Concessionaire in connection with such Divestment shall be borne by the Authority.

**31.5.2.** In the event of any Dispute relating to matters covered by and under this Article 35, the Dispute Resolution Procedure shall apply.



## **32. DEFECTS LIABILITY AFTER TERMINATION**

### **32.1. LIABILITY FOR DEFECTS AFTER TERMINATION**

The Concessionaire shall be responsible for all defects and deficiencies in the Project for a period of 120 (one hundred and twenty) days after Termination, and it shall have the obligation to repair or rectify, at its own cost, all defects and deficiencies observed by the Independent Engineer/ Chief Engineer in the Project during the aforesaid period. In the event that the Concessionaire fails to repair or rectify such defect or deficiency within a period of 15 (fifteen) days from the date of notice issued by the Authority in this behalf, the Authority shall be entitled to get the same repaired or rectified at the Concessionaire's risk and cost so as to make the Project conform to the Maintenance Requirements. All costs incurred by the Authority hereunder shall be reimbursed by the Concessionaire to the Authority within 15 (fifteen) days of receipt of demand thereof, and in the event of default in reimbursing such costs, the Authority shall be entitled to recover the same from the funds retained in the Escrow Account under the provisions of Clause 32.2 or from the Performance Guarantee provided there under. For the avoidance of doubt, the provisions of this Article 29 shall not apply if Termination occurs prior to PCD.

### **32.2. RETENTION IN ESCROW ACCOUNT**

**32.2.1.** Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 32.2.3, a sum equal to 15% (fifteen percent) of the Monthly Payment due and payable immediately preceding the Transfer Date shall be retained in the Escrow Account for a period of 120 (one hundred and twenty) days after Termination for meeting the liabilities, if any, arising out of or in connection with the provisions of Clause 32.1.

**32.2.2.** Without prejudice to the provisions of Clause 32.2.1, the Independent Engineer/ Chief Engineer shall carry out an inspection of the Project at any time between 210 (two hundred and ten) and 180 (one hundred and eighty) days prior to the Termination and if it recommends that the status of the Project is such that a sum larger than the amount stipulated in Clause 32.2.1 should be retained in the Escrow Account and for a period longer than the aforesaid 120 (one hundred and twenty) days, the amount recommended by the Independent Engineer/ Chief Engineer shall be retained in the Escrow Account for the period specified by it.

**32.2.3.** The Concessionaire may, for the performance of its obligations under this Article 32, provide to the Authority a guarantee from a Bank for a sum equivalent to the amount determined under Clause 32.2.1 or 32.2.2, as the case may be, and for the period specified therein, substantially in the form set forth in Schedule-C (the "Performance Guarantee"), to be modified, mutatis mutandis, for this purpose, and the Authority shall,

without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the required amounts from the Performance Guarantee for undertaking the repairs or rectification at the Concessionaire's risk and cost in accordance with the provisions of this Article 32. Upon furnishing of a Performance Guarantee under this Clause 32.2.3, the retention of funds in the Escrow Account in terms of Clause 32.2.1 or 32.2.2, as the case may be, shall be dispensed with.

**PART-VI  
OTHER PROVISIONS**

### **33. ASSIGNMENT AND CHARGES**

#### **33.1. RESTRICTIONS ON ASSIGNMENT AND CHARGES**

**33.1.1.** Subject to Clauses 33.2 and 33.3, this Agreement shall not be assigned by the Concessionaire to any person, save and except with the prior consent in writing of the Authority.

**33.1.2.** Subject to the provisions of Clause 33.2, the Concessionaire shall not create nor permit to subsist any Encumbrance, or otherwise transfer or dispose of all or any of its rights and benefits under this Agreement or any Project Agreement to which the Concessionaire is a party, except with prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.

#### **33.2. PERMITTED ASSIGNMENT AND CHARGES**

The restraints set forth in Clause 33.1 shall not apply to:

- a) Liens arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the Project;
- b) mortgages/pledges/hypothecation of goods/assets other than Project Assets and their related documents of title, arising or created in the ordinary course of business of the Project, and as security only for indebtedness to the Senior Lenders under the Financing Agreements and/or for working capital arrangements for the Project. For the avoidance of doubt, the Senior Lenders would be entitled to create a lien on the Escrow Account, subject to and without prejudice to the rights of the Authority under this Agreement;
- c) assignment of rights, interest and obligations of the Concessionaire to or in favor of the Lenders' Representative as nominee and for the benefit of the Senior Lenders, to the extent covered by and in accordance with the Substitution Agreement as security for financing provided by Senior Lenders under the financing Agreements; and
- d) Liens or encumbrances required by any Applicable Law.

#### **33.3. SUBSTITUTION AGREEMENT**

**33.3.1.** The Lenders' Representative, on behalf of Senior Lenders, may exercise the right to substitute the Concessionaire pursuant to the agreement for substitution of the Concessionaire (the "Substitution Agreement") to be entered into amongst the

Concessionaire, the Authority and the Lenders' Representative, on behalf of Senior Lenders, substantially in the form set forth in Schedule-O.

**33.3.2.** Upon substitution of the Concessionaire under and in accordance with the Substitution Agreement, the Nominated Company substituting the Concessionaire shall be deemed to be the Concessionaire under this Agreement and shall enjoy all rights and be responsible for all obligations of the Concessionaire under this Agreement as if it were the Concessionaire; provided that where the Concessionaire is in breach of this Agreement on the date of such substitution, the Authority shall by notice grant a Cure Period of 120 (one hundred and twenty) days to the Concessionaire for curing such breach.

**33.4. ASSIGNMENT BY THE AUTHORITY**

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

## **34. CHANGE IN LAW**

### **34.1. INCREASE IN COSTS**

If as a result of Change in Law, the Concessionaire suffers an increase in costs or reduction in net after-tax return or other financial burden, the aggregate financial effect on the total Monthly Payments including the CAPEX pertaining to the Bid Project Cost in any Accounting Year, the Concessionaire may so notify the Authority and propose amendments to this Agreement so as to place the Concessionaire in the same financial position as it would have enjoyed had there been no such Change in Law resulting in increased costs, reduction in return or other financial burden as aforesaid. Upon notice by the Concessionaire, the Parties shall meet, as soon as reasonably practicable as 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 Concessionaire may by notice require the Authority to pay an amount that would place the Concessionaire 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 Authority shall pay the amount specified therein; provided that if the Authority shall dispute such claim of the Concessionaire, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Clause 34.1 shall be restricted to changes in law directly affecting the Concessionaire's costs of performing its obligations under this Agreement.

### **34.2. REDUCTION IN COSTS**

If as a result of Change in Law, the Concessionaire benefits from a reduction in costs or increase in net after-tax return or other financial gains, on the total Monthly Payments in any Accounting Year, the Authority may so notify the Concessionaire and propose amendments to this Agreement so as to place the Concessionaire in the same financial position as it would have enjoyed had there been no such Change in Law resulting in decreased costs, increase in return or other financial gains as aforesaid. Upon notice by the Authority, the Parties shall meet, as soon as reasonably practicable as 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 Authority may by notice require the Concessionaire to pay an amount that would place the Concessionaire 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 Concessionaire shall pay the amount specified therein to the

Authority; provided that if the Concessionaire shall dispute such claim of the Authority, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Clause 34.2 shall be restricted to changes in law directly affecting the Concessionaire's costs of performing its obligations under this Agreement.

#### **34.3. PROTECTION OF NPV**

Pursuant to the provisions of Clauses 34.1 and 34.2 and for the purposes of placing the Concessionaire 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. For the avoidance of doubt, the Parties expressly agree that for determination of NPV, the discount rate to be used shall be equal to the weighted average rate of interest at which the Concessionaire has raised the Debt Due under its Financing Agreements.

#### **34.4. RESTRICTION ON CASH COMPENSATION**

The Parties acknowledge and agree that the demand for cash compensation under this Article 34 shall be restricted to the effect of Change in law during the respective Accounting Year and shall be made at any time after commencement of such year, but no later than one year from the close of such Accounting Year. Any demand for cash compensation payable for and in respect of any subsequent Accounting Year shall be made after the commencement of the Accounting Year to which the demand pertains, but no later than 2 (two) years from the close of such Accounting Year.

## **35. LIABILITY AND INDEMNITY**

### **35.1. GENERAL INDEMNITY**

**35.1.1.** The Concessionaire shall indemnify, defend, save and hold harmless the Authority and its officers, servants, agents, Government Instrumentalities and Government owned and/or controlled entities/enterprises, (the "Authority Indemnified Persons") against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature, whether arising out of any breach by the Concessionaire of any of its obligations under this Agreement or any related agreement or on account of any defect or deficiency in the provision of services by the Concessionaire to the Authority or to any User, or from any negligence of the Concessionaire under contract or tort or on any other ground whatsoever, except to the extent that any such suits, proceedings, actions, demands and claims have arisen due to any negligent act or omission, or breach or default of this Agreement on the part of the Authority Indemnified Persons

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

### **35.2. INDEMNITY BY THE CONCESSIONAIRE**

**35.2.1.** Without limiting the generality of Clause 35.1, the Concessionaire shall fully indemnify, hold harmless and defend the Authority and the Authority Indemnified Persons from and against any and all loss and/or damages arising out of or with respect to:

- a) Failure of the Concessionaire to comply with Applicable Laws and Applicable Permits;
- b) Payment of taxes required to be made by the Concessionaire in respect of the income or other taxes of the Concessionaire's contractors, suppliers and representatives; or



- c) Non-payment of amounts due as a result of materials or services furnished to the Concessionaire or any of its contractors which are payable by the Concessionaire or any of its contractors.

**35.2.2.** Without limiting the generality of the provisions of this Article 35, the Concessionaire shall fully indemnify, hold harmless and defend the Authority Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which the Authority Indemnified Persons may hereafter suffer, or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other intellectual property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the Concessionaire or by the Concessionaire's Contractors in performing the Concessionaire's obligations or in any way incorporated in or related to the Project. If in any such suit, action, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the Concessionaire shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the revocation or suspension of the injunction or restraint order. If, in any such suit, action, claim or proceedings, the Project, or any part thereof or comprised therein, is held to constitute an infringement and its use is permanently enjoined, the Concessionaire shall promptly make every reasonable effort to secure for the Authority a license, at no cost to the Authority, authorizing continued use of the infringing work. If the Concessionaire is unable to secure such license within a reasonable time, the Concessionaire shall, at its own expense, and without impairing the Specifications and Standards, either replace the affected work, or part, or process thereof with non-infringing work or part or process, or modify the same so that it becomes non-infringing.

### **35.3. NOTICE AND CONTEST OF CLAIMS**

In the event that either Party receives a claim or demand from a third party in respect of which it is entitled to the benefit of an indemnity under this Article 35 (the "Indemnified Party") it shall notify the other Party (the "Indemnifying Party") within 15 (fifteen) days of receipt of the claim or demand and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim or demand, it may conduct the proceedings in the name of the Indemnified Party, subject to the Indemnified Party being secured against any costs involved, to its reasonable satisfaction.

### **35.4. DEFENSE OF CLAIMS**

**35.4.1.** The Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against such Party in respect of, resulting from, related to or arising out of any matter for which it

is entitled to be indemnified hereunder, and reasonable costs and expenses thereof shall be indemnified by the Indemnifying Party. If the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party in respect of loss to the full extent provided by this Article 35, the Indemnifying Party shall be entitled, at its option, to assume and control the defense of such claim, action, suit or proceeding, liabilities, payments and obligations at its expense and through the counsel of its choice; provided it gives prompt notice of its intention to do so to the Indemnified party and reimburses the Indemnified Party for the reasonable cost and expenses Incurred by the Indemnified Party prior to the assumption by the indemnifying party of such defense. The Indemnifying Party shall not be entitled to settle or compromise any claim, demand, action, suit or proceeding without the prior written consent of the Indemnified Party, unless the Indemnifying Party provides such security to the Indemnified Party as shall be reasonably required by the Indemnified Party to secure the loss to be indemnified hereunder to the extent so compromised or settled.

**35.4.2.** If the Indemnifying Party has exercised its rights under Clause 35.3, the Indemnified Party shall not be entitled to settle or compromise any claim, action, suit or proceeding without the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

**35.4.3.** If the Indemnifying Party exercises its rights under Clause 35.3, the Indemnified Party shall nevertheless have the right to employ its own counsel, and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party, when and as incurred, unless:

- a) The employment of counsel by such party has been authorized in writing by the Indemnifying Party;
- b) The Indemnified Party shall have reasonably concluded that there may be a conflict of interest between the Indemnifying Party and the Indemnified Party in the conduct of the defense of such action;
- c) The Indemnifying Party shall not, in fact, have employed independent counsel reasonably satisfactory to the Indemnified Party, to assume the defense of such action and shall have been so notified by the Indemnified Party; or
- d) The Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party either:
  - i. that there may be specific defenses available to it which are different from or additional to those available to the Indemnifying Party; or

- ii. (ii) That such claim, action, suit or proceeding involves or could have a material adverse effect upon it beyond 'the scope of this Agreement:

Provided that if Sub-clauses (b), (c) or (d) of this Clause 35.4.3 shall be applicable, the counsel for the Indemnified Party shall have the right to direct the defense of such claim, demand, action, suit or proceeding on behalf of the Indemnified Party, and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder.

**35.5. NO CONSEQUENTIAL CLAIMS**

Notwithstanding anything to the contrary contained in this Article 35, the indemnities herein provided shall not include any claim or recovery in respect of any cost, expense, loss or damage of an indirect, incidental or consequential nature, including loss of profit, except as expressly provided in this Agreement.

**35.6. SURVIVAL ON TERMINATION**

The provisions of this Article 35 shall survive Termination.

## **36. RIGHTS AND TITLE OVER THE SITE**

### **36.1. LICENSEE RIGHTS**

For the purpose of this Agreement, the Concessionaire shall have rights to the use of the Site as a licensee subject to and in accordance with this Agreement, and to this end; it may regulate the entry and use of the Project by third parties in accordance with and subject to the provisions of this Agreement.

### **36.2. ACCESS RIGHTS OF THE AUTHORITY AND OTHERS**

**36.2.1.** The Concessionaire shall allow free access to the Site at all times for the authorized representatives and vehicles of the Authority and/or its contractors, Senior Lenders, and the Independent Engineer/ Chief Engineer , and for the persons and vehicles duly authorized by any Government Instrumentality to inspect the Project and to investigate any matter within their authority, and upon reasonable notice, the Concessionaire shall provide to such persons reasonable assistance necessary to carry out their respective duties and functions.

**36.2.2.** The Concessionaire shall, for the purpose of operation and maintenance of any utility or road specified in Article 12, allow free access to the Site at all times for the authorized persons and vehicles of the controlling body of such utility or road.

### **36.3. PROPERTY TAXES**

All property taxes on the Site shall be payable by the Authority as owner of the Site; provided, however, that any such taxes payable by the Concessionaire under Applicable Laws for use of the Site shall not be reimbursed or payable by the Authority. For the avoidance of doubt, the Parties agree that stamp duties, if any, due and payable on the grant of license comprising this Agreement shall be paid by the Authority. Provided, however, that the Authority may require the Concessionaire to pay such stamp duties, which shall be reimbursed by the Authority to the Concessionaire within 15 (fifteen) days of receiving the demand thereof.

## **37. DISPUTE RESOLUTION**

### **37.1. DISPUTE RESOLUTION**

**37.1.1.** Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the "Dispute") shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 37.2.

**37.1.2.** The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non--privileged records, information and data pertaining to any Dispute.

### **37.2. CONCILIATION**

In the event of any Dispute between the Parties, either Party may call upon the Independent Engineer/ Chief Engineer to mediate and assist the Parties in arriving at an amicable settlement thereof. Failing mediation by the Independent Engineer/ Chief Engineer or without the intervention of the Independent Engineer/ Chief Engineer, either Party may require such Dispute to be referred to the [Chairman] of the Authority and the Chairman of the Board of Directors of the Concessionaire for amicable settlement, and upon such reference, the said persons shall meet no later than 7 (seven) days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 7 (seven) days period or the Dispute is not amicably settled within 15 (fifteen) days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within 30 (thirty) days of the notice in writing referred to in Clause 37.1.1 or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 37.3.

### **37.3. ARBITRATION**

**37.3.1.** Any Dispute which is not resolved amicably by conciliation, as provided in Clause 37.2, shall be finally decided by reference to arbitration by an arbitral tribunal constituted in accordance with Clause 37.3.2. Such arbitration shall be held in accordance with the arbitration and dispute resolution rules of Andhra Pradesh government and jurisdiction of High courts at Vijayawada 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. The place of such arbitration shall be the Vijayawada and the language of arbitration proceedings shall be English.

- 37.3.2.** There shall be an arbitral tribunal comprising three arbitrators, of whom each Party shall select one, and the third arbitrator shall be appointed by the two arbitrators so selected and in the event of disagreement between the two arbitrators, the appointment shall be made in accordance with the Rules.
- 37.3.3.** The arbitral tribunal shall make a reasoned award (the "Award"). Any Award made in any arbitration held pursuant to this Article 37 shall be final and binding on the Parties as from the date it is made, and the Concessionaire and the Authority agree and undertake to carry out such Award without delay.
- 37.3.4.** The Concessionaire and the Authority agree that an Award may be enforced against the Concessionaire and/or the Authority, as the case may be, and their respective assets wherever situated.
- 37.3.5.** 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

## **38. DISCLOSURE**

### **38.1. DISCLOSURE OF SPECIFIED DOCUMENTS**

The Concessionaire shall make available for inspection by any person, copies of this Concession Agreement, the Maintenance Manual, the Maintenance Program, the Maintenance Requirements and the Safety Requirements (hereinafter collectively referred to as the "Specified Documents"), free of charge, during normal business hours on all working days at the Site and the Concessionaire's Registered Office. The Concessionaire shall prominently display at the Site, public notices stating the availability of the Specified Documents for such inspection, and shall provide copies of the same to any person upon payment of copying charges on a 'no profit no loss' basis.

### **38.2. DISCLOSURE OF DOCUMENTS RELATING TO SAFETY**

The Concessionaire shall make available for inspection by any person copies of all Documents and data relating to safety of the Project, free of charge, during normal business hours on all working days, at the Concessionaire's Registered Office. The Concessionaire shall make copies of the same available to any person upon payment of copying charges on a 'no profit no loss' basis.

38.3 Notwithstanding the provisions of Clauses 38.1 and 38.2, the Authority shall be entitled to direct the Concessionaire, from time to time, to withhold the disclosure of Protected Documents (as defined herein below) to any person in pursuance of the aforesaid Clauses.

Explanation:

The expression Protected Documents shall mean such of the Specified Documents or documents referred to in Clauses 38.1 and 38.2, or portions thereof, the disclosure of which the Authority is entitled to withhold under the provisions of the Right to Information Act, 2005.

## **39. FINANCIAL AND PROJECT INFORMATION**

### **39.1. PERIODIC INFORMATION**

Concessionaire agrees to deliver to Andhra Pradesh Industrial Infrastructure Corporation Ltd., during both the Construction Period and the Operation Period, the following documents and information at the intervals described below:

- a) Annual audited accounts of Concessionaire delivered within 90 (Ninety) days or the end of each fiscal year.
- b) Un-audited financial statements of Concessionaire delivered within 30 (Thirty) days of the end of each quarter;
- c) Notification of any Material Adverse Effect in the financial condition of Concessionaire and/or the Project promptly following such occurrence: and
- d) The Project plan for the implementation of the Project which shall comprise of the order in which Concessionaire shall carry out various activities involved in the Construction of the Facilities and/or the System or part thereof, repairs and refurbishment of the Existing Transmission System within a period of 30 (Thirty) days from the Construction Commencement Date.

### **39.2. CONSTRUCTION PERIOD REPORTS**

Concessionaire shall provide, within 30 (Thirty) days of the Construction Commencement Date, a copy of the construction schedule in a network form to Andhra Pradesh Industrial Infrastructure Corporation Ltd. and to the Andhra Pradesh Industrial Infrastructure Corporation Ltd. Engineer and Independent Engineer/ Chief Engineer . A detailed explanation of the construction methodology, outlining the plans for traffic management during, excavation and for public safety shall also be included.

Concessionaire shall provide to Andhra Pradesh Industrial Infrastructure Corporation Ltd., to the extent applicable and the Independent Engineer/ Chief Engineer a Monthly progress report during the Construction Period, which shall contain the following information:

- a) Summary of progress: Summary of the progress of the Project for that Month which shall detail:
  - i. Any areas of significant concern and the action being taken to resolve any significant difficulties.
  - ii. The actual progress made during that Month against the construction schedule including a description in reasonable detail of the work carried out.
  - iii. The details of quantification of the cost and time overrun if any as part of the report and reasons for the same along with the funding for it and any matters which have come to light which are likely materially and adversely to affect the construction of the Project.



- iv. Any potential or actual deviations from the construction schedule, Technical Requirements, Prudent Utility Practices. Performance Standards or otherwise confirmation that construction as proceeding in accordance with the construction schedule, Technical Requirements, Performance Standards and Prudent Utility Practices
- b) Completion: details of any changes to the proposed date of Completion of construction and the reasons for such changes.
- c) Government Approvals: written confirmation that all Clearances then required are in full force and effect including a list of such Clearances.

### 39.3. OPERATION PERIOD REPORT

Concessionaire shall provide to Andhra Pradesh Industrial Infrastructure Corporation Ltd. (to the extent applicable) and the Andhra Pradesh Industrial Infrastructure Corporation Ltd. Engineer a Quarterly/Monthly operation and maintenance progress report during the Operation Period, which shall contain the following information:

- a) **Summary of progress:** Summary of operating and financial results for that quarter and explanations of any major variation between actual and projected results:
- b) **Expenses:** Details of any Major repairs expenses, Operation and Maintenance Expenses and the costs Or expenses of other repairs incurred in that quarter or expected to be incurred in the following quarter.
- c) **Maintenance Plan:** A Maintenance plan for the Project and its components for the next quarter and a report on maintenance carried out during the previous quarter (including a commentary on any material deviation from expected maintenance activities as set out in the maintenance plan).
- d) Subject to availability of information on Gross Yearly Demand of Water, Raw Effluent and quantum of Garbage on Annual basis from the Member Industries, Concessionaire shall assess the Gross Yearly Demand of Water, Raw Effluent for the Project Area as well Garbage disposal and treatment in accordance with Concession Agreement provisions and submit it to Andhra Pradesh Industrial Infrastructure Corporation Ltd. on Annual Basis.
- e) The Concessionaire shall be required to submit on a monthly basis for the Raw Effluent Abstraction details to Andhra Pradesh Industrial Infrastructure Corporation Ltd.
- f) Concessionaire shall generate periodic Management Information System (MIS) and Monitoring Reports as requires by Andhra Pradesh Industrial Infrastructure Corporation Ltd. Engineer in approved formats and communicate them to Andhra Pradesh Industrial Infrastructure Corporation Ltd. Engineer.
- g) Concessionaire shall be required to update the asset register and submit the same to Andhra Pradesh Industrial Infrastructure Corporation Ltd. on a quarterly basis.

- h) Concessionaire shall submit detailed asset/inventory status reports on an annual basis for all assets/inventories within the Project area.
- i) All correspondence, records, reports, presentations and other forms of information developed by the Concessionaire under this Agreement, whether electronic or physical, shall become the property of Andhra Pradesh Industrial Infrastructure Corporation Ltd. upon Expiry/termination of this Agreement. Andhra Pradesh Industrial Infrastructure Corporation Ltd. reserves, without limitation, the right to use procedures, forms and productivity enhancement methods developed under this Agreement elsewhere.
- j) Concessionaire shall notify Andhra Pradesh Industrial Infrastructure Corporation Ltd. of any Major Incident affecting any part of the *PROJECT* Assets that has occurred and shall at the earliest possible and in any event, by no later than seven (7) days or such period as may be extended by Andhra Pradesh Industrial Infrastructure Corporation Ltd. from the date of such Major Incident. Concessionaire shall also submit a report to Andhra Pradesh Industrial Infrastructure Corporation Ltd. giving full details of the facts within the knowledge of the Concessionaire regarding the incident, its cause and the remedial measures to be taken by the Concessionaire to prevent its reoccurrence.

#### **39.4. INDEPENDENT ENGINEER REPORTS**

- 39.4.1.** Andhra Pradesh Industrial Infrastructure Corporation Ltd. may at any time during the subsistence of this agreement authorize Independent Engineer to inspect. Verify and audit the performance, records and accounts of the Concessionaire, and the Concessionaire shall be obliged to extend all cooperation, assistance and facilities as may be required to such Independent Engineer.
- 39.4.2.** Concessionaire shall allow Independent Auditors appointed by Andhra Pradesh Industrial Infrastructure Corporation Ltd. to audit the efficiency of the *PROJECT* and Assets and will extend all Cooperation thereof.
- 39.4.3.** Andhra Pradesh Industrial Infrastructure Corporation Ltd. reserves the right to conduct the physical verification of the *PROJECT* and Assets at any time during the term of this Agreement.
- 39.4.4.** All the aforesaid audits/verifications shall be conducted by person(s) duly authorized for the specific purpose by the Andhra Pradesh Industrial Infrastructure Corporation Ltd. Engineer.

## **40. MISCELLANEOUS**

### **40.1. GOVERNING LAW AND JURISDICTION**

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

### **40.2. WAIVER OF IMMUNITY**

Each Party 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 Party with respect to its assets;
- c. waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and
- d. consents generally in respect of the enforcement of any judgment or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgment that may be made or given in connection therewith).

### **40.3. DEPRECIATION**

For the purposes of depreciation under Applicable Laws, the property representing the capital investment made by the Concessionaire in the Project shall be deemed to be acquired and owned by the Concessionaire. For the avoidance of doubt, the Authority shall not in any manner be liable in respect of any claims for depreciation to be made by the Concessionaire under Applicable laws.

### **40.4. DELAYED PAYMENTS**

**40.4.1.** The Parties hereto agree that payments due from one Party to the other Party under the provisions of this Agreement shall be made within the period set forth therein, and if no

such period is specified, within 30 (thirty) days of receiving a demand along with the necessary particulars. Unless otherwise specified in this Agreement, in the event of delay beyond such period, the defaulting Party shall pay interest for the period of delay calculated at a rate equal to 5% (five per cent) above the daily average Bank Rate, and Recovery there of shall be without prejudice to the rights of the Parties under this agreement including Termination thereof.

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

#### **40.5. WAIVER**

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

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

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

#### **40.6. LIABILITY FOR REVIEW OF DOCUMENTS AND DRAWINGS**

- a. Except to the extent expressly provided in this Agreement
- b. no review, comment or approval by the Authority or the Independent Engineer/ Chief Engineer of any Project Agreement, Document or Drawing submitted by the Concessionaire nor any observation or inspection of the construction, operation or maintenance of the Project nor the failure to review, approve, comment, observe or inspect hereunder shall relieve or absolve the Concessionaire from its obligations, duties and liabilities under this Agreement, Applicable Laws and Applicable Permits; and
- c. The Authority shall not be liable to the Concessionaire by reason of any review, comment, approval, observation or inspection referred to in Sub-clause (a) above.

#### **40.7. EXCLUSION OF IMPLIED WARRANTIES ETC.**

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

#### **40.8. SURVIVAL**

##### **40.8.1. Termination shall:**

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

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

#### **40.9. ENTIRE AGREEMENT**

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

#### **40.10. SEVERABILITY**

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

to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to the Dispute Resolution Procedure set forth under this Agreement or otherwise.

#### **40.11. NO PARTNERSHIP**

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

#### **40.12. THIRD PARTIES**

This Agreement is intended solely for the benefit of the Parties and their respective successors and permitted assigns, and nothing in this Agreement shall be construed to Create any duty to, standard of care with reference to, or any liability to, any person not a Party to this Agreement including any Concessionaire's Contractor.

#### **40.13. SUCCESSORS AND ASSIGNS**

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

#### **40.14. NOTICES**

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

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

**M/s.** \_\_\_\_\_

- (b) in the case of the Authority, be given by facsimile or e-mail and by letter delivered by hand at the address given below and be addressed to the person named below with a copy delivered to the Authority Representative or such other person as the Authority may from time to time designate by notice to the Concessionaire; provided that if the

Concessionaire does not have an office in the Mangalagiri it may send such notice by facsimile or e-mail and by registered acknowledgement due, air mail or by courier.

Andhra Pradesh Industrial Infrastructure Corporation Ltd.  
9<sup>th</sup> Floor, APIIC Towers,  
Plot No-1, IT Park, Mangalagiri,  
Guntur District, Andhra Pradesh - 522503

(c) Any notice or communication by a Party to the other Party, given in accordance herewith, shall be deemed to have been delivered when in the normal course of post it ought to have been delivered and in all other cases, it shall be deemed to have been delivered on the actual date and time of delivery; provided that in the case of facsimile or e-mail, it shall be deemed to have been delivered on the working day following the date of its delivery.

#### **40.15. LANGUAGE**

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

#### **40.16. COUNTERPARTS**

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

## 41. DEFINITIONS

### 41.1. DEFINITIONS

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

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

**"Adjusted Equity"** means the Equity funded in Indian Rupees and adjusted on the first day of the current month (the "Reference Date"), in the manner set forth below, to reflect the change in its value on account of depreciation and variations in WPI, and for any Reference Date occurring:

- (a) on or before PCD, the Adjusted Equity shall be a sum equal to the Equity funded in Indian Rupees and expended on the Project, revised to the extent of one half of the variation in WPI occurring between the first day of the month of Appointed Date and the Reference Date;

**"Affected Party"** shall have the meaning as set forth in Clause 27.1;

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

**"Appendix"** shall have the meaning as set forth in Clause 11.3.1;

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

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



**"Appointed Date"** means the date on which Financial Close is achieved and every Condition Precedent is satisfied, in accordance with the provisions of this Agreement, and such date shall be the date of commencement of the Concession Period;

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

**"Authority Default"** shall have the meaning as set forth in Clause 30.2.1;

**"Authority Indemnified Persons"** shall have the meaning set forth in Clause 35.1.1;

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

**"Bank"** means a bank incorporated in India and having a minimum net worth of Rs. 1,000 crore (Rupees one thousand crore) or any other bank acceptable to senior lenders, but does not include a bank in which any Senior Lender has an interest;

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

**"Bid"** means the documents in their entirety comprised in the bid submitted by the {selected Bidder} in response to the Request for Proposals in accordance with the provisions thereof and "Bids" shall mean the bids submitted by any and all pre-qualified Bidders;

**"Bid Date"** means the last date on which the Bid may have been submitted in accordance with the provisions of the Request for Proposals;

**"Bid Project Cost"** shall have the meaning as set forth in Clause 23.1;

**"Bid Security"** means the security provided by the Concessionaire to the Authority along with the Bid, in accordance with the Request for Proposals, and which is to remain in force until substituted by the Performance Security;

**"CPI (IW)"** means the Consumer Price Index for Industrial Workers as published by the Labor Bureau, Government of India and shall include any index which substitutes the CPI

{IW), and any reference to CPI {IW) shall, unless the context otherwise requires, be construed as a reference to the CPI (IW) published for the period ending with the preceding quarter;

**"Change in Law"** means the occurrence of any of the following after the Bid Date:

- (a) the enactment of any new Indian law;
- (b) The repeal, modification or re-enactment of any existing Indian law;
- (c) The commencement of any Indian law which has not entered into effect until the Bid Date;
- (d) a change in the interpretation or application of any Indian law by a judgment 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 Bid Date; or
- (e) Any change in the rates of any of the Taxes that have a direct effect on the Project;

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

**"Change of Scope"** shall have the meaning as set forth in Clause 17.1.1;

**"Company"** means the company acting as the Concessionaire under this Agreement;

**"Completion Certificate"** shall have the meaning as set forth in Clause 15.2;

**"Completion Cost"** shall have the meaning as set forth in Clause 23.4

**"Concession"** shall have the meaning as set forth in Clause 3.1.1;

**"Concessionaire/Developer"** shall have the meaning attributed thereto in the array of Parties as set forth in the Recitals;

**"Concession Period"** means the period starting on and from Appointed Date and ending on the Transfer Date. For avoidance of doubt, it is clarified that the Concession Period shall include a period of 33 years of Operation & Maintenance Period from the Appointed date.

**"Concessionaire Default"** shall have the meaning as set forth in Clause 30.1.1;

**"Conditions Precedent"** shall have the meaning as set forth in Clause 4.1.1;

**"Construction Period"** means the period beginning from the Appointed Date and ending on PCD;

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

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

**"Cure Period"** means the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Party responsible for such breach or default and shall:

- (a) Commence from the date on which a notice is received by the defaulting Party asking to cure the breach or default specified in such notice by the non-defaulting Party;
- (b) Not relieve any Party from liability to pay Damages or compensation under the provisions of this Agreement; and
- (c) Not in any way be extended by any period of Suspension under this Agreement;

provided that if the cure of any breach by the Concessionaire requires any reasonable action by the Concessionaire that must be approved by the Authority or the Independent Engineer/ Chief Engineer hereunder, the applicable Cure Period shall be extended by the period taken by the Authority or the Independent Engineer/ Chief Engineer to accord their approval;

**"Damages"** shall have the meaning as set forth in Sub-clause (x) of Clause 1.2.1;

**"Debt Due"** means the aggregate of the following sums expressed in Indian Rupees outstanding on the Transfer Date:

- (a) the principal amount of the debt provided by the Senior Lenders under the Financing Agreements for financing the Total Project Cost (the "principal") but excluding any part of the principal that had fallen due for repayment two years prior to the Transfer Date;
- (b) all accrued interest, financing fees and charges payable under the Financing Agreements on, or in respect of, the debt referred to in Sub-clause (a) above until the Transfer Date but excluding (i) any interest, fees or charges that had fallen due one year prior to the Transfer Date, (ii) any penal interest or charges payable under the Financing Agreements to any Senior Lender, and (iii) any pre- payment charges in relation to accelerated repayment of debt except where such charges have arisen due to Authority Default; and
- (c) any Subordinated Debt which is included in the Financial Package and disbursed by lenders for financing the Total Project Cost;
- (d) provided that if all or any part of the Debt Due is convertible into Equity at the option of Senior Lenders and/or the Concessionaire, it shall for the purposes of this Agreement be deemed to be Debt Due even after such conversion and the principal thereof shall be dealt with as if such conversion had not been undertaken;

**"Debt Service"** means the sum of all payments on account of principal, interest, financing fees and charges due and payable in an Accounting Year to the Senior Lenders for and in respect of Debt Due under the Financing Agreements;

**"Deemed Performance Security"** shall have the meaning.

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

**"Dispute"** shall have the meaning as set forth in Clause 37.1.1;

**"Dispute Resolution Procedure"** means the procedure for resolution of Disputes as set forth in Article 37;

**"Divestment Requirements"** means the obligations of the Concessionaire for and in respect of Termination as set forth in Clause 31.1;

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

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

**"EPC Contract"** means the engineering, procurement and construction contract or contracts entered into by the Concessionaire with one or more Contractors for, inter alia, engineering and construction of the Project in accordance with the provisions of this Agreement;

**"EPC Contractor"** means the person with whom the Concessionaire has entered into an EPC Contract;

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

**"Encumbrances"** means, in relation to the Project, any encumbrances such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations, and shall include any designation of loss payees or beneficiaries or any similar arrangement under any Insurance policy pertaining to the Project, where applicable herein but excluding utilities referred to in clause 12.1;

**"Equity"** means the sum expressed in Indian Rupees representing the paid up equity share capital of the Concessionaire for meeting the equity component of the Total Project Cost, and for the purposes of this Agreement shall include convertible instruments or other similar forms of capital, which shall compulsorily convert into equity share capital of the Company, and any interest-free funds advanced by any shareholder of the Company for meeting such equity component;

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

**"Escrow Agreement"** shall have the meaning as set forth in Clause 24.1.2; "Escrow Bank"

shall have the meaning as set forth in Clause 24.1.1; "Escrow Default" shall have the meaning as set forth in Schedule-L;

**"Estimated Project Cost"** shall be the cost estimated by the Authority as per the development of the Project to meet the requirement of industry.

**"Financial Close"** means the fulfillment of all conditions precedent to the initial availability of funds under the Financing Agreements which shall be communicated by the lender's Representative to the Authority in writing. Such communication from lender's Representative shall be treated as date on which the Financial Close IS achieved;

**"Financial Default"** shall have the meaning as set forth in Schedule-O;

**"Financial Model"** means the financial model adopted by Senior lenders, setting forth the capital and operating costs of the Project and revenues therefrom on the basis of which financial viability of the Project has been determined by the Senior lenders, and includes a description of the assumptions and parameters used for making calculations and projections therein;

**"Financial Package"** means the financing package indicating the total capital cost of the Project and the means of financing thereof, as set forth in the Financial Model and approved by the Senior lenders, and includes Equity, all financial assistance specified in the Financing Agreements and Subordinated Debt, if any;

**"Financing Agreements"** means the agreements executed by the Concessionaire in respect of financial assistance to be provided by the Senior lenders by way of loans, guarantees, subscription to non-convertible debentures and other debt instruments including loan agreements, guarantees, notes, debentures, bonds and other debt instruments, security agreements, and other documents relating to the financing (including refinancing) of the Total Project Cost, and includes amendments or modifications made in accordance with Clause 5.2.2;

**"Force Majeure"** or force Majeure Event" shall have the meaning ascribed to it in Clause 27.1;

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

**"Good Industry Practice"** means the practices, methods, techniques, designs, standards, skills, diligence, efficiency, reliability and prudence which are generally and reasonably expected from a reasonably skilled and experienced operator engaged in the same type of

undertaking as envisaged under this Agreement and which would be expected to result in the performance of its obligations by the Concessionaire in accordance with this Agreement, Applicable Laws and Applicable Permits in reliable, safe, economical and efficient manner and for providing safe, economical, reliable and efficient use of the Project;

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

**"Government Instrumentality"** means any department, division or sub-division of the Government 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 or the State Government, as the case may be, and having jurisdiction over all or any part of the Project or the performance of all or any of the services or obligations of the Concessionaire under or pursuant to this Agreement;

**"Indemnified Party"** means the Party entitled to the benefit of an indemnity pursuant to Article 39;

**"Indemnifying Party"** means the Party obligated to indemnify the other Party pursuant to Article 36;

**"Independent Engineer"** shall have the meaning as set forth in Clause 21.1;

**"Indirect Political Event"** shall have the meaning as set forth in Clause 27.3;

**"Insurance Cover"** means the aggregate of the maximum sums insured under the insurances taken out by the Concessionaire pursuant to Article 25, and includes all insurances required to be taken out by the Concessionaire under Clause 25.2 but not actually taken, and when used in the context of any act or event, it shall mean the aggregate of the maximum sums insured and payable or deemed to be insured and payable in relation to such act or event;

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

**"LOA"** or "Letter of Award" means the letter of award referred to in Recital (D);

**"Lender's Representative"** means the person duly authorized by the Senior Lenders to act for and on behalf of the Senior Lenders with regard to matters arising out of or in relation to this Agreement, and includes his successors, assigns and substitutes;

**"Licensed Premises"** shall have the meaning as set forth in Clause 11.2.2;

**"Maintenance Manual"** shall have the meaning as set forth in Clause 18.3.1; "Maintenance Program" shall have the meaning as set forth in Clause 18.4.1; "Maintenance Requirements" shall have the meaning as set forth in Clause 18.2;

**"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;

**"Nominated Company"** means a company selected by the Lenders' Representative and proposed to the Authority for substituting the Concessionaire in accordance with the provisions of the Substitution Agreement;

**"Non-Political Event"** shall have the meaning as set forth in Clause 27.2;

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

**"O&M Contract"** means the operation and maintenance contract that may be entered into between the Concessionaire and the O&M Contractor for performance of all or any of the O&M obligations;

**"O&M Contractor"** means the person, if any, with whom the Concessionaire has entered into an O&M Contract for discharging O&M obligations for and on behalf of the Concessionaire;

**"O&M Expenses"** means expenses incurred by or on behalf of the Concessionaire or by the Authority, as the case may be, for all O&M including (a) cost of salaries and other compensation to employees, (b) cost of materials, supplies, utilities and other services, (c) premium for insurance, (d) all taxes, duties, cess and fees due and payable for O&M, (e) all repair, replacement, reconstruction, reinstatement, improvement and maintenance costs, (f) payments required to be made under the O&M Contract or any other contract in



connection with or incidental to O&M, and (g) all other expenditure required to be incurred under Applicable Laws, Applicable Permits or this Agreement;

**"O&M Inspection Report"** shall have the meaning as set forth in Clause 20.2;

**"O&M Payments"** shall have the meaning as set forth in Clause 23.5;

**"Operation Period"** means the operation and maintenance period of 30 (Thirty) years from the Appointed Date and ending on the Transfer Date;

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

**"PCD"** or "Project Commencement Date" shall have the meaning as set forth in Clause 16.1;

**"Political Event"** shall have the meaning as set forth in Clause 27.4;

**"Price Index"** shall be adopted for all Materials, Labour, Machinery & Fuel, the Project Cost adjustment based on WPI and CPI (IW) as published from time to time comprise of 70% & 30% respectively.

**"Project Development Plan"**: The Plan prepared based on Detailed Analysis and gap assessment and will consist of 1) Gap Assessment of each of the components of Infrastructure 2) Identification of CAPEX projects 3) Operation and Maintenance Plan including Operation and Maintenance Schedules, 4) Phasing and Project Completion Schedule for entire Infrastructure and 5) The financing Plan and financial Model for ensuring profitability both to APIIC as well as the concessionaire. The Plan is duly approved by APIIC in consultation with the Stake holders.

**"PROJECT"** means the Design, Build, Finance, operate and maintenance and Transfer (DBFOT) of the Project and its components comprising Civil Infrastructure; Environmental Infrastructure including the CAPEX works to be undertaken to fulfil gaps identified as per gap Analysis and Assessment of Infrastructure and based on the approved Project Development Plan in accordance with the provisions of this Agreement, and includes all works, services and equipment relating to or in respect of the Scope of the Project in Site comprising the existing Industrial Park and all Project Assets, and its subsequent development and augmentation in accordance with this Agreement;

**"Project Agreements"** means this Agreement, the Financing Agreements, EPC Contract, O&M Contract, and any other material agreements or contracts that may be entered into by

the Concessionaire with any person in connection with matters relating to, arising out of or incidental to the Project, but does not include the Escrow Agreement, Substitution Agreement, or any agreement for procurement of goods and services Involving a consideration of up to Rs.\_\_\_\_\_crore ( \_\_\_\_\_)<sup>1</sup>

**"Project Completion Schedule"** means the progressive Project Milestones set forth in Schedule-I for completion of the Project on or before the Scheduled Completion Date;

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

**"Rs." or "Rupees" or "Indian Rupees"** means the lawful currency of the Republic Of India;

**"Reference Exchange Rate"** means, in respect of any one currency that is to be converted into another currency in accordance with the provisions of this Agreement, the exchange rate as of 12.00 (twelve) noon on the relevant date 3% in Delhi by the State Bank of India, and in the absence of such rate, the average of similar rates quoted in Delhi by the Bank of India and the Bank of Baroda;

**"Reference Index Date"** means, in respect of the specified date or month, as the case may be, that last day of the preceding month with reference to which the Price Index or any constituent thereof is revised and in the event such revision has not been notified, the last such Price Index or any constituent thereof shall be adopted provisionally and used until the Price Index or such constituent thereof is revised and notified;

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

**"Request for Qualification" or "RFQ"** shall have the meaning as set forth in Recital (B);

**"Right of Way"** means the constructive possession of the Site, together with all way leaves, easements, unrestricted access and other rights of way, howsoever described, necessary for construction, operation and maintenance of the Project in accordance with this Agreement;

**"Safety Requirements"** shall have the meaning as set forth in Clause 19.1;

---

<sup>1</sup>This may be fixed at the higher of ; (a)2%(two percent)of Total Project Cost and(b)Rs.25(twenty five) crore

**"Scheduled Completion Date"** shall have the meaning as set forth in Clause 8 of Schedule - D; "Scope of the Project" shall have the meaning as set forth in Clause 2;

**"Senior Lenders"** means the financial institutions, banks, multilateral lending agencies, trusts, funds and agents or trustees of debenture holders, including their successors and assignees, who have agreed to guarantee or provide finance to the Concessionaire under any of the Financing Agreements for meeting all or any part of the Total Project Cost and who hold pari passu charge on the assets, rights, title and interests of the Concessionaire;

**"Site"** shall have the meaning as set forth in Clause 11.1;

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

"State" means the Andhra Pradesh, and "State Government" means the government of that State;

**"Statutory Auditors"** means a reputable firm of chartered accountants acting as the statutory auditors of the Concessionaire under the provisions of the Companies Act, 2013, including any re-enactment or amendment thereof, for the time being in force, and appointed in accordance with Clause 26.2.1;

**"Subordinated Debt"** means the aggregate of the following sums expressed in Indian Rupees or in the currency of debt, as the case may be, outstanding as on the Transfer Date:

- (a) the principal amount of debt provided by lenders or the Concessionaire's shareholders for meeting the Total Project Cost and subordinated to the financial assistance provided by the Senior Lenders; and
- (b) all accrued interest on the debt referred to in Sub-clause (a) above but restricted to the lesser of actual interest rate and a rate equal to 5% (five per cent) above the Bank Rate in case of loans expressed in Indian Rupees and lesser of the actual interest rate and 6 (six) month LIBOR (London Inter-Bank Offer Rate) plus 2% (two per cent) in case of loans expressed in foreign currency, but does not include any interest that had fallen due 1(one) year prior to the Transfer Date; provided that if all or any part of the Subordinated Debt is convertible into Equity at the option of the lenders and/or the Concessionaire's shareholders, it shall for the purposes of this Agreement be deemed to be Subordinated Debt even after such conversion and the principal thereof shall be dealt with as if such conversion had not been undertaken;

**"Substitution Agreement"** shall have the meaning as set forth in Clause 33.3.1;

**"Suspension"** shall have the meaning as set forth in Clause 29.1;

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

**"Termination"** means the expiry or termination of this Agreement and the Concession hereunder;

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

**"Termination Payment"** means the amount payable by the Authority to the Concessionaire, under and in accordance with the provisions of this Agreement, upon Termination;

**"Tests"** means the tests set forth in Schedule-1 to determine the completion of the project in accordance with the provisions of this Agreement;

**"Total Project Cost"** means lowest of **the Bid Project Cost** or Adjusted Bid Project Cost as specified in clause 23.1 and 23.2 respectively.

**"Transfer Date"** means the date on which this Agreement and the Concession hereunder expires pursuant to the provisions of this Agreement or is terminated by a Termination Notice.

**"Member Industries / Industrial Units"** shall mean the Industrial Units located within the APIIC and connected through Conveyance Network and use Project Facilities for treatment of effluents, in accordance with the provisions of this Agreement and Applicable laws.

**"Vesting Certificate"** shall have the meaning as set forth in Clause 31.4; and

**"WPI"** means the Wholesale Price Index for all commodities as published by the Ministry of Industry, GOI and shall include any index which substitutes the WPI, and any reference to WPI shall, unless the context otherwise requires, be construed as a reference to the

latest monthly WPI published no later than 30 (thirty) days prior to the date of consideration hereunder.

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

<p>SIGNED, SEALED AND DELIVERED For and on behalf of THE AUTHORITY by:</p>	<p>THE COMMON SEAL OF CONCESSIONAIRE has been affixed pursuant to the resolution passed by the Board of Directors of the Concessionaire at its meeting held on the ____ day of ____ 2023 Hereunto affixed in the presence of ____ Director, Who has signed these Presents in token thereof and, Company Secretary/Authorized Officer who has countersigned the same in token thereof:</p>
<p>(Signature) (Designation) (Name) (Address) (Fax No.) (e-mail)</p>	<p>(Signature) (Designation) (Name) (Address) (Fax No.) (e-mail)</p>

In the presence of:

1

2

## **SCHEDULE – A: SITE OF THE PROJECT**

### **1. The Site**

- 1.1. The Site for the Selection of Developer for Strengthening, Upgradation, Augmentation, Establishment, Operation and Maintenance of Industrial Infrastructure on DBFOT basis for APSEZ Atchutapuram Industrial Area developed by APIIC, Anakapalli District, Andhra Pradesh
- 1.2. The included drawings are only proposed drawings and are for general guidance of the Bidder. These are not working drawings and must not be confused for the same. The lengths, levels and other data included in the drawings through fairly correct are not guaranteed. The Andhra Pradesh Industrial Infrastructure Corporation Ltd. will not responsible for any inaccuracy or incorrectness of the drawings or data included in those.
- 1.3. All the designs, drawings and data for the project are to be prepared by the Concessionaire after detailed survey, investigation, data collection, engineering design etc., as required to generate required working drawings.
- 1.4. The drawings and data shall be submitted to the Independent Engineer / Andhra Pradesh Industrial Infrastructure Corporation Ltd. and got approved as provided in the agreement.
- 1.5. An inventory of the Site including the land, buildings, structures, road works, trees and any other immovable property on, or attached to, the Site shall be prepared jointly by the Authority Representative and the Concessionaire, and such inventory shall form part of the Schedules to the Concession Agreement referred to in Clause 11.3.1 of this Agreement.

## SCHEDULE – A: SITE OF THE PROJECT

### INDUSTRIAL PARK:

SI No	Area	Acres
1	AP SEZ Atchutapuram	5595.47

### ANNEXURE-1: DETAILS OF THE PROJECT SITE:

#### AP SEZ ATCHUTAPURAM – 5595.47 ACRES



## **SCHEDULE – A1**

### **1. Development of the PROJECT**

Development of the PROJECT shall include design & construction of the PROJECT and its components as described in this Schedule-A. The Concessionaire shall build a fully functional Industrial Estate PROJECT in accordance with minimum description as provided in this Schedule –A.

### **2. SCOPE OF WORKS**

As defined in these bidding documents, hereinafter referred to as "the Works/ PROJECT and its Components".

#### **THE DETAILS OF PROJECT COMPONENTS:**

- (a) Construction of Common Effluent Treatment Plant(s) includes but not limited to detailed design including hydraulic, process, equipment design, and preparation of detailed layout working drawings for process layout plan, general arrangement drawings, civil, electrical, mechanical, instrumentation and structural drawings, electrical, mechanical, instrumentation system, automation diagrams, datasheets of equipment and cable schedules and detailed structural steel fabrication drawings, preparation of design report manufacture and testing at places of manufacture, painting, packing, transport, delivery, supply, storage, erection, building-in, setting work, commissioning, testing, painting, lining and finishing after erection of all plant required for the plant, including pipelines, pumps, pumping installations, machinery apparatus, flow meters at various installations, on line monitoring equipment for process parameters, whole plant SCADA based automation system, pipe work, lifting, handling and ventilation equipment, electrical equipment, instrumentation, control, lighting systems, earthing and lighting protection system, materials, articles, fittings and accessories, ancillaries, enabling works of all kind and nature required for installations of the highest possible operative standards and for compliance with the standards prescribed in the specification.
- (b) It broadly comprises the following works:
- i. All preparatory work, including required topographical survey, clearing out trees, shrubs, debris, levelling and dressing of the site, excavation in wet saturated soil and disposal of surplus excavated earth within the site to the extent possible and proper disposal of the extra surplus excavated earth to a suitable location as decided by the Employer.
  - ii. Carrying out of necessary site surveys and soil investigations as deemed necessary by the Contractor for the purpose of designs/ drawings check and



- if the soil bearing capacity is less, then Contractor has to do soil treatment work on their own cost which will be subsequently approved by the Employer.
- iii. Process and Hydraulic Design, Preparation of General Arrangement (GA) Drawings, Site Layout, Unit Process/ Equipment/ Facility/ Building layouts, Hydraulic Profile, Process Flow Diagram, Piping and Instrumentation Diagram (P&ID).
  - iv. Detailed Sizing, Design and Engineering of all treatment units, buildings, structures, and equipment (including all civil, mechanical, electrical, architectural, instrumentation, control, automation and SCADA components). All the necessary statutory approvals/ permits shall be obtained from required agency / Authority and it is under Contractor / Bidder scope.
  - v. The General arrangement drawing (GAD) should include all the units for the design requirement of capacity as mentioned in Tender documents as well as units for ultimate requirement. The placement/ layout of units should be clearly shown in the available land area.
  - vi. Design and Construction of all Civil Structures and Building Works including Supply, Installation, Testing & Commissioning of all Civil, Mechanical, Electrical, Instrumentation & SCADA Works.
  - vii. All the civil foundation and structural designs and drawings vetted by concerned department of any of the National Institute of Technology / Indian Institute of Technology / Any Reputed Engineering College.
  - viii. Submission of Detailed Engineering Designs, Drawings, Process & hydraulic Calculations, Mass Balance Calculations, and Data Sheets as per Tender requirements.
  - ix. Construction of Internal Plant Roads, Kerbs, Pavements, Parking Spaces, Compound Wall, plant water supply and sewage disposal and Storm Water Drains.
  - x. Construction of compound wall all around the plot boundary and fixing of compound gates as the requirement and as per the approval of Employer or Employer's Representative.
  - xi. Transportation and Disposal of Sludge, Salts and Solvents
  - xii. Plantation and Landscaping work.
  - xiii. Receiving Raw Influent at the inlet of the site and storage & preservation of treated effluentwater meeting prescribed characteristics for reutilization in industrial/ commercial/ irrigation requirements or as specified in Employer's requirements.
  - xiv. Plant, Testing, Commissioning, Stabilization, Demonstration of Performance Guarantee. This item shall include proper maintenance according to manufacturers' instructions of entire plant and its components during any inactive period that may be required if influent effluent water is not available at the time of works completion.

- xv. Developing detailed plan and submission of financing procedures, IRR, net rate of return for 33 years of concession period.
- xvi. Submission of Commissioning Procedure
- xvii. Complete Operation & Maintenance of the CETP for the concession period.
- xviii. Operation & Maintenance of the Marine Outfall designed for disposal of treated effluent from the CETP in this zone for the Concession period.
- xix. The treated effluent shall be stored in guard ponds for effluent shall be disposed through pipeline which is already established for total 31 MLD capacity. The existing marine disposal pumping infrastructure shall be utilized for discharging the treated effluent from proposed 5 MLD CETP. The guard ponds shall be constructed by Bidder to store the treated effluent from proposed 5 MLD CETP as per the requirements provided in the statutory guidelines / conditions
- xx. The pipeline from 5 MLD CETP guard ponds shall be established by Bidder upto existing pumping mains as part the scope of proposed 5 MLD CETP Outfall.
- xxi. Submission of Operation and Maintenance Manuals - Operation & maintenance of entire system including the date of completion of the Works and successful passing test on completion.
- xxii. Construction and equipping of laboratory for routine testing of raw and treated effluent quality of the CETP, effluent from member industries as on a day to day basis and control of process parameters; Instituting Quality Assurance and Quality Control procedures during construction and O& M period.
- xxiii. Providing Training Services to Employer's Personnel.
- xxiv. Preparation and Submission of As-Built drawings for all Civil, Mechanical, Electrical, Instrumentation and SCADA Works.
- xxv. Design, construction, installation, testing, commissioning, and training for any and all other equipment, systems, components, and/or services that might be necessary for a complete, fully functional facility in compliance with all requirements of these Tender documents.
- xxvi. The CETP should be handed over to APIIC in good working condition at the end of Concession Period. An assessment of cost of assets shall be prepared by the Concessionaire through a chartered Engineer before the handover. Life Cycle Assessment for the CETP shall also be done by Bidder before handing over the plant to APIIC.
- xxvii. Bidder should always treat 100% of the effluents and should assure the treated water quality as per the specified standards, however penalty clause applicable if treats less than 90% of the full capacity.
- xxviii. Concessionaire may opt for development of required capacity Co-Gen Power Plant.
- xxix. Bidder shall dispose the Sludge, Slat and Solvents to any location as approved by Pollution Control Board (PCB).

- xxx. Provision for Power and Water shall be arranged by Bidder at their own cost from nearest available source. The charges incurred for power and water shall be paid by the Bidder during the project implementation.
- xxxi. =The scheme proposed in the Technical Specifications is indicative. Bidder can propose any Technology subject to meeting the Effluent Outlet Parameters and as per best Industrial practice.
- xxxii. Construction of 5.0 MLD CETP module wise to be completed as per PDP. including trial run period of 3 months.
- xxxiii. Concessionaire can opt for Recycling of Treated water duly installing the required additional treatment units and recycled water network to achieve the recyclable standard. In such case, Authority may be advise the Industries to buy-back of effluent water given to CETP for treatment. The Tariff for the Recycled Treated water shall be decided by Authority.
- xxxiv. **INLET PARAMETERS FROM MEMBER INDUSTRIES:** The effluent generated in the Industries shall be pre-treated within their premises before discharging to collection network, to ensure the inlet parameters of proposed CETP. Before accepting of the effluent from user Industry, the Concessionaire should carry the analysis of the effluent. In case effluent parameters differ from the inlet parameters defined Concessionaire is having right to reject and communicate user Industry to provide the effluent within stipulated inlet parameters of the CETP.
- xxxv. **TOXIC MATERIALS IN EFFLUENT:** The quality of effluent and the toxic materials vary from unit to unit as per their products and processes. CETP Concessionaire will not accept if any toxic materials are found in the effluent. They shall have a separate arrangement with member units for collection, storage, treatment and disposal of same.
- xxxvi. **Development of CETP in**

Plant Capacity (MLD)
3 MLD LTDS
2 MLD HTDS

## 2.1. Broad Methodology of the Project:

Following is the broad Methodology of the Project:

### 2.1.1. Assessment of the existing Infrastructure in the Industrial Areas: Existing infrastructure is classified into

- a) Civil Infrastructure
- b) Environmental Infrastructure and
- c) .

**a) Civil Infrastructure:**

- (i) Electrical Infrastructure including HT (33KV / 11KV as the case may be) underground distribution System, Receiving and Substations, External Illumination & Telecommunication Data Networks conduiting including Area Lighting works.
- (ii) Road and Transportation Infrastructure including existing Road infrastructure, Civil structures including Minor Bridges and Culverts, Weigh Bridges, Truck Terminals, Parking areas, Logistics Parks,
- (iii) Water Supply Infrastructure including Potable Water Supply Network, Clear water Sump and Pump House, Overhead Tank (OHT), Pumping Mains and gravity mains and the distribution network for potable, non-potable, including valves, valve chambers.
- (iv) Effluent Collection System
- (v) Fire Fighting Network including Fire Pumps, Firefighting Network including external hydrants.

**b) Environmental Infrastructure:**

- i. Water and Waste water Management system including Treatment, Recycling and Reuse of Treated water
- ii. Liquid Waste Management: Effluent Treatment and safe disposal, environmental monitoring, Solid Waste and hazardous waste management facilities, pollution control services, improvement of green cover, etc., complete.

**2.1.2. Identification of Infrastructure Scope**

Infrastructure Scope Includes:

**A. Common Effluent Treatment Plant (CETP): depend on module**

- Upgradation of Existing CETP capacity of 825 KLD (450 KL HTDS, 375 KL LTDS) to 2000 KLD capacity i.e., 1125 KL HTDS and 875 KL LTDS)
- Establishment Expansion of new 5.0 MLD CETP i.e., 2.0 MLD HTDS and 3.0 MLD LTDS
- Recycling of CETP treated water of at least 50%.
- APIIC to advise the industries for buyback of recycled water to the extent possible
- Conveyance of recycled water network
- Conveyance system of LTDS and HTDS
- Online monitoring system

**B. Water Treatment Plant (WTP):**

- Establishment of Water treatment plant of 20 MLD capacity etc

- Pipeline from WTP shall be connected to existing conveyance system.

#### **C. Solid Waste Management:**

- Any solid waste including hazardous waste generated from the AP SEZ Industrial area shall be scientifically treated at common solid waste management facility.

#### **2.1.3. Project Procurement Strategy**

Preparation of Project Development Plan which includes Financial Feasibility, Project Viability, Business & Financial Models, Procurement Strategy, Phasing Strategy.

#### **2.1.4. Proposed Structure of the Project:**

- a) The project is structured on DBFOT (Design, Build, Finance & Operate and Transfer) basis, where Developer will invest the Capex and recover investment through user charges.
- b) A User pay Model will be implemented for various services including: water treatment, effluent water treatment & disposal, Solid waste management and maintenance of civil infrastructure etc.);
- c) The Project shall be developed in various phases depending on the actual requirement to meet international standards. IALA to act as a Nodal Agency to monitor the above. In addition to User Fee, the Project can also be supported through VGF or through Government of India or Government of Andhra Pradesh grants.
- d) Developer to buy back Member Industries share of AETL as per Average Valuation to be done by a minimum two approved valuers.

#### **2.1.5. Sources of Revenue:** The Sources of Revenue envisaged for the Developer are as follows:

- a) Collection of User charges for Park maintenance to enable provision of utility services like water treatment, effluent treatment, Solid Waste Management etc.
- b) Any subsidy or grant available under any scheme from Government of India or the State Government

The prioritization and phasing for redevelopment shall be based on the outcome of Stakeholder consultations and as agreed with the Authority. The Project Development Plan is finalized after discussions with APIIC and the stakeholders and after approval becomes the 'PROJECT' as mentioned elsewhere in the Agreement.

## **SCHEDULE-A2- SPECIFICATIONS AND STANDARDS**

The Concessionaire shall ensure compliance as per industry best practices, as may become applicable from time to time including but not limited to the specifications and standards set forth herein for development of the Project.

### **1. Building & Other Structures**

- a) Buildings as per CPWD specifications and as per the applicable development and regulatory norms of the Site.
- b) RCC Structures shall be designed as per IS 456
- c) Steel Structures shall be designed in accordance with the provision of IS 531 and IS 800. Structural steel shall conform to IS 2062. Tubular section shall conform to IS 4923
- d) Architectural design norms as per NBC (National Building Code – 2016)
- e) Structural design norms, fire safety measures as per NBC and BIS (Bureau of Indian Standards)
- f) Firefighting arrangement as per National Building Code

### **2. Internal Roads**

- a) Rigid Pavements are to be developed as per IRC 15
- b) Flexible Pavements to be developed as per IRC 37
- c) Road Over Bridges to be designed as per IRC 05 and railway norms
- d) Rail Under Bridges to be designed as per Railway norms
- e) Paver blocks shall be as per IRC SP 063
- f) Road Over Bridges / VUP / VoP shall be designed as per IRC 05, IRC 06, IRC 78 and IRC 112.
- g) Utility corridors shall be provided along the road.
- h) Storm water drain shall be provided along the road based on the storm water requirements as per design considering the rainfall in last 30 years in the area.
- i) Road markings are to be as per IRC 35
- j) Road signages are to be as per IRC 67
- k) All roads have to be designed for turning radius as per IRC 106 for trailers with a minimum length of 18 metres.

### **3. Landscaping & Rainwater harvesting**

- a) General landscaping shall be done as per IRC SP 21
- b) Rainwater harvesting works shall be done as per Rainwater Harvesting and Conservation Manual by CPHEEO

#### **4. UTILITIES**

##### **a) Road lighting**

- i. The lighting shall comply with the standards, requirements, illumination level and specifications given in Indian Standard 'Code of Practice for Lighting of Public Thoroughfare' IS: 1944 Part I & II.
- ii. Road lighting shall be designed with minimum illumination of 40 lux or NH standards for urban roads whichever is higher.
- iii. GI Octagonal Poles and LED luminaries are to be considered for Road Lighting system.
- iv. Power supply to Road lighting pole is to be fed through underground 1.1 kV XLPE insulated, armored, Aluminum conductor cables. Distribution of power be through 415V, 3 phase, 4 wire system.
- v. The streetlights shall be controlled from outdoor street light Panel with 4Pole MCCB incomer, energy meter, automatic timers switch and power contactor for switching ON/ OFF the lights and MCB outgoings for distribution.

##### **b) Data Networking**

- i. Ethernet IP networks as per IEEE 802.11 including both wireline and wireless components and redundancy for high reliability and availability shall be designed and maintained across the MMLP for data transmission between different equipment, control centres, administration and gate systems.
- ii. Fast Ethernet/Ethernet Network –LAN and WAN cables as per ISO/IEC 8802-3.
- iii. A fiber backbone in ring structure shall be created to connect all buildings; all cables will be laid in redundancy mode.
- iv. The network rack shall be as per the ISO 27001 standards

##### **c) Telephone System**

- i. The telephone system shall conform to applicable ITU-T standards.
- ii. A Centralized Voice Mail System (CVMS) shall be provided and integrated with the switch to enable PABX users to leave, retrieve and broadcast voice messages to and from this single message centre.
- iii. Provision of VHF radio/TETRA systems for field communications
- iv. Provision of mobile telephones for field communications

##### **d) Closed Circuit Television**

- i. The Closed-Circuit Television (CCTV) System shall be provided for video surveillance and recording function for the operators to monitor all the sensitive areas.

- ii. CCTV system as per Policy and Guidelines for setting up of Inland Container Depots (ICDs), Container Freight Stations (CFSs) and Air Freight Stations (AFSs) dated 05.11.2020
  - iii. Two types of cameras shall be provided:
  - iv. Fixed cameras with fixed focal length lens and fixed orientation.
  - v. Pan/Tilt/Zoom (PTZ) cameras with variable focal length lens with adjustable orientation in both the vertical and horizontal directions.
- e) Public Address System**
- i. The equipment shall be in accordance with IS 1881
  - ii. All PA equipment shall be rack-mounted.
- f) Video Conferencing System**
- i. Video Conferencing System will be provided for video communication with other locations.
- g) UPS & Battery Bank**
- i. UPS shall be compliance of Standards UL 2003 (MH26669), JIS C 8702, IEC 60896, ISO14001 and ISO9001.
- h) Water Supply System**
- i. The water supply system shall be designed and constructed as per Central Public Health and Environmental Engineering Organisation (CPHEEO) "Manual on Water Supply and Treatment.
  - ii. The incoming water supplies and the system they supply shall be designed and constructed as per National Building Code.
  - iii. Distribution system for potable and recycled water shall comply with IS: 4984.
  - iv. Service water from storage tank to individual buildings by pumping system/gravity system, through buried HDPE pipeline & fittings
  - v. Pipes and fittings for Water supply shall be High Density Polyethylene Pipes class PE100, PN10, confirming to IS 4984. All road crossings for water supply lines will be through RCC pipes
  - vi. Gate valve shall be confirming to IS 14846
  - vii. Air valve shall be confirming to IS 14845
  - viii. Water Meter with NRV, Ferule and Strainer shall be confirming to IS 2373/ ISO 4064-1
  - ix. RCC Hume pipes class NP 3 (minimum), confirming to IS 458:2003
  - x. Ball valve shall be confirming to IS 9890:1991
- i) Drainage System**
- i. The storm water and sewerage (underground drainage) system shall be designed and constructed as per Central Public Health and Environmental Engineering Organisation (CPHEEO) "Manual on Sewerage and Sewage Treatment. RCC M-



- 20 grade manholes for sewerage system with maximum spacing of 30 m C/C. RCC NP-3/HDPE pipes should be used for Sewerage system.
- ii. All conduits will be HDPE conforming to IS 4984 & IS 14333

**5. GENERAL STANDARDS**

- a) In the absence of any specific provision in this Agreement, the following standards shall apply in order of priority:
- b) Bureau of Indian Standards (BIS), Indian Standards, CPWD, MoRTH, IRC,
- c) Relevant International Standards or codes as applicable in the United States of America or the European Union or Singapore; and
- d) Any other specifications/standards/codes proposed by the Concessionaire and reviewed by the Independent Expert.
- e) In case of any conflict or inconsistency in the provisions of the applicable Indian Standards or codes and International Standards or codes, the Indian Standards or codes shall apply.
- f) The latest version of the specified codes and standards which were notified/published at least 60 (sixty) days prior to the bid date in respect of this Agreement shall apply. For subsequent phases, updated codes and specifications in force at the time of actual execution shall be considered.
- g) Statutory guidelines issued by Central / State / Local Authority (ies) for Industrial land use.
- h) Compliance with relevant Zoning Regulations.
- i) [.
- j) Environmental Standards and Pollution Control Norms as laid down by the Central / State Pollution Control Board.
- k) Standards / Restrictions as laid down by the relevant Central / State / Local Authority (ies) for proper treatment and discharge of solid and liquid waste.
- l) Energy efficient techniques to be utilized in the building design and operation. Net Zero concept to be explored.
- m) Rainwater management systems should be adopted to recharge ground water and reduce run-off.
- n) Existing local development controls, under law for the time being in force, shall be binding if they are more limiting than the Project Specifications.

**6. COMMON FACILITIES DEVELOPMENT – SPECIFICATIONS AND STANDARDS**

- a) The Concessionaire shall ensure compliance as per industry best practices, as may become applicable from time to time including but not limited to the Specifications and Standards set forth herein for development of the Commercial Zone.
- b) Petrol pumps provided if any to comply with The Petroleum Rules 2002 and its subsequent amendment/(s) (2021).

- c) The commercial complex shall be designed in conformance with National Building Code and Zonal regulations.
- d) RCC Structures shall be designed as per IS 456
- e) Steel Structures shall be designed in accordance with the provision of IS 531 and IS 800. Structural steel shall conform to IS 2062. Tubular section shall conform to IS 4923
- f) Architectural design norms as per NBC (National Building Code – 2016)
- g) Structural design norms, fire safety measures as per NBC and BIS (Bureau of Indian Standards)

**7. CETP SPECIFICATIONS:**

- a) Construction of Common Effluent Treatment Plant(s) includes but not limited to detailed design including hydraulic, process, equipment design, and preparation of detailed layout working drawings for process layout plan, general arrangement drawings, civil, electrical, mechanical, instrumentation and structural drawings, electrical, mechanical, instrumentation system, automation diagrams, datasheets of equipment and cable schedules and detailed structural steel fabrication drawings, preparation of design report manufacture and testing at places of manufacture, painting, packing, transport, delivery, supply, storage, erection, building-in, setting work, commissioning, testing, painting, lining and finishing after erection of all plant required for the plant, including pipelines, pumps, pumping installations, machinery apparatus, flow meters at various installations, on line monitoring equipment for process parameters, whole plant SCADA based automation system, pipe work, lifting, handling and ventilation equipment, electrical equipment, instrumentation, control, lighting systems, earthing and lighting protection system, materials, articles, fittings and accessories, ancillaries, enabling works of all kind and nature required for installations of the highest possible operative standards and for compliance with the standards prescribed in the specification. It broadly comprises the following works:
  - i. All preparatory work, including required topographical survey, clearing out trees, shrubs, debris, levelling and dressing of the site, excavation in wet saturated soil and disposal of surplus excavated earth within the site to the extent possible and proper disposal of the extra surplus excavated earth to a suitable location as decided by the Employer.
  - ii. Carrying out of necessary site surveys and soil investigations as deemed necessary by the Contractor for the purpose of designs/ drawings check and if the soil bearing capacity is less, then Contractor has to do soil treatment work on their own cost which will be subsequently approved by the Employer.
  - iii. Process and Hydraulic Design, Preparation of General Arrangement (GA) Drawings, Site Layout, Unit Process/ Equipment/ Facility/ Building layouts, Hydraulic Profile, Process Flow Diagram, Piping and Instrumentation Diagram (P&ID).

- iv. Detailed Sizing, Design and Engineering of all treatment units, buildings, structures, and equipment (including all civil, mechanical, electrical, architectural, instrumentation, control, automation and SCADA components)
- v. The General arrangement drawing (GAD) should include all the units for the design requirement of capacity as mentioned in Tender documents as well as units for ultimate requirement. The placement/ layout of units should be clearly shown in the available land area.
- vi. Design and Construction of all Civil Structures and Building Works including Supply, Installation, Testing & Commissioning of all Civil, Mechanical, Electrical, Instrumentation & SCADA Works.
- vii. All the civil foundation and structural designs and drawings vetted by concerned department of any of the National Institute of Technology / Indian Institute of Technology / Any Reputed Engineering College.
- viii. Submission of Detailed Engineering Designs, Drawings, Process & hydraulic Calculations, Mass Balance Calculations, and Data Sheets as per Tender requirements.
- ix. Construction of Internal Plant Roads, Curbs, Pavements, Parking Spaces, Compound Wall, plant water supply and sewage disposal and Storm Water Drains.
- x. Construction of compound wall all around the plot boundary and fixing of compound gates as the requirement and as per the approval of Employer or Employer's Representative.
- xi. Transportation and Disposal of Sludge, Salts and Solvents
- xii. Plantation and Landscaping work.
- xiii. Receiving Raw Influent at the inlet of the site and storage & preservation of treated effluentwater meeting prescribed characteristics for reutilization in industrial/ commercial/ irrigation requirements or as specified in Employer's requirements.
- xiv. Plant, Testing, Commissioning, Stabilization, Demonstration of Performance Guarantee. This item shall include proper maintenance according to manufacturers' instructions of entire plant and its components during any inactive period that may be required if influent effluent water is not available at the time of works completion.
- xv. Submission of Commissioning Procedure
- xvi. Complete Operation & Maintenance of the CETP for the concession period.
- xvii. Operation & Maintenance of the Outfall designed for disposal of treated effluent from the CETP in this zone for the Concession period.
- xviii. Submission of Operation and Maintenance Manuals - Operation & Maintenance of entire system including the date of completion of the Works and successful passing test on completion.
- xix. Construction and equipping of laboratory for routine testing of raw and treated effluent quality of the CETP, effluent from member industries as on a

day to day basis and control of process parameters; Instituting Quality Assurance and Quality Control procedures during construction and O& M period.

- xx. Providing Training Services to Employer's Personnel.
- xxi. Preparation and Submission of As-Built drawings for all Civil, Mechanical, Electrical, Instrumentation and SCADA Works.
- xxii. Design, construction, installation, testing, commissioning, and training for any and all other equipment, systems, components, and/or services that might be necessary for a complete, fully functional facility in compliance with all requirements of these Tender documents.
- xxiii. The CETP should be handed over to APIIC in good working condition at the end of Concession Period. An assessment of cost of assets shall be prepared by the Concessionaire through a chartered Engineer before the handover. Life Cycle Assessment for the CETP shall also be done by Bidder before handing over the plant to APIIC.
- xxiv. The bidder should treat at least 90% of effluent received to CETP and Recycle/dispose in the Outfall as per the standards set up by APPCB.
- xxv. Concessionaire may opt for the development of required capacity Co-Gen Power Plant.
- xxvi. Bidder shall dispose the Sludge, Salts and Solvents to any location as approved by Pollution Control Board (PCB).
- xxvii. Power and Water shall be made available up to the battery limits by APIIC by the time of start of Construction at free of cost.
- xxviii. The scheme proposed in the Technical Specifications is indicative. Bidder can propose any Technology subject to meeting the Effluent Outlet Parameters and as per best Industrial practice.
- xxix. Construction of the CETP shall be done in approved Phases wherever required.

**(b) HAZARDOUS WASTE:**

**Responsibilities of the Concessionaire for management of hazardous and other wastes.-**

(1) For the management of hazardous and other wastes, an Concessionaire shall follow the following steps, namely:-

- (a) prevention;
- (b) minimization;
- (c) reuse,
- (d) recycling;
- (e) recovery, utilisation including co-processing;
- (f) safe disposal.

(2) The Concessionaire shall be responsible for safe and environmentally sound management of hazardous and other wastes.

(3) The hazardous and other wastes generated in the establishment of an Concessionaire shall be sent or sold to an authorised actual user or shall be disposed of in an authorised disposal facility.

(4) The hazardous and other wastes shall be transported from an Concessionaire's establishment to an authorised actual user or to an authorised disposal facility in accordance with the provisions of these rules.

(5) The Concessionaire who intends to get its hazardous and other wastes treated and disposed of by the operator of a treatment, storage and disposal facility shall give to the operator of that facility, such specific information as may be needed for safe storage and disposal.

(a) The Concessionaire shall take all the steps while managing hazardous and other wastes to contain contaminants and prevent accidents and limit their consequences on human beings and the environment; and

(b) provide persons working in the site with appropriate training, equipment and the information necessary to ensure their safety.

**4. Grant of authorisation for managing hazardous and other wastes.-** (1) Every Concessionaire of the facility who is engaged in handling, generation, collection, storage, packaging, transportation, use, treatment, processing, recycling, recovery, pre-processing, co-processing, utilisation, offering for sale, transfer or disposal of the hazardous and other wastes shall be required to make an application in **Form 1** to the State Pollution Control Board and obtain an authorisation from the State Pollution Control Board within a period of sixty days from the date of publication of these rules. Such application for authorisation shall be accompanied with a copy each of the following documents, namely:-

(a) consent to establish granted by the State Pollution Control Board under the Water (Prevention and Control of Pollution) Act, 1974 (25 of 1974) and the Air (Prevention and Control of Pollution) Act, 1981 (21 of 1981);

(b) Consent to operate granted by the State Pollution Control Board under the Water (Prevention and Control of Pollution) Act, 1974 (25 of 1974) and/or Air (Prevention and Control of Pollution) Act, 1981, (21 of 1981);

(c) in case of renewal of authorisation, a self-certified compliance report in respect of effluent, emission standards and the conditions specified in the authorisation for hazardous and other wastes:

Provided that an application for renewal of authorisation may be made three months before the expiry of such authorisation:

Provided further that-

- (i) any person authorised under the provisions of the Hazardous Waste (Management, Handling and Transboundary Movement) Rules, 2008, prior to the date of commencement of these rules, shall not be required to make an application for authorisation till the period of expiry of such authorisation;
- (ii) any person engaged in recycling or reprocessing of the hazardous waste specified in Schedule IV and having registration under the provisions of the Hazardous Waste (Management, Handling and Transboundary Movement) Rules, 2008, shall not be required to make an application for authorisation till the period of expiry of such registration.

(2) On receipt of an application complete in all respects for the authorisation, the State Pollution Control Board may, after such inquiry as it considers necessary, and on being satisfied that the applicant possesses appropriate facilities for collection, storage, packaging, transportation, treatment, processing, use, destruction, recycling, recovery, pre-processing, co-processing, utilisation, offering for sale, transfer or disposal of the hazardous and other waste, as the case may be, and after ensuring technical capabilities and equipment complying with the standard operating procedure or other guidelines specified by the Central Pollution Control Board from time to time and through site inspection, grant within a period of one hundred and twenty days, an authorisation in **Form 2** to the applicant, which shall be valid for a period of five years subject to such conditions as may be laid down therein. For commonly recyclable hazardous waste as given in Schedule IV, the guidelines already prepared by the Central Pollution Control Board shall be followed:

Provided that in the case of an application for renewal of authorisation, the State Pollution Control Board may, before granting such authorisation, satisfy itself that there has been no violation of the conditions specified in the authorisation earlier granted by it and same shall be recorded in the inspection report.

(3) The authorisation granted by the State Pollution Control Board under sub-rule (2) shall be accompanied by a copy of the field inspection report signed by that Board indicating the adequacy of facilities for collection, storage, packaging, transportation, treatment, processing, use, destruction, recycling, recovery, pre-processing, co-processing, utilisation, offering for sale, transfer or disposal of the hazardous and other wastes and compliance to the guidelines or standard operating procedures specified by the Central Pollution Control Board from time to time.

(4) The State Pollution Control Board may, for the reasons to be recorded in writing and after giving reasonable opportunity of being heard to the applicant, refuse to grant any authorisation under these rules.

(5) Every Concessionaire authorised under these rules, shall maintain a record of hazardous and other wastes managed by him in **Form 3** and prepare and submit to the State Pollution Control Board, an annual return containing the details specified in **Form 4** on or before the 30<sup>th</sup> day of June following the financial year to which that return relates.

(6) The State Pollution Control Board shall maintain a register containing particulars of the conditions imposed under these rules for management of hazardous and other wastes and it shall be open for inspection during office hours to any interested or affected person.

(7) The authorised actual user of hazardous and other wastes shall maintain records of hazardous and other wastes purchased in a passbook issued by the State Pollution Control Board along with the authorisation.

(8) Handing over of the hazardous and other wastes to the authorised actual user shall be only after making the entry into the passbook of the actual user.

**5. Power to suspend or cancel an authorisation.-** (1) The State Pollution Control Board, may, if in its opinion the holder of the authorisation has failed to comply with any of the conditions of the authorisation or with any provisions of the Act or these rules and after giving him a reasonable opportunity of being heard and after recording reasons thereof in writing cancel or suspend the authorisation issued under rule 6 for such period as it considers necessary in the public interest.

(2) Upon suspension or cancellation of the authorisation, the State Pollution Control Board may give directions to the person whose authorisation has been suspended or cancelled for the safe storage and management of the hazardous and other wastes, and such Concessionaire shall comply with such directions.

**6. Storage of hazardous and other wastes.-** (1) The Concessionaires of facilities may store the hazardous and other wastes for a period not exceeding ninety days and shall maintain a record of sale, transfer, storage, recycling, recovery, pre-processing, co-processing and utilisation of such wastes and make these records available for inspection:

Provided that the State Pollution Control Board may extend the said period of ninety days in following cases, namely:-

- (i) small generators (up to ten tonnes per annum) up to one hundred and eighty days of their annual capacity;

- (ii) actual users and disposal facility operators up to one hundred and eighty days of their annual capacity,
- (iii) Concessionaires who do not have access to any treatment, storage, disposal facility in the concerned State; or
- (iv) the waste which needs to be specifically stored for development of a process for its recycling, recovery, pre-processing, co-processing or utilisation;
- (v) in any other case, on justifiable grounds up to one hundred and eighty days.

**7. Utilisation of hazardous and other wastes.-** (1) The utilisation of hazardous and other wastes as a resource or after pre-processing either for co-processing or for any other use, including within the premises of the generator (if it is not part of process), shall be carried out only after obtaining authorisation from the State Pollution Control Board in respect of waste on the basis of standard operating procedures or guidelines provided by the Central Pollution Control Board.

(2) Where standard operating procedures or guidelines are not available for specific utilisation, the approval has to be sought from Central Pollution Control Board which shall be granting approval on the basis of trial runs and thereafter, standard operating procedures or guidelines shall be prepared by Central Pollution Control Board:

Provided, if trial run has been conducted for particular waste with respect to particular utilisation and compliance to the environmental standards has been demonstrated, authorisation may be granted by the State Pollution Control Board with respect to the same waste and utilisation, without need of separate trial run by Central Pollution Control Board and such cases of successful trial run, Central Pollution Control Board shall intimate all the State Pollution Control Board regarding the same.

No trial runs shall be required for co-processing of waste in cement plants for which guidelines by the Central Pollution Control Board are already available; however, the actual users shall ensure compliance to the standards notified under the Environment (Protection) Act, 1986 (29 of 1986), for cement plant with respect to co-processing of waste:

Provided that till the time the standards are notified, the procedure as applicable to other kind of utilisation of hazardous and other waste, as enumerated above shall be followed.



## **Schedule A3 - GUARANTEES**

### **1. Guarantees:**

Concessionaire will have to give guarantees for the following:

- a) Completion of work in all respect within 24 months from the Date of Appointment by Andhra Pradesh Industrial Infrastructure Corporation Ltd.
- b) Design and workmanship of all items of civil work, equipment, instruments and electrical work, quality control tests etc.

### **2. Procedure for Trial Runs**

- a) As soon as the PROJECT components are ready for trial runs, the Concessionaire shall notify to the Andhra Pradesh Industrial Infrastructure Corporation Ltd. in writing at least one week in advance of its intention to carry out guarantee test runs of the PROJECT component. Such guarantee test runs shall be carried out during the period, in the manner and to the extent as hereafter provided.
- b) The 'trial runs' shall be undertaken under the Concessionaire's direct supervision and responsibility and under normal operating conditions and shall be witnessed by Andhra Pradesh Industrial Infrastructure Corporation Ltd.
- c) The 'trial runs' for the PROJECT component shall be conducted.
- d) All working data of the 'trial runs' which are required for the purpose of evaluating the results of such test runs shall be signed and confirmed both by the Andhra Pradesh Industrial Infrastructure Corporation Ltd. representative and the Concessionaire's guarantees shall be checked on averaging the figures obtained during the 'trial runs' period. Instruments for analysis shall be mutually agreed upon before start of the 'trial runs'.
- e) The Concessionaire may stop the 'trial runs' in case such runs are not found to be satisfactory in his opinion, or any defective machinery, equipment, materials, goods or work are required to be modified.
- f) The Guarantee Test Runs shall be deemed to have been satisfactorily completed when the PROJECT component has been established to meet with the guarantees.

### **3. Design and Workmanship Guarantee**

The Concessionaire shall guarantee that he shall at his own cost promptly repair or replace and deliver at job site, all or any of the equipment, machinery, electrical, etc., which may turn out to be defective or of inadequate design capacity, during construction and till twelve months from the date of acceptance of the PROJECT component or within six months from the date

of the last modification/rectification work carried out by the Contractor under workmanship guarantee, whichever is later.

**4. Warranty / Guarantee Tenderer shall ensure following:**

- a) The Concessionaire shall guarantee the Treated Effluent / Water quality as mentioned in Volume I of the Bid document.
- b) The supplier shall warrant that the goods supplied under the contract shall be new, unused, of the most recent or current models and incorporate all recent improvements in design and material unless provided otherwise in the contract.

The supplier further warrants that the Goods supplied under this contract shall have no defect arising from design or materials or workmanship (except in so far as the design material is required by the Purchaser's specifications) or from any act or omission of the supplier, that may develop under normal use of the supplied goods in the condition obtaining in the country of final destination. The supplier also guarantees that the Goods supplied shall perform satisfactorily as per the designed/rated/installed capacity as provided for in the Contract

- c) The Warranty under this scope of work shall mean that the Concessionaire shall replace/remove the defected parts of any machinery with a new part at his own cost.
- d) The Guarantee under this scope of work shall mean that the Contract shall replace the entire defected machinery which is beyond repair with a machinery of same or better specification at his own cost.
- e) Concessionaire has to provide details information about number of equipment's covered Warranty/Guarantee as well as the period which is covered.
- f) This warranty/guarantee shall remain valid for minimum of 12 months after the Goods, or any portions thereof as the case may be, have been delivered to the final destination indicated in the Contract. The Concessionaire has to ensure that the warranty/guarantee of the goods are applicable, and tend to any faults under the same.
- g) The Concessionaire shall promptly notify the Supplier/Manufacturer in writing of any claims arising under this warranty and shall endeavour to get the replacement done without disturbing the operations of the PROJECT component.
- h) Upon receipt of such notice, the supplier shall, with all reasonable speed, repair or replace the defective Goods or parts thereof, without costs to the purchaser other than, where applicable, the cost of inland delivery of the repaired or replaced Goods or parts from the port of entry to the final destination.

- i) If the supplier, having been notified, fails to rectify the defect(s) within a reasonable period, the Purchaser may proceed to take such remedial action as may be necessary, at the Supplier's risk and expense and without prejudice to any other rights which the purchaser may have against the supplier under the Contract.
- j) In case of installation and commissioning, the Supplier shall guarantee the complete installation for satisfactory performance for a minimum period of 12months from the date of commissioning. Any defect arising out of faulty installation or use of substandard materials or workmanship shall be rectified by the supplier at his own cost.
- k) Concessionaire shall handover all the As-Built Drawings, Maintenance, Operation & Service Manual of all the plant & machinery installed & supplied by him to Andhra Pradesh Industrial Infrastructure Corporation Ltd. authorized person on completion and handing over the project.

#### **Schedule A4- Liquidated Damages**

- a) Should the Concessionaire fail to complete the separable portions of works identified in the programme of works or to complete the whole of the works within the periods specified therein, the Concessionaire shall pay to the Employer as fixed and agreed liquidated damages and not as penalty, the sum shown herein below for every week's (or part thereon) delay.
  - b) Further, if the Plant fails to achieve the performance guaranteed by the Concessionaire, the Concessionaire shall pay to the Authority as fixed and agreed liquidated damages and not as penalty, the sum shown herein below for default in performance as applicable.
- (1) Liquidated Damages for Delay
- A. CPM/PERT network, Bar chart, Schedule of Drawings and Engineering Documents and Out line and General Arrangement drawings.
    - (i) The Concessionaire is required to produce certain drawings and documentation as per the mutually agreed programme and submit them to the Engineer within respective submission period as stated therein in the said agreed programme, if there is any delay in submitting these drawings and documentation or the Standard of drawing and documentation is inadequate for the purpose stated in the Specification which delays the approval of these drawing or documents then a sum of Indian Rupees 500 per drawing per week shall be deducted from the amount due to the Concessionaire as liquidated damages.
  - B. Detailed Plant drawings, wiring diagrams, cabling schedules and civil work's drawings, reinforcement drawings, Structural steel fabrication drawings, design report, instruction manuals, record drawings.
    - (i) The Concessionaire is required to produce certain drawings, manuals and design documentation as per the mutually agreed programme and submit them to the Engineer within respective submission period as stated therein. If there is any delay in submitting these drawings, manuals or the standard of drawings of manual or report is inadequate for the purpose stated in the Specification which delays the approval of these drawings or manuals, then a sum of India Rupees 500 per drawing or manual or report per week shall be deducted from the amounts due to the Concessionaire as liquidated damages.
    - (ii) If the Contractor fails to achieve completion of the Works within the time prescribed, then the Contractor shall pay to the Employer the sum at the

rate 0.25% of the performance security as liquidated damages for every week of delay for completion of the construction.

- (iii) The Employer may without prejudice to any other method of recovery, deduct the amount of such damages from any payment in its hands, due or which may become due to the Contract. The payment or deduction of such damages shall not relieve the Contractor from his obligation to complete the Works, or from any other of his obligations and liabilities under the Contract

C. Taking-Over Certificate

- (i) For each day's delay in readiness of the plant for issue of the Taking-Over Certificate beyond the programmed date (as provided in the Conditions of Contract) 0.1% of the relevant Performance Security for each day of delay as liquidated damages.
- (ii) The total sum that can be deducted as Liquidated Damages for Delay under (A), (B) and (C) above shall not exceed Performance Security value.

The aggregate maximum of the liquidated damages payable to the Employer under this clause shall be subject to a maximum of 10% of the performance security . The delay shall not exceed nine months in the DFBOT model. Unless explicitly agreed through written communication, any delay over the given time period may result in contract termination.

- (iii) If, before the completion of the whole of the Works any part or section of the Work has been certified by the Engineer as completed, hereof, and occupied by the Employer, the liquidated damages for delay shall, for any period of delay after such certificate be reduced in the proportion which the value of the part or section so certified bears to the value of the whole of the Works.

For the purposes of this Liquidated Damages, the Bidder shall be required to provide performance guarantee to the extent of 10% of the Contract Value, which shall be invoked after completion of the Construction for the purposes of delay period.

Liquidated Damages during O & M

The Assessment of compliance to KPIs for each of the parameters shall be validated in accordance with the Real Time Effluent Quality Monitoring Systems, Surveillance systems, laboratory test results and APPCB/ CPCB effluent analysis reports.

- (i) CETP should always treat 100% of the effluents and should assure the treated water quality as per the specified standards, however penalty clause applicable if

treats less than 90% of the full capacity.

(ii) Any MAJOR breakdown / Shutdown of CETP shall NOT exceed 48 Hours

(iii) Any minor breakdowns shall not exceed 3 Hours

(iv) If the CETP continues to default in terms of quantity or quality or both, then for each parameter, any defect more than 3 times a month, will lead to doubling the penalty.

Parameter	Charges
Less than 90% of the treatment quantity	X charges
Less than 95% of the treatment quality	Y charges
Both X and Y to be mutually agreed	

The Liquidated Damages payable by the contractor will be deducted from the Operation & Maintenance expenses payable to the contractor in each quarter. If the Liquidated Damages exceed more than the O&M charges payable for the quarter, it may be adjusted against the O&M charges payable in the sub-sequent month or against the O&M Security

### Penalty Clause

Deductions will be made in the monthly payments as per the following:

- Non-compliance to demonstrate the plant performance during the completion tests with respect to treated effluent quality for a continuous period of 72 hours, is not acceptable and the Concessionaire shall rectify the facility to demonstrate the performance. Not being able to demonstrate the plant performance shall render the plant as “Non-Acceptable” leading to a liquidity damage of 10% and shall forfeit the performance securities. Concessionaire to maintain guarantee parameters for treated effluent quality during O & M period. These quality parameters are subject to presumptions that actual pollutant (Pollutants like BOD, COD, SS, TDS, Nitrogen etc. in kg/day) load will not exceed design pollutant load (kg/day) per day for every parameter. However, on some occasions during the year (i.e., festivals, excessive rain, extreme weather conditions), individual pollutant concentration (mg/l) can exceed up to 10% of design parameters, and total effluent water flow can exceed up to 10% design flow.
- The treated effluent parameters shall be demonstrated with 24 hour composite samples with 95% compliance on monthly basis i.e. not more than 5% cumulative samples during the month can be off specifications.
- The Maximum Allowed Concentration (MAC) on individual grab samples shall not be more than 2 times of the above specified 95 percentile value.
- If any parameter of any grab sample exceeds the MAC values, the sample shall be considered as “Non-Complaint”.

- However, if pollutants load (kg/day) exceeds the design pollutant load per day basis, or total flow exceeds the design flow (24 hr basis), no penalty shall be applicable.
- During trial run and commissioning, no penalties will be applied and Concessionaire will rectify the plant to ensure successful commissioning.
- Bidder should always treat at least 90% of the effluents and should assure the treated water quality as per the specified standards, in case if the Bidder fails to comply either of the above or both during Concession Period, Authority will impose following penalties/liquidated damages per each event @ INR. 1,00,000 per event. @all the penalties shall be exclusive of GST and shall be payable along with GST

The cumulative of above penalties shall not exceed the monthly treatment fee.

**Condition-B: Breakdown of Equipment:**

In case of breakdown of equipment for more than the stipulated time period as below, on discretion of Engineer-in-Charge, the Contractor shall be penalized as mentioned below:

<b>Equipment</b>	<b>Breakdown Time Period</b>	<b>Penalty Imposed</b>
<b>Critical Equipment/ Instrumentation</b> (Critical equipment shall mean those equipment's / systems which are essential to ensure the plants performance and it shall include all flow and treated effluent quality measuring instruments and systems)	beyond 72 hours	3% of 'Monthly Treatment Fee' per day of default beyond permitted breakdown time period.
<b>Semi-Critical Equipment</b> Semi Critical equipment shall mean those equipment's / systems which are normally necessary to ensure the plants	beyond 7 days	2% of 'Monthly Treatment Fee' per day of default beyond permitted breakdown time period
<b>Non Critical Equipment</b> Non Critical equipment shall mean those equipment's/ systems which have been provided at the plant are but are not critical in for delivering the plants performance, such as area lighting, air conditioners, Instruments not critical towards operation of the plant.	beyond 10 days	1% of 'Monthly Treatment Fee' per day of default beyond permitted breakdown time period

The cumulative of above penalties shall not exceed the monthly treatment fee.

NOTE: In case the non-conformance, on a continuous basis, due to Condition A and Condition B becomes equal to or more than 50% of the monthly treatment fee for a period

more than 3 months in a year i.e. 90 days in a year, then the Employer reserves the right to terminate the Contractor after in-cashing the, Performance Guarantees.

**Condition- C:** In any case if the grid power failure is more than 8 hrs in a single occasion in a day or cumulative grid power failure is more than 8 hrs in a day

a) No relaxation shall be given. The Concessionaire to have power backup arrangements in place.



**Schedule A5 - O&M: Estimated numbers of staff to be provided during the operation and maintenance period of 30 years from the Appointed Date.**

In accordance with relevant Clauses and Specifications, we undertake to provide the required staff on the site of the works for the duties of operation, maintenance, working and renovation and repair of defects during the Operation and Maintenance period.

**Schedule A6 - Annexures**

**Annexure 1**

**Parameters for Treated Effluents / Water Quality**

<b>S. No.</b>	<b>Parameters</b>	<b>Concentration(Maximum)</b>
1	pH	6.0-9.0
2	Biological Oxygen Demand (BOD <sub>3</sub> )	100mg/L
3	Chemical Oxygen Demand (COD)	250mg/L
4	Total Suspended Solids (TSS)	100mg/L
5	Fixed Dissolved Solids (FDS)	As per Sea Water TDS (Less Than)
6	Temperature	<5°C above ambient temperature
7	Total Chromium (as Cr)	2.5mg/L
8	Boron (as B)	2.0mg/L
9	Oil & Grease	5.0mg/L
10	Total Nitrogen	50.0mg/L
11	Phosphates (as P)	5.0mg/L
12	Chlorides	1000mg/L
13	Sulphates (as SO <sub>4</sub> )	1000mg/L
14	Fluoride (as F)	2.0mg/L
15	Sulphides (as S)	2.0mg/L
16	Phenolic Compounds (as C <sub>6</sub> H <sub>5</sub> OH)	1.0mg/L
17	Total Residual Chlorine	1.0mg/L
18	Zinc (as Zn)	5.0mg/L
19	Iron (as Fe)	3.0mg/L
20	Copper (as Cu)	3.0mg/L
21	Trivalent Chromium	2.0mg/L
22	Manganese	2.0mg/L
23	Nickel (as Ni)	3.0mg/L
24	Arsenic (as As)	0.2mg/L
25	Cyanide (as CN)	0.2mg/L
26	Vanadium	0.2mg/L
27	Lead (as Pb)	0.1mg/L
28	Hexavalent Chromium (as Cr <sup>6+</sup> )	0.1mg/L
29	Mercury (as Hg)	0.01mg/L
30	Cadmium (as Cd)	0.05mg/L
31	Selenium (as Se)	0.05mg/L
32	Sodium Absorption Ratio (SAR)	desirable<18;unacceptable >26
33	Bio-assay	90%Survival of Fish after
34	Total Dissolved Solids (TDS)	<35000mg/L

**Annexure 2**  
**Parameters for water treatment plant / Water Quality**

Sl.No.	Characteristics	Acceptable
1	Turbidity (NTU)	1
2	Colour (Units on Platinum Cobalt scale)	5
3	Taste and Odour	Unobjectionable
4	pH	7.0 to 8.5
5	Total dissolved solids (mg/l)	500
6	Total hardness (as CaCO <sub>3</sub> ) (mg/l)	200
7	Chlorides (as Cl) (mg/l)	200
8	Sulphates (as SO <sub>4</sub> ) (mg/l)	200
9	Fluorides (as F) (mg/l)	1
10	Nitrates (as NO <sub>3</sub> ) (mg/l)	45
11	Calcium (as Ca) (mg/l)	75
12	Magnesium (as Mg) (mg/l)	<30
If there are 250 mg/l of sulphates, Mg content can be increased to a maximum of 125 mg/l with reduction of sulphates at the rate of 1 unit per every 2.5 units of sulphates		
13	Iron (as Fe) (mg/l)	0.1
14	Manganese (as Mn) (mg/l)	0.05
15	Copper (as Cu) (mg/l)	0.05
16	Aluminum (as Al) (mg/l)	0.03
17	Alkalinity (mg/l)	200
18	Residual Chlorine (mg/l)	0.2
19	Zinc (as Zn) (mg/l)	5
20	Phenolic compounds (as Phenol) (mg/l)	0.001
21	Anionic detergents (mg/l) (as MBAS)	0.2
22	Mineral Oil (mg/l)	0.01
<b>TOXIC MATERIALS</b>		
23	Arsenic (as As) (mg/l)	0.01
24	Cadmium (as Cd) (mg/l)	0.01
25	Chromium (as hexavalent Cr) (mg/l)	0.05
26	Cyanides (as CN) (mg/l)	0.05
27	Lead (as Pb) (mg/l)	0.05
28	Selenium (as Se) (mg/l)	0.01
29	Mercury (total as Hg) (mg/l)	0.001
30	Polynuclear aromatic hydrocarbons (PAH) (ug/l)	0.2
31	Pesticides (total, mg/l)	Absent
RADIO ACTIVITY+		
32	Gross Alpha activity (Bq/l)	0.1
33	Gross Beta activity (Bq/l)	1

**Parameters for waste constituents with concentration limits**

Class A: Based on leachable concentration limits [Toxicity Characteristic Leaching Procedure (TCLP) or Soluble Threshold Limit Concentration (STLC)]

<b>Class</b>	<b>Constituents</b>	<b>Concentration in mg/l</b>
<b>(1)</b>	<b>(2)</b>	<b>(3)</b>
A1	Arsenic	5.0
A2	Barium	100.0
A3	Cadmium	1.0
A4	Chromium and/or Chromium (III) compounds	5.0
A5	Lead	5.0
A6	Manganese	10.0
A7	Mercury	0.2
A8	Selenium	1.0
A9	Silver	5.0
A10	Ammonia	50*
A11	Cyanide	20*
A12	Nitrate (as nitrate-nitrogen)	1000.0
A13	Sulphide (as H <sub>2</sub> S)	5.0
A14	1,1-Dichloroethylene	0.7
A15	1,2-Dichloroethane	0.5
A16	1,4-Dichlorobenzene	7.5
A17	2,4,5-Trichlorophenol	400.0
A18	2,4,6-Trichlorophenol	2.0
A19	2,4-Dinitrotoluene	0.13
A20	Benzene	0.5
A21	Benzo (a) Pyrene	0.001
A22	Bromodichloromethane	6.0
A23	Bromoform	10.0
A24	Carbon tetrachloride	0.5
A25	Chlorobenzene	100.0
A26	Chloroform	6.0
A27	Cresol (ortho+ meta+ para)	200.0
A28	Dibromochloromethane	10.0
A29	Hexachlorobenzene	0.13
A30	Hexachlorobutadiene	0.5
A31	Hexachloroethane	3.0
A32	Methyl ethyl ketone	200.0
A33	Naphthalene	5.0
A34	Nitrobenzene	2.0
A35	Pentachlorophenol	100.0
A36	Pyridine	5.0
A37	Tetrachloroethylene	0.7

A38	Trichloroethylene	0.5
A39	Vinyl chloride	0.2
A40	2,4,5-TP (Silvex)	1.0
A41	2,4-Dichlorophenoxyacetic acid	10.0
A42	Alachlor	2.0
A43	Alpha HCH	0.001
A44	Atrazine	0.2
A45	Beta HCH	0.004
A46	Butachlor	12.5
A47	Chlordane	0.03
A48	Chlorpyrifos	9.0
A49	Delta HCH	0.004
A50	Endosulfan (alpha+ beta+ sulphate)	0.04
A51	Endrin	0.02
A52	Ethion	0.3
A53	Heptachlor (& its Epoxide)	0.008
A54	Isoproturon	0.9
A55	Lindane	0.4
A56	Malathion	19
A57	Methoxychlor	10
A58	Methyl parathion	0.7
A59	Monocrotophos	0.1
A60	Phorate	0.2
A61	Toxaphene	0.5
A62	Antimony	15
A63	Beryllium	0.75
A64	Chromium (VI)	5.0
A65	Cobalt	80.0
A66	Copper	25.0
A67	Molybdenum	350
A68	Nickel	20.0
A69	Thallium	7.0
A70	Vanadium	24.0
A71	Zinc	250
A72	Fluoride	180.0
A73	Aldrin	0.14
A74	Dichlorodiphenyltrichloroethane (DDT), Dichlorodiphenyldichloroethylene (DDE), Dichlorodiphenyldichloroethane (DDD)	0.1
A75	Dieldrin	0.8
A76	Kepone	2.1
A77	Mirex	2.1
A78	Polychlorinated biphenyls	5.0

A79	Dioxin (2,3,7,8-TCDD)	0.001
-----	-----------------------	-------

**Details of expected Effluent Generation from Industries**

S. No.	Type of Industry	HTDS (KLD)	LTDS (KLD)
1	Pharma	4,154	2,440
2	Spe. Chemical	204	1,399
3	FMCG (Aerated drinks)	0	317
4	Water and Solvent based and Solvent Recovery	3	60
5	Engineering & Electrical	0	402
<b>Total</b>		<b>4,360</b>	<b>4,617</b>

### Annexure 3

#### Raw Effluent / Water Characteristics of CETP (Basic Parameters)

S. No.	Quality Parameter	Concentration	
		HTDiS	LTDiS
1	pH	5.5 – 9.0	5.5 – 9.0
2	BOD	4000 Mg/l	1500 mg/l
3	TSS	< 3500 mg/l	< 1000 mg/l
4	TDS	>12000 mg/	<= 12000 mg/l
5	COD	>8000 mg/l	<= 8000 mg/l
6	Ammonical Nitrogen as N	<1000 mg/l	< 50 mg/l
7	Oil & Grease	< 20 mg/l	< 20 mg/l

## Annexure 4

### Raw Effluent / Water Characteristics of CETP (Other Parameters)

#### LTDS Effluent Quality Analysis

S. No.	Test Parameter	Method of Testing	Unit	Result
1	Turbidity	IS 3025 (Part 10)	NTU	40.3
2	Alkalinity as (CaCO <sub>3</sub> )	IS 3025 (Part 23)	mg/L	Nil
3	M. Alkalinity as (CaCO <sub>3</sub> )	IS 3025 (Part 23)	mg/L	367.2
4	Total Hardness as (CaCO <sub>3</sub> )	IS 3025 (Part 21)	mg/L	360
5	Calcium as Ca	IS 3025 (Part 46)	mg/L	88
6	Magnesium as Mg	IS 3025 (Part 46)	mg/L	34
7	Silica as SiO <sub>2</sub>	IS 3025 (Part 35)	mg/L	19.13
8	Sodium as Na	APHA 3500 Na	mg/L	1079
9	Potassium as K	APHA 3500 K	mg/L	101
10	Chloride	IS 3025 (Part 32)	mg/L	370.5
11	Sulphate	IS 3025 (Part 24)	mg/L	337.02
12	Nitrate as NO <sub>3</sub>	APHA 4500 NO3	mg/L	24.1
13	Iron as Fe	APHA 3125	mg/L	0.43
14	Fluoride as F	APHA 4500 (SPADNS Method)	mg/L	0.82

**Instrument used:** ICP MS, UV- Visible Spectrophotometer

#### LTDS Effluent Quality Analysis (GC Analysis)

S. No.	Test Parameter	Method	Unit	Result
1	Acetic acid	In house Method	ppm	146.31
2	Iodide Solution	In house Method	ppm	Not detected
3	Chloroform	In house Method	mg/kg	BLQ
4	Methanol	In house Method	mg/kg	803.75



S. No.	Test Parameter	Method	Unit	Result
5	Ethyl acetate	In house Method	mg/kg	462.70
6	Toluene	In house Method	mg/kg	BLQ
7	Acetonitrile	In house Method	mg/kg	27.00
8	N-Heptane	In house Method	mg/kg	BLQ
9	Methylene Dichloride	In house Method	mg/kg	BLQ
10	Methy iso Butyl Ketone	Qualitative Screening	mg/kg	Absent
11	Iso propyl Alcohol	In house Method	mg/kg	34.85
12	Acetonitrile + Toulene	In house Method	mg/kg	27.00
13	Ethyl Acetate + Methylene Chloride	In house Method	mg/kg	462.70
14	Iso propyl Alcohol + Cyclohexane	In house Method	mg/kg	34.85
15	N- Heptane +THF	In house Method	mg/kg	15.80
16	Iso propyl alcohol + Toluene	In house Method	mg/kg	34.85
17	Ethyl acetate +N-Heptane	In house Method	mg/kg	462.70
18	Acetone	In house Method	mg/kg	30.90
19	Cyclohexane	In house Method	mg/kg	BLQ
20	N-Hexane	In house Method	mg/kg	BLQ

#### HTDS Effluent Quality Analysis

S. No.	Test Parameter	Method	Unit	Result
1	pH	IS 3025 (Part 11)	--	7.27
2	Turbidity	IS 3025 (Part 10)	NTU	21
3	TSS	APHA 2540-D	mg/L	3412
4	P. Alkalinity as (CaCO <sub>3</sub> )	IS 3025 (Part 23)	mg/L	Nil
5	M. Alkalinity as (CaCO <sub>3</sub> )	IS 3025 (Part 23)	mg/L	4794
6	Total Hardness as (CaCO <sub>3</sub> )	IS 3025 (Part 21)	mg/L	120
7	Calcium as Ca	IS 3025 (Part 46)	mg/L	32

S. No.	Test Parameter	Method	Unit	Result
8	Magnesium as Mg	IS 3025 (Part 46)	mg/L	9.7
9	Silica as SiO <sub>2</sub>	IS 3025 (Part 35)	mg/L	46.28
10	Sodium as Na	APHA 3500 Na	mg/L	27164
11	Potassium as K	APHA 3500 K	mg/L	3224
12	Chloride	IS 3025 (Part 32)	mg/L	20639
13	Sulphate	IS 3025 (Part 24)	mg/L	7667.22
14	Nitrate as NO <sub>3</sub>	APHA 4500 NO3	mg/L	8146.7
15	Iron as Fe	APHA 3125	mg/L	0.56
16	Fluoride as F	APHA 4500 (SPADNS Method)	mg/L	377.92
17	Oil and Grease	IS 3025 (Part 39)	mg/L	0.26
18	Ammonical Nitrogen as N	APHA 4500 NH3	mg/L	1026

#### HTDS Effluent Quality Analysis (GC Analysis)

S. No.	Test Parameter	Method	Unit	Result
1	Acetic acid	In house Method	ppm	84.38
2	Iodide Solution	In house Method	ppm	Not detected
3	Chloroform	In house Method	mg/kg	12.55
4	Methanol	In house Method	mg/kg	2036.90
5	Ethyl acetate	In house Method	mg/kg	1133.85
6	Toluene	In house Method	mg/kg	28.95
7	Acetonitrile	In house Method	mg/kg	778.30
8	N-Heptane	In house Method	mg/kg	16.05
9	Methylene Dichloride	In house Method	mg/kg	252.00
10	Methy iso Butyl Ketone	In house Method	mg/kg	Absent
11	Iso propyl Alcohol	In house Method	mg/kg	877.25
12	Acetonitrile + Toulene	In house Method	mg/kg	807.25

S. No.	Test Parameter	Method	Unit	Result
13	Ethyl Acetate + Methylene Chloride	In house Method	mg/kg	1385.85
14	Iso propyl Alcohol + Cyclohexane	In house Method	mg/kg	877.25
15	N - Heptane +THF	In house Method	mg/kg	45.00
16	Iso propyl alcohol + Toluene	In house Method	mg/kg	2914.15
17	Ethyl acetate +N-Heptane	In house Method	mg/kg	1149.90
18	Acetone	In house Method	mg/kg	210.75
19	Cyclohexane	In house Method	mg/kg	BLQ
20	N-Hexane	In house Method	mg/kg	BLQ

## SCHEDULE – B: APPLICABLE PERMITS

### Concessionaire Applicable Permits

SI No	Applicable Permit	Authority
1	Construction Power	AP Southern Power Distribution Company Ltd
2	Consent to Establishment	AP State Pollution Control Board
3	Consent for Operations	AP State Pollution Control Board
4	Permanent power	AP Southern Power Distribution Company Ltd
❖ Any other permission required from the concerned Utility Department as per site conditions, statutory Fee paid by Concessionaire shall be reimbursed by Authority		

### APIIC Applicable Permits

Approvals related to Environmental, Forest clearance except tree cutting permission, General Arrangement Drawings for pipes at level crossing are obtained by Authority.

## SCHEDULE – C: PERFORMANCE SECURITY

TO  
THE CHIEF ENGINEER,  
ANDHRAPRADESH INDUSTRIAL INFRASTRUCTURE CORPORATION LIMITED,  
9th Floor, APIIC TOWERS, PLOT NO-1, IT PARK, MANGALAGIRI,  
GUNTUR District, Andhra Pradesh - 522503  
Email: chiefengineer3-ap@apiic.in

### WHEREAS:

- (A) \_\_\_\_\_ (the “Concessionaire”) and the Andhra Pradesh Industrial Infrastructure Corporation Ltd., 9th Floor, APIIC Towers, Plot No-1, IT Park, Mangalagiri, Guntur District, Andhra Pradesh - 522503 (the “Authority”) have entered into a Concession Agreement dated \_\_\_\_\_ (the “Agreement”) where by the Authority has agreed to the Concessionaire undertaking Selection of Developer for Strengthening, Upgradation, Augmentation, Establishment, Operation and Maintenance of Industrial Infrastructure on DBFOT basis for APSEZ Atchutapuram Industrial Area developed by APIIC, Anakapalli District, Andhra Pradesh, subject to and in accordance with the provisions of the Agreement.
- (B) The Agreement requires the Concessionaire to furnish a Performance Security to the Authority in a sum of **Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_ only)** (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 byway of Performance Security.

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

1. The Bank here by unconditionally and irrevocably guarantees the due and faithful performance of the Concessionaire’s obligations during the Construction Period, under and in accordance with the Agreement, and agrees and undertakes to pay to the Authority, upon its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Concessionaire, such sum or sums up to an aggregate sum of the Guarantee Amount as the Authority shall claim,

without the Authority being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.

2. A letter from the Authority, under the hand of an Officer not below the rank of Andhra Pradesh Industrial Infrastructure Corporation Ltd., 9th Floor, APIIC Towers, Plot No-1, IT Park, Mangalagiri, Guntur District, Andhra Pradesh - 522503 that the Concessionaire has committed default in the due and faithful performance of all or any of its obligations under and in accordance with the Agreement shall be conclusive, final and binding on the Bank. The Bank further agrees that the Authority shall be the sole judge as to whether the Concessionaire is in default in due and faithful performance of its obligations during the Construction Period under the Agreement and its decision that the Concessionaire is in default shall be final, and binding on the Bank, notwithstanding any differences between the Authority and the Concessionaire, or any dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Concessionaire for any reason whatsoever.
3. In order to give effect to this Guarantee, the Authority shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Concessionaire and/or the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.
4. It shall not be necessary, and the Bank hereby waives any necessity, for the Authority to proceed against the Concessionaire before presenting to the Bank its demand under this Guarantee.
5. The Authority shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Agreement or to extend the time or period for the compliance with, fulfilment and/ or performance of all or any of the obligations of the Concessionaire contained in the Agreement or to postpone for any time, and from time to time, any of the rights and powers exercisable by the Authority against the Concessionaire, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement and/or the securities available to the Authority, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the Authority of the liberty with reference to the matters aforesaid or by reason of time being given to the Concessionaire or any other forbearance, indulgence, act or omission on the part of the Authority or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.

6. This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the Authority in respect of or relating to the Agreement or for the fulfilment, compliance and/or performance of all or any of the obligations of the Concessionaire under the Agreement.
7. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and this Guarantee will remain in force for the period specified in paragraph 8 below and unless a demand or claim in writing is made by the Authority on the Bank under this Guarantee, not later than 6 (six) months from the date of expiry of this Guarantee, all rights of the Authority under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.
8. The Performance Security shall cease to be in force and effect when the Concessionaire shall have expended on Project construction an aggregate sum not less than 20% (twenty per cent) of the Total Project Cost which is deemed to be Rs. \_\_\_\_\_. For the purposes of this Guarantee, and provided the Concessionaire is not in breach of this Agreement. Upon request made by the Concessionaire for release of the Performance Security along with the particulars required hereunder, duly certified by a statutory auditor of the Concessionaire, the Authority shall release the Performance Security forthwith.
9. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the Authority in writing, and declares and warrants that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.
10. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred Branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the Authority that the envelope was so posted shall be conclusive.
11. This Guarantee shall come into force with immediate effect and shall remain in force and effect for a period of one year or until it is released earlier by the Authority pursuant to the provisions of the Agreement.

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_, 2023 at \_\_\_\_\_

SIGNED, SEALED AND DELIVERED

For and on behalf of the BANK by:

(Signature)

(Name)

(Designation)

(Code Number)

(Address)

**NOTES:**

- a) The bank guarantee should contain the name, designation and code number of the officer(s) signing the guarantee.
- b) 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 – D: PROJECT COMPLETION SCHEDULE**

### **1. Project Completion Schedule**

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

#### **1. Project Milestone-I**

1.1 Project Milestone-I shall occur on the date falling on the **3 Months** from the Appointed Date (the "Project Milestone-I").

1.2 Prior to the occurrence of Project Milestone-I, the Concessionaire shall have commenced construction of the Project and achieved 5% Physical Progress.

#### **2. Project Milestone-II**

2.1 Project Milestone-II shall occur on the date falling on the **5 Months** from the Appointed Date (the "Project Milestone-II").

2.3 Prior to the occurrence of Project Milestone-II, the Concessionaire shall have commenced construction of the Project and achieved 10% Physical Progress

#### **3. Project Milestone-III**

3.1 Project Milestone-III shall occur on the date falling on the **7 Months** from the Appointed Date (the "Project Milestone-III").

3.2 Prior to the occurrence of Project Milestone-III, the Concessionaire shall have commenced construction of the Project and achieved 20% Physical Progress

#### **4. Project Milestone-IV**

4.1 Project Milestone-IV shall occur on the date falling on the **9 Months** from the Appointed Date (the "Project Milestone-IV").

4.2 Prior to the occurrence of Project Milestone-IV, the Concessionaire shall have commenced construction of the Project and achieved 40% Physical Progress

#### **5. Project Milestone-V**

5.1 Project Milestone-V shall occur on the date falling on the **11 Months** from the Appointed Date (the "Project Milestone-V").

5.2 Prior to the occurrence of Project Milestone-V, the Concessionaire shall have commenced construction of the Project and achieved 55% Physical Progress

**6. Project Milestone-VI**

6.1 Project Milestone-VI shall occur on the date falling on the **13 Months** from the Appointed Date (the "Project Milestone-VI").

6.2 Prior to the occurrence of Project Milestone-VI, the Concessionaire shall have commenced construction of the Project and achieved 70% Physical Progress

**7. Project Milestone-VII**

7.1 Project Milestone-VII shall occur on the date falling on the **16 Months** from the Appointed Date (the "Project Milestone-VII").

7.2 Prior to the occurrence of Project Milestone-VII, the Concessionaire shall have commenced construction of the Project and achieved 85% Physical Progress

**8. Scheduled Completion Date**

8.1 The Scheduled Completion Date shall be the 24 **Months** from the Appointed Date.

8.2 On or before the Scheduled Completion Date, the Concessionaire shall have completed the Project in accordance with this Agreement.

**9. Extension of period**

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

## **SCHEDULE - E**

### **SPECIFICATIONS AND STANDARDS**

The Concessionaire shall ensure compliance as per industry best practices, as may become applicable from time to time including but not limited to the specifications and standards set forth herein for development of the Project.

#### **1. Levelling & Grading**

- a) Prior to the start of any activity of earthwork, the area under construction shall be cleared of shrubs, vegetation, grass, brushwood, trees, and saplings.
- b) The trees cut inside the Site shall be uprooted up to 1m below ground level and the branches to be chopped to small sizes and stacked at designated place within premises
- c) The Concessionaire shall prepare and submit the Independent Expert for approval the drawing showing the cutting and filling mentioning the Finished Ground Level (FGL) and various locations, road junctions etc.
- d) The unsuitable soil shall be removed for required depth prior to the start of any construction work.
- e) Site levelling and grading works to be done considering balanced cut & fill up to possible extent to minimize the borrow earth from the outside of Site. Unsuitable soil shall not be used for filling for below building, roads, open container yards & truck parking area
- f) Slope to be maintained in embankments at considerable level difference areas using slope protection measures or toe retaining structure.
- g) IS 3764:1992-Safety code for excavation works to be adhered during earthwork activities.
- h) Methods of test for soils shall be as per IS: 2720 as applicable.
- i) Mechanical compaction at optimal moisture content and ramming to be done layer wise (maximum 200 mm thickness) with proper mechanical compaction and watering and to achieve required relative density as per the applicable IS Codes and specifications.
- j) The paved areas to be designed and constructed as per SP 63:2018 and ICPI Manual for yard pavements.
- k) Adequate numbers of 30 meters (or equivalent) high mast lighting tower with LED flood light is be installed. The LED shall have minimum average lumen level of 20 lux in the ground up to 50 meters from centre of high mast. Beam angle of luminaries/ lamps positioning is to be suitable to cover illumination in ground as well as stored containers in the yard up to minimum 16 meters high. Lighting shall be as per SP 72:2010-National lighting Code.
- l) Adequate drainage system to be provided in the yard area conforming to applicable IS code provisions.

#### **2. Building & Other Structures**

- a) Buildings as per CPWD specifications and as per the applicable development and regulatory norms of the Site.

- i. RCC Structures shall be designed as per IS 456:2000
  - ii. Steel Structures shall be designed in accordance with the provision IS 800:2007. Structural steel shall conform to IS 2062:2011. Tubular section shall conform to IS 4923:1997
  - iii. Architectural design norms as per NBC
  - iv. Structural design norms as per NBC and BIS
- b) Firefighting arrangement as per NBC

### **3. Internal Roads and Parking space**

- a) All roads are to be developed as Rigid Pavement / Flexible Pavement per IRC specifications and manual following MoRTH specifications for Roads and Bridges 5<sup>th</sup> revision and as revised time to time.
- b) Typical road section is provided in Annex-III of this Schedule-D
- c) Road Over Bridges to be designed as per IRC 05:2015 and as per latest railway norms
- d) Paver blocks shall be as per SP 063 :2018
- e) Utility corridors shall be provided along the road.
- f) RCC Storm water drain shall be provided along the road based on the storm water requirements as per design considering the rainfall in last 30 years in the area.
- g) Road markings are to be provided as per IRC 35:2015
- h) Road signages are to be provided as per IRC 67:2012
- i) All roads (designated for movement of cargo) shall be designed for turning radius as per IRC SP 41:1994 for trailers (with a minimum length of 18 meters).
- j) Parking spaces are to be as per SP 12:2015

### **4. Equipment**

- a) The Concessionaire shall undertake supply, installation, testing, commissioning/calibration of the Project equipment in accordance with the relevant Specifications and Standards of the original equipment manufacturer's guidelines for such equipment.
- b) All equipment to be procured shall be accompanied by relevant efficient energy usage certificate and/or emission under control certificate from relevant Authority
- c) Other Handling equipment and custodian systems to be as per Policy and Guidelines for setting up of Inland Container Depots (ICDs), Container Freight Stations (CFSs) and Air Freight Stations (AFSs) dated 05.11.2020 by CBIC, Ministry of Finance and as revised time to time.
- d) The following equipment or better system, but not limited to, shall be deployed for achieving efficiencies in operations at MMLP :
  - i. Forklift trucks;
  - ii. Service carts;
  - iii. Side-pick cranes;
  - iv. Top-pick cranes;

- v. All ancillary equipment or any facility and equipment incidental or necessary for operation of the Industrial Park.
- vi. Weighbridges- The specifications for weigh bridges shall comply with guidelines given in IS: 1436:1991. Weighbridges shall conform to the provisions of the Standards of Weights and Measures Act, 1976 and the Standards of Weights and Measures (Package Commodities) Rules, 1977 or any substitute thereof.

## **5. Landscaping & Rainwater harvesting**

- a) General landscaping shall be done as per SP 21:2005
- b) Rainwater storage and recharge is mandatory for all Industrial Buildings. Suitable provision shall be made for collection of water from roof top to the recharge pits
- c) Rainwater harvesting to be as per i) development control rules ii) environmental approval
- d) Rainwater harvesting works shall be done as per Rainwater Harvesting and Conservation Manual by Central Public Health and Environmental Engineering Organization (CPHEEO).

## **6. UTILITIES**

### **a) Road lighting**

- i. The lighting shall comply with the standards, requirements, illumination level and specifications given in
- ii. Indian Standard 'Code of Practice for Lighting of Public Throughfare' IS 1944 Part I & II: 1970.
- iii. Road lighting shall be designed with minimum illumination of 15 lux or NH standards for urban roads whichever is higher.
- iv. GI Octagonal Poles and LED luminaries are to be considered for Road lighting system.
- v. Power supply to Road lighting pole is to be fed through underground 1.1 kV XLPE insulated, armored, Aluminum conductor cables. Distribution of power to be through 415V, 3 phase, 4 wire system.
- vi. The streetlights shall be controlled from outdoor street light Panel with 4Pole MCCB incomer, energy meter, automatic timers switch and power contactor for switching ON/ OFF the lights and MCB outgoings for distribution.

### **b) Data Networking**

- i. Ethernet IP networks as per IEEE 802.11 including both wireline and wireless components and redundancy for high reliability and availability shall be designed and maintained across the Industrial Park for data transmission between different equipment, control centres, administration and gate systems.
- ii. Fast Ethernet/Ethernet Network – LAN and WAN cables as per ISO/IEC 8802-3:2021.
- iii. A fiber backbone in ring structure shall be created to connect all buildings; all cables to be laid in redundancy mode.
- iv. The network rack shall be as per the ISO 27001:2013 standards

- v. The IP address, the line feed shall be shared with Authority and the Independent Expert

**c) Telephone System**

- i. The telephone system shall conform to applicable ITU-T standards.
- ii. Centralized Voice Mail System (CVMS) shall be provided, integrated with the switch to enable PABX users to leave, retrieve and broadcast voice messages to and from this single message centre.
- iii. Provision of VHF radio/TETRA systems for field communications
- iv. Provision of mobile telephones for field communications

**d) Closed Circuit Television**

- i. Closed-Circuit Television (CCTV) System with minimum 15 days data storage/recording backup shall be provided for video surveillance and recording function for the operators to monitor the entire Industrial Park Site.
- ii. Two types of cameras shall be provided:
- iii. Fixed cameras with fixed focal length lens and fixed orientation.
- iv. Pan/Tilt/Zoom (PTZ) cameras with variable focal length lens with adjustable orientation in both the vertical and horizontal directions.

**e) Public Address System & Video Conferencing System**

- i. The PA equipment shall be in accordance with IS 1881:1998
- ii. All PA equipment shall be rack mounted.

**f) UPS & Battery Bank**

- i. UPS shall be compliance of Standards UL 2003 (MH26669), JIS C 8702, IEC 60896:2004, ISO14001:2015 and ISO9001.2015.

**g) Fire Fighting System**

- i. The firefighting system is to be designed in accordance with applicable IS codes and NBC.
- ii. The design of the fire mains shall comply with the Local Fire Authorities' Regulations, NBC, IS Codes.

**h) Water Supply System**

- i. The water supply system shall be designed and constructed as per Central Public Health and Environmental Engineering Organisation (CPHEEO) "Manual on Water Supply and Treatment.
- ii. The incoming water supplies and the system they supply shall be designed and constructed as per NBC.
- iii. Distribution system for potable and recycled water shall comply with IS: 4984: 2016.

- iv. Service water from storage tank to individual buildings by pumping system/gravity system, through buried HDPE pipeline & fittings.
- v. Pipes and fittings for water supply shall be High Density Polyethylene Pipes for Potable water system is class PE100 PN6 and for Recycle water system shall be Class PE 100 PN 8, confirming to IS 4984:2016. All water supply pipelines in road crossings shall be as per CPHEEO Manual.
- vi. Gate valve shall be confirming to IS 14846:2000
- vii. Air valve shall be confirming to IS 14845:2000
- viii. Water Meter with NRV, Ferule and Strainer shall be confirming to IS 2373:1981/ ISO 4064-1:2014
- ix. Ball valve shall be confirming to IS 9890:1981

**i) Sewerage and Drainage System**

- i. The sewerage system (underground drainage) shall be designed and constructed as per Central Public Health and Environmental Engineering Organisation (CPHEEO). Precast RCC Inspection Chamber & M- 15 grade (min.) manholes for sewerage system with maximum spacing of 30 m C/C. RCC NP-3/DWC pipes will be used for Sewerage system.
- ii. All conduits for sewerage system will be RCC NP-3/DWC conforming to IS 14930 Part-I and II, IS 4984:2016 & IS 14333:1996.
- iii. The storm water drainage system shall be designed and constructed as per Central Public Health and Environmental Engineering Organisation (CPHEEO). RCC Storm water drain of minimum M25 grade shall be provided by the side of all container yards, circulation areas, rail platforms based on the storm water requirements as per design considering the rainfall in last 30 years in the area.

**j) Staffing and manpower training**

The Concessionaire shall conduct staff and manpower training for all the Services offered in the Industrial Park in regular intervals as per the schedule approved by Independent Expert.

**7. General standards**

In the absence of any specific provision in this Agreement, the following standards shall apply in order of priority:

- a) Bureau of Indian Standards (BIS), Indian Standards, National Building Code, Central Public Works Department (CPWD), Ministry of Road Transport and Highways (MoRTH), Indian Road Congress (IRC), Indian Railways Standards;
- b) Relevant International Standards or codes as applicable in the United States of America or the European Union or Singapore; and
- c) Any other specifications/standards/codes proposed by the Concessionaire and reviewed by the Independent Expert.

In case of any conflict or inconsistency in the provisions of the applicable Indian Standards or codes and International Standards or codes, the Indian Standards or codes shall apply. The latest version of the specified codes and standards which were notified/published at least 60 (sixty) days prior to the bid date in respect of this Agreement shall apply. For subsequent phases, updated codes and specifications in force at the time of actual execution shall be considered.



## **SCHEDULE – E: DRAWINGS**

### **1. Drawings**

In compliance of the obligations set forth in Clause 13.2 of this Agreement, the Concessionaire shall furnish to the Authority / Independent Engineer, free of cost, all required Drawings listed and however the concessionaire shall prepare and submit the detailed and working drawings to Independent Engineer /Chief Engineer as per the technical specifications, standards and in accordance with the provisions of the concession agreement and up to the satisfaction of Independent Engineer/ Andhra Pradesh Industrial Infrastructure Corporation Ltd.

### **2. Additional drawings**

If the Independent Engineer/ Chief Engineer determines that for discharging its duties and functions under this Agreement, it required any drawings other than those listed in it may by notice require the Concessionaire to prepare and furnish such drawings forthwith. Upon receiving a requisition not this effect, the Concessionaire shall promptly prepare and furnish such drawings to the Independent Engineer/ Chief Engineer, as if such drawings formed part of this Schedule-E

## **SCHEDULE – F: TESTS**

### **1. Schedule for Tests**

- 1.1. The Concessionaire shall, no later than 60 (sixty) days prior to the likely completion of PROJECT component, notify the Independent Engineer and the Authority of its intent to subject the PROJECT component to Tests, and no later than 7(seven) days prior to the actual date of Tests, furnish to the Independent Engineer and the Authority detailed inventory and particulars of all works forming part of the PROJECT component.
- 1.2. The Concessionaire shall notify the Independent Engineer of its readiness to subject the PROJECT component to Tests at any time after 7(seven) days from the date of such notice, and upon receipt of such notice, the Independent Engineer shall, in consultation with the Concessionaire, determine the date and time for each Test and notify the same to the Authority who may designate its representative to witness the Tests. The Independent Engineer shall there upon conduct the tests itself or cause any of the tests to be conducted in accordance with Article15 and this Annexure I.

### **2. Tests**

- 2.1. Without prejudice to the provisions of this Clause2, the Independent Engineer shall require the Concessionaire to carry out or cause to be carried out Tests, in accordance with Good Industry Practice, for determining the compliance of the PROJECT component with Specifications and Standards. The Tests would be carried out on a random sample basis and the number or frequency, as the case may be, of such Tests shall, to the extent possible, not exceed 10% (ten percent) of the tests that the Concessionaire of such works would normally undertake in accordance with Good Industry Practice.
- 2.2. Visual and physical Test: The Independent Engineer shall conduct a visual and physical check of the PROJECT component to determine that all works and equipment forming part there of conform to the provisions of this Agreement.

### **3. Test for Pipelines**

- 3.1. The Concessionaire shall, no later than 30 (thirty) days prior to the likely completion of the laying of pipelines notify the Independent Panel and the Authority of its intent to subject the PROJECT component to Tests, and no later than 7 (seven) days prior to the actual date of Tests, furnish to the Independent Engineer and the Authority detailed inventory and particulars of manufacturers, guidelines, guarantees and warranties.
- 3.2. The Concessionaire shall notify the Independent Engineer of its readiness to subject the PROJECT component to Tests at any time after7 (seven) days from the date of such notice, and upon receipt of such notice, the Independent Engineer shall, in consultation

with the Concessionaire, determine the date and time for each Test and notify the same to the Authority who may designate its representative to witness the Tests. The Independent Engineer shall there upon conduct the Tests to determine that laying of PROJECT component.

- 3.3. Environmental audit: The Independent Engineer shall carry out a check to determine conformity of the PROJECT component, as the case may be, with the environmental requirements set forth in Applicable Laws and Applicable Permits.
- 3.4. Safety review: Safety audit of the PROJECT component shall be undertaken by the Independent Engineer and on the basis of such audit, the Independent Engineer shall determine conformity of the PROJECT component in accordance with the provisions of this Agreement.
- 3.5. Other Tests: The Independent Engineer may require the Concessionaire to carry out or cause to be carried additional Tests, in accordance with Good Industry Practice, for determining the compliance of the PROJECT component with Specifications and Standards.

**4. Concessionaire for conduction Tests**

All Tests set forth in this Schedule- H shall be conducted by the Independent Engineer/ TPQC/PMC or such other concessionaire or person as it may specify in consultation with the Authority.

**5. Completion Certificate**

Upon successful completion of Tests, the Independent Engineer/ Chief Engineer shall issue the Completion Certificates, in accordance with the provisions of Article15.

**SCHEDULE – G: COMPLETION CERTIFICATE**

1. I, \_\_\_\_\_ (Name of the Chief Engineer ), acting as Chief Engineer , under and in accordance with the Concession Agreement dated \_\_\_\_\_ (the “Agreement”), for \_\_\_\_\_, through \_\_\_\_\_ (Name of the Concessionaire), hereby certify that the Tests specified in Article15 and Schedule-H of the Agreement have been successfully undertaken to determine compliance of the PROJECT component with the provisions of the Agreement, and I am satisfied that the PROJECT component can be safely and reliably placed for commercial service for Treatment of Effluent from Member Industries thereof.
  
2. It is certified that, in terms of the aforesaid Agreement, all works forming part of the PROJECT component have been completed, and the PROJECT component is here by declared fit for entry into commercial operation on this the \_\_\_\_\_ day of \_\_\_\_\_ 2023.

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

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

## **SCHEDULE – H: SAFETY REQUIREMENTS**

### **1. Guiding principles**

- 1.1 Safety Requirements aim at reduction in injuries, loss of life and damage to property resulting from accidents on or about the Project, irrespective of the person(s) at fault.
- 1.2 Users of the Project include technical/non-technical and labour etc. involved in, or associated with accidents.
- 1.3 Safety Requirements apply to all phases of development/construction, operation and maintenance with emphasis on identification of factors associated with accidents, consideration of the same, and implementation of appropriate remedial measures.
- 1.4 Safety Requirements include measures associated with PROJECT management and regulation such as safety signs, enforcement and emergency response.

### **2. Obligations of the Concessionaire**

The Concessionaire shall abide by the following insofar as they relate to safety of the Users:

- a) Applicable Laws and Applicable Permits;
- b) Manual for Safety in CPHEEO
- c) Relevant Standards/Guidelines of IS relating to safety, bridges, Safety sign;
- d) Provisions of this Agreement; and
- e) Good Industry Practice.

### **3. Appointment of Safety Consultant**

For carrying out safety audit of the Project under and in accordance with this Schedule-K, the Authority shall appoint from time to time, one or more qualified Firms or Organizations as its consultants (the "Safety Consultant"). The Safety Consultant shall employ a team comprising, without limitation to undertake safety audit of the Project.

### **4. Safety measures during Development Period**

- 4.1. No later than 90 (ninety) days from the date of this Agreement, the Authority shall appoint a Safety Consultant for carrying out safety audit at the design stage of the Project. The Safety Consultant shall collect data on all fatal accidents and other accidents which occurred on the Project in the preceding two years by obtaining copies of the relevant First Information Reports (FIRs) from the police stations having jurisdiction. The information contained in such FIRs shall be summarised in the form prescribed by the Authority for this purpose and the data shall be analysed for the type of victims killed or injured, location of accidents and other relevant factors.
- 4.2. The Concessionaire shall provide to the Safety Consultant, in four copies, the relevant drawings containing the design details that have a bearing on safety of Users (the "Safety Drawings"). Such design details shall include all relevant and consequential information

followed by the guidelines of CPHEEO/IE. The Safety Consultant shall review the design details and forward 3 (three) copies of the Safety Drawings with its recommendations, if any, to the Independent Engineer/ Chief Engineer who shall record its comments, if any, and forward one copy each to the Authority and the Concessionaire.

- 4.3. The accident data and the design details shall be compiled, analysed and used by the Safety Consultant for evolving a package of recommendations consisting of safety related measures for the Project. The safety audit shall be completed in a period of three months and a report thereof (the "Safety Report") shall be submitted to the Authority, in 5 (five) copies. One copy each of the Safety Report shall be forwarded by the Authority to the Concessionaire and the Independent Engineer/ Chief Engineer forthwith.
- 4.4. The Concessionaire shall endeavor to incorporate the recommendations of the Safety Report in the design of the Project, as may reasonably be required in accordance with Applicable Laws, Applicable Permits, Manuals and Guidelines of the CPHEEO/Authority, Specifications and Standards, and Good Industry Practice. If the Concessionaire does not agree with any or all of such recommendations, it shall state the reasons thereof and convey them to the Authority forthwith. In the event that any or all of the works and services recommended in the Safety Report fall beyond the scope of Schedule-A, Schedule-B, the Concessionaire shall make a report thereon and seek the instructions of the Authority for funding such works in accordance with the provisions of Article 19.
- 4.5. Without prejudice to the provisions of Paragraph 4.4, the Concessionaire and the Independent Engineer/ Chief Engineer shall, within 15 (fifteen) days of receiving the Safety Report, send their respective comments thereon to the Authority, and no later than 15 (fifteen) days of receiving such comments, the Authority shall review the same along with the Safety Report and by notice direct the Concessionaire to carry out any or all of the recommendations contained therein with such modifications as the Authority may specify; provided that any works or services required to be undertaken hereunder shall be governed by the provisions of Article 18.

## **5. Safety measures during Construction Period**

- 5.1. A Safety Consultant shall be appointed by the Authority, no later than 4 (four) months prior to the expected PCD, for carrying out a safety audit of the completed Construction Works.
- 5.2. The Safety Consultant shall collect and analyses the accident data for the preceding two years in the manner specified in Paragraph 4.1 of this Schedule- H. It shall study the Safety Report for the Development Period and inspect the Project to assess the adequacy of safety measures. The Safety Consultant shall complete the safety audit within a period of 4 (four) months and submit a Safety Report recommending a package of additional road safety measures, if any, that are considered essential for reducing accident hazards on

the Project. Such recommendations shall be processed, mutatis mutandis, and acted upon in the manner set forth in Paragraphs 4.3, 4.4 and 4.5 of this Schedule-H.

- 5.3. The Concessionaire shall make adequate arrangements during the Construction Period for the safety of workers and Users in accordance with the guidelines of CPHEEO for safety in construction zones, and notify the Authority and the Independent Engineer/ Chief Engineer about such arrangements.

## **6. Safety measures during Operation Period**

- 6.1. The Concessionaire shall develop, implement and administer a surveillance and safety programmer for Users, including correction of safety violations and deficiencies and all other actions necessary to provide a safe environment in accordance with this Agreement.
- 6.2. [The Concessionaire shall establish a Project Safety Management Unit (the. "PSMU") to be functional on and after PCD, and designate one of its officers to be in-charge of the PSMU. Such officer shall have specialist knowledge and training in project safety by having attended a course conducted by a reputed organization on the subject.]
- 6.3. The Concessionaire shall keep a copy of every FIR recorded by the Police with respect to any accident occurring on the Project. In addition, the Concessionaire shall also collect data for all cases of accidents not recorded by the Police but where a vehicle rolled over or had to be towed away. The information so collected shall be summarized in the form prescribed by the Authority for this purpose. The Concessionaire shall also record the exact location of each accident on a road map. The aforesaid data shall be submitted to the Authority at the conclusion of every quarter and to the Safety Consultant as and when appointed.
- 6.4. The Concessionaire shall submit to the Authority before the 31<sup>st</sup> (Thirty first) May of each year, an annual report (in ten copies) containing, without limitation, a detailed listing and analysis of all accidents of the preceding Accounting Year and the measures taken by the Concessionaire pursuant to the provisions of Paragraph 6.1 of this Schedule-H for averting or minimizing such accidents in future.
- 6.5. Once in every Accounting Year, a safety audit shall be carried out by the Safety Consultant to be appointed by the Authority. It shall review and analyses the annual report and accident data of the preceding year, and undertake an inspection of the Project. The Safety Consultant shall complete the safety audit within a period of 1 (one) month and submit a Safety Report recommending specific improvements, if any, required to be made to the markings, signs, Project Facilities. Such recommendations shall be processed, mutatis mutandis, and acted upon in the manner set forth in Paragraphs 4.3, 4.4 and 4.5 of this Schedule-H.

**7. Costs and expenses**

Costs and expenses incurred in connection with the Safety Requirements set forth herein, including the provisions of Paragraph 2 of this Schedule-H, shall be met in accordance with Article 19, and in particular, the remuneration of the Safety Consultant, safety audit, and costs incidental thereto, shall be met by the Concessionaire.



## **SCHEDULE – I: REPORTING REQUIREMENTS**

A list of reports required to be submitted by the Concessionaire to the Authority and Independent Engineer are given below. Apart from these, the Concessionaire should submit any additional reports as required under the Agreement or to meet compliance, regulatory and oversight requirements of the Project, as required by the Authority, Independent Engineer, and other regulatory / compliance enforcement authorities.

### **A. During Construction Period**

The Concessionaire will submit the following reports during the Construction Period to the Authority and Independent Engineer.

1. Monthly and quarterly progress report-Physical and financial progress of the Project;

### **B. During Operations and Maintenance Period (Post PCD)**

- a. Daily test and quality reports;
- b. Treated water quality reports;
- c. Daily & Monthly treated water production report;
- d. Quarterly reports;
- e. Quarterly report on complaints and redress of complaints;
- f. Yearly audited balance sheet and profit & loss statements with all schedules, in a format as described by Securities and Exchange Board of India for any listed entity; and
- g. Quarterly unaudited balance sheet and profit & loss statements with all schedules, in a format as described by Securities and Exchange Board of India for any listed entity.
- h. The treated water and other byproducts generated at Project Site are the property of Concessioner.

## **SCHEDULE – J: SELECTION OF INDEPENDENT ENGINEER**

**Selection of Independent Engineer will be as per the EOI called by the Authority**

1. One-half of such remuneration shall be reimbursed by the Concessionaire to the Authority.
2. The maximum fee is 0.5% of the Project Cost.

## **SCHEDULE – K: TERMS OF REFERENCE FOR INDEPENDENT ENGINEER**

### **1. Scope**

- 1.1. These Terms of Reference for the Independent Engineer (the “**TOR**”) are being specified pursuant to the Concession Agreement dated\_\_\_\_\_ (the “**Agreement**”), which has been entered into between the Authority and\_\_\_\_\_ (the “**Concessionaire**”) for Selection of Developer for Strengthening, Upgradation, Augmentation, Establishment, Operation and Maintenance of Industrial Infrastructure on DBFOT basis for APSEZ Atchutapuram Industrial Area developed by APIIC, Anakapalli District, Andhra Pradesh, and a copy of which is annexed hereto and marked as Annex-A to form part of this TOR.
- 1.2. The TOR shall apply to construction, operation and maintenance of the Project.

### **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 the min 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.
- 2.3. 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 of the Drawings and Documents as set forth in Paragraph 4;
  - ii. Review, inspection and monitoring of Construction Works as set forth in Paragraph 5;
  - iii. Conducting Tests on completion of construction and issuing Completion as set forth in Paragraph 5;
  - iv. Review, inspection and monitoring of O&M as set forth in Paragraph 6;
  - v. Review, inspection and monitoring of Divestment Requirements as set forth in Paragraph 7;
  - vi. Determining, as required under the Agreement, the costs of any works or services and/or their reasonableness;
  - vii. Determining, as required under the Agreement, the period or any extension thereof, for performing any duty or obligation;

- viii. Assisting the Parties in resolution of disputes as set forth in Paragraph 9;
- ix. undertaking all other duties and functions in accordance with the Agreement; and
- x. Monitor and check the Quality and quantity of PROJECT and its components as per Schedule-L.

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. Development Period**

4.1. During the Development Period, the Independent Engineer shall undertake a detailed review of the Drawings to be furnished by the Concessionaire along with supporting data, including the geotechnical and hydrological investigations if necessary, characteristics of materials, topographical surveys and other surveys. The Independent Engineer shall complete such review and send its comments/observations to the Authority and the Concessionaire within 15 (fifteen) days of receipt of such Drawings. In particular, such comments shall specify the conformity or otherwise of such Drawings with the Scope of the Project and Specifications and Standards.

4.2. The Independent Engineer shall review any modified Drawings or supporting Documents sent to it by the Concessionaire and furnish its comments within 7(seven) days of receiving such Drawings or Documents.

4.3. The Independent Engineer shall also review the Safety Report submitted by the Concessionaire and furnish its comments there onto the Authority within 15 (fifteen) days of receiving such report.

4.4. The Independent Engineer shall review the detailed design, construction methodology, quality assurance procedures and the procurement, engineering and construction time schedule sent to it by the Concessionaire and furnish its comments within 15 (fifteen) days of receipt thereof.

4.5. Upon reference by the Authority, the Independent Engineer shall review and comment on the EPC Concessionaire any other contract for construction, operation and maintenance of the Project, and furnish its comments within 7 (seven) days from receipt of such reference from the Authority.

#### **5. Construction Period**

5.1. In respect of the Drawings, Documents and Safety Report received by the Independent Engineer for its review and comments during the Construction Period, the provisions of Paragraph 4 shall apply, mutatis mutandis.

- 5.2. The Independent Engineer shall review the monthly progress report furnished by the Concessionaire and send its comments there on to the Authority and the Concessionaire within 7 (seven) days of receipt of such report.
- 5.3. The Independent Engineer shall inspect the Construction Works and the Project Facilities once every month, preferably after receipt of the monthly progress report from the Concessionaire, but before the 20<sup>th</sup>(twentieth) day of each month in any case, and make out a report of such inspection (the “**Inspection Report**”) setting forth an overview of the status, progress, quality and safety of construction, including the work methodology adopted, the materials used and their sources, and conformity of Construction Works with the Scope of the Project and the Specifications and Standards. 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 construction of the Project Facilities. The Independent Engineer shall send a copy of its Inspection Report to the Authority and the Concessionaire within 7 (seven) days of the inspection.
- 5.4. The Independent Engineer may inspect the Project Facilities more than once in a month if any lapses, defects or deficiencies require such inspections.
- 5.5. For determining that the Construction Works conform to Specifications and Standards, the Independent Engineer shall require the Concessionaire to carry out, or cause to be carried out, tests on a sample basis, to be specified by the Independent Engineer in accordance with Good Industry Practice for quality assurance. The Independent Engineer shall issue necessary directions to the Concessionaire for ensuring that the tests are conducted in a fair and efficient manner, and shall monitor and review the results thereof.
- 5.6. The timing of tests and the criteria for acceptance/rejection of their results shall be determined by the Independent Engineer. The tests shall be undertaken on a random sample basis and shall be in addition to, and independent of, the tests that may be carried out by the Concessionaire for its own quality assurance in accordance with Good Industry Practice.
- 5.7. In the event that the Concessionaire carries out any remedial works for removal or rectification of any defects or deficiencies, the Independent Engineer shall require the Concessionaire to carry out, or cause to be carried out, tests to determine that such remedial works have brought the Construction Works into conformity with the Specifications and Standards, and the provisions of this Paragraph 5 shall apply to such tests.

- 5.8. In the event that the Concessionaire fails to achieve any of the Project Milestones, the Independent Engineer shall undertake a review of the progress of construction and identify potential delays, if any. If the Independent Engineer shall determine that completion of the Project is not feasible within the time specified in the Agreement, it shall require the Concessionaire to indicate within 15 (fifteen) days the steps proposed to be taken to expedite progress, and the period within which the Project Completion Date shall be achieved. Upon receipt of a report from the Concessionaire, the Independent Engineer shall review the same and send its comments to the Authority and the Concessionaire forth with.
- 5.9. If at any time during the Construction Period, the Independent Engineer determines that the Concessionaire has not made adequate arrangements for the safety of workers and Users in the zone of construction or that any work is being carried out in a manner that threatens the safety of the workers and the Users, it shall make a recommendation to the Authority forthwith, identifying the whole or part of the Construction Works that should be suspended for ensuring safety in respect thereof.
- 5.10. In the event that the Concessionaire carries out any remedial measures to secure the safety of suspended work and Users, it may, by notice in writing, require the Independent Engineer to inspect such works, and within 3(three) days of receiving such notice, the Independent Engineer shall inspect the suspended works and make a report to the Authority forth with, recommending whether or not such suspension may be revoked by the Authority.
- 5.11. If suspension of Construction Works is for reasons not attributable to the Concessionaire, the Independent Engineer shall determine the extension of dates set forth in the Project Completion Schedule, to which the Concessionaire is reasonably entitled, and shall notify the Authority and the Concessionaire of the same.
- 5.12. The Independent Engineer shall carry out, or cause to be carried out, all the Tests as required and issue a Completion Certificate, as the case may be. For carrying out its functions under this Paragraph 5.13 and all matters incidental there to, the Independent Engineer shall act under and in accordance with the provisions of Article 14.
- 5.13. Upon reference from the Authority, the Independent Engineer shall make a fair and reasonable assessment of the costs of providing information, works and services as set forth in Article 16 and certify the reasonableness of such costs for payment by the Authority to the Concessionaire.
- 5.14. The Independent Engineer shall aid and advise the Concessionaire in preparing the Maintenance Manual.

## **6. Operation Period**

- 6.1. In respect of the Drawings, Documents and Safety Report received by the Independent Engineer for its review and comments during the Operation Period, the provisions of Paragraph 4 shall apply, *mutatis mutandis*.
- 6.2. The Independent Engineer shall review the annual maintenance programme furnished by the Concessionaire and send its comments thereon to the Authority and the Concessionaire within 15 (fifteen) days of receipt of the maintenance programme.
- 6.3. The Independent Engineer shall review the monthly status report furnished by the Concessionaire and send its comments there onto the Authority and the Concessionaire within 7 (seven) days of receipt of such report.
- 6.4. The Independent Engineer shall inspect the Project Facilities once every month, preferably after receipt of the monthly status report from the Concessionaire, but before the 20<sup>th</sup> (twentieth) day of each month in any case, and make out an O&M Inspection Report setting forth an overview of the status, quality and safety of O&M including its conformity with the Maintenance Requirements and Safety Requirements. In a separate section of the O&M Inspection Report, the Independent Engineer shall describe in reasonable detail the lapses, defects or deficiencies observed by it in O&M of the Project Facilities. The Independent Engineer shall send a copy of its O&M Inspection Report to the Authority and the Concessionaire within 7 (seven) days of the inspection.
- 6.5. The Independent Engineer may inspect the Project Facilities more than once in a month, if any lapses, defects or deficiencies require such inspections.
- 6.6. The Independent Engineer shall in its O&M Inspection Report specify the tests, if any, that the Concessionaire shall carry out, or cause to be carried out, for the purpose of determining that the Project Facilities is in conformity with the Maintenance Requirements. It shall monitor and review the results of such tests and the remedial measures, if any, taken by the Concessionaire in this behalf.
- 6.7. In respect of any defector deficiency, the Independent Engineer shall, in conformity with Good Industry Practice, specify the permissible limit of deviation or deterioration with reference to the Specifications and Standards and shall also specify the time limit for repair or rectification of any deviation or deterioration beyond the permissible limit.

- 6.8. The Independent Engineer shall determine if any delay has occurred in completion of repair or remedial works in accordance with the Agreement, and shall also determine the Damages, if any, payable by the Concessionaire to the Authority for such delay.
- 6.9. The Independent Engineer shall examine the request of the Concessionaire for closure of pipelines for undertaking maintenance/repair thereof.
- 6.10. The Independent Engineer shall monitor and review the curing of defects and deficiencies by the Concessionaire.
- 6.11. In the event that the Concessionaire notifies the Independent Engineer of any modifications that it proposes to make to the Project Facilities, the Independent Engineer shall review the same and send its comments to the Authority and the Concessionaire within 15 (fifteen) days of receiving the proposal.

## **7. Termination**

- 7.1. At any time, not earlier than 90(ninety) days prior to Termination but not later than 15 (fifteen) days prior to such Termination, the Independent Engineer shall, in the presence of a representative of the Concessionaire, inspect the Project Facilities for determining compliance by the Concessionaire with the Divestment Requirements set forth in Clause 31.1 and, if required, cause tests to be carried out at the Concessionaire's cost for determining such compliance. If the Independent Engineer determines that the status of the Project Facilities is such that its repair and rectification would require a larger amount than the sum set forth in Clause 32.2, it shall recommend retention of the required amount in the Escrow Account and the period of retention thereof.
- 7.2. The Independent Engineer shall inspect the Project Facilities once in every 15 (fifteen) days during a period of 90(ninety) days after Termination for determining the liability of the Concessionaire under Article 32, in respect of the defects or deficiencies specified therein. If any such defect or deficiency is found by the Independent Engineer, it shall make a report in reasonable detail and send it forthwith to the Authority and the Concessionaire.

## **8. Determination of costs and time**

- 8.1. The Independent Engineer shall determine the costs, and/or their reasonableness, that are required to be determined by it under the Agreement.
- 8.2. The Independent Engineer shall determine the period, or any extension thereof, that is required to be determined by it under the Agreement.

## **9. Assistance in Dispute resolution**

- 9.1. When called upon by either Party in the event of any Dispute, the Independent Engineer shall mediate and assist the Parties in arriving at an amicable settlement.



9.2. In the event of any disagreement between the Parties regarding the meaning, scope and nature of Good Industry Practice, as set forth in any provision of the Agreement, the Independent Engineer shall specify such meaning, scope and nature by issuing a reasoned written statement relying on good industry practice and authentic literature.

**10. Other duties and functions**

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

**11. Miscellaneous**

11.1. The Independent Engineer shall notify its programme of inspection to the Authority and to the Concessionaire, who may, in their discretion, depute their respective representatives to be present during the inspection.

11.2. A copy of all communications, comments, instructions, Drawings or Documents sent by the Independent Engineer to the Concessionaire 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 Authority forthwith.

11.3. The Independent Engineer shall obtain, and the Concessionaire shall furnish in two copies thereof, all communications and reports required to be submitted, under this Agreement, by the Concessionaire to the Independent Engineer, where upon the Independent Engineer shall send one of the copies to the Authority along with its comments thereon.

11.4. The Independent Engineer shall retain at least one copy each of all Drawings and Documents received by it, including 'as-built' Drawings, and keep them in its safe custody.

11.5. Upon completion of its assignment here under, the Independent Engineer shall duly classify and list all Drawings, Documents, results of tests and other relevant records, and hand them over to the Authority or such other person as the Authority may specify, and obtain written receipt thereof. Two copies of the said documents shall also be furnished in micro film form or in such other medium as may be acceptable to the Authority.

## SCHEDULE – L: ESCROW AGREEMENT

(See Clause 24.1.2)

THIS ESCROW AGREEMENT is entered into on this the \_\_\_\_\_ day of \_\_\_\_\_ 2023

### AMONGST

- 1 \_\_\_\_\_, accompany incorporated under the provisions of the Companies Act, 1956 and having its registered office at \_\_\_\_\_ (Herein after referred to as the “**Concessionaire**” which expression shall, unless repugnant to the context or meaning thereof, include its successors, permitted assigns and substitutes);
- 2 \_\_\_\_\_ name and particulars of Lenders’ Representative and having its registered office at \_\_\_\_\_ acting for and on behalf of the Senior Lenders as their duly authorized agent with regard to matters arising out of or in relation to this Agreement (herein after referred to as the “**Lenders’ Representative**” which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes);
- 3 \_\_\_\_\_ name and particulars of the Escrow Bank and having its registered office at \_\_\_\_\_ (Here in after referred to as the “**Escrow Bank**” which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes); and
- 4 The Andhra Pradesh Industrial Infrastructure Corporation Ltd., established under the administrative control of Government of Andhra Pradesh represented by its Andhra Pradesh Industrial Infrastructure Corporation Ltd. & 9th Floor, APIIC Towers, Plot No-1, IT Park, Mangalagiri, Guntur District, Andhra Pradesh - 522503 (hereinafter referred to as the “**Authority**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns).

### WHEREAS:

- A. The Authority has entered into a Concession Agreement dated \_\_\_\_\_ with the Concessionaire (the “**Concession Agreement**”) for Selection of Developer for Selection of Developer for Strengthening, Upgradation, Augmentation, Establishment, Operation and Maintenance of Industrial Infrastructure on DBFOT basis for APSEZ Atchutapuram Industrial Area developed by APIIC, Anakapalli District, Andhra Pradesh, and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.

- B. Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.
- C. The Concession Agreement requires the Concessionaire, at its discretion, to establish an Escrow Account, inter alia, on the terms and conditions stated therein.

**NOW IT IS HEREBY AGREED 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 herein after respectively assigned to them:

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

**“Concession Agreement”** means the Concession Agreement referred to in Recital(A) above and annexed hereto as Annex-A, and shall include all of its Recitals and Schedules and any amendments made there to 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 Concessionaire, and shall commence from the date on which a notice is delivered by the Authority or the Lenders’ Representative, as the case may be, to the Concessionaire asking the latter to cure the breach or default specified in such notice;

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

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

**“Lenders’ Representative”** means the person referred to as the Lenders’ Representative in the foregoing Recitals;

**“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 there from on the Payment Date(s).

## **1.2. Interpretation**

1.2.1. References to Lenders’ Representative shall, unless repugnant to the context or meaning thereof, mean references to the Lenders’ Representative, acting for and on behalf of Senior Lenders.

1.2.2. 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 Concession Agreement shall, unless repugnant to the context, have the meaning ascribed there to in the Concession Agreement.

1.2.3. References to Clauses are, unless stated otherwise, references to Clauses of this Agreement.

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

## **2. ESCROW ACCOUNT**

### **2.1. Escrow Bank to act as trustee**

2.1.1. The Concessionaire hereby appoints the Escrow Bank to act as trustee for the Authority, the Lenders’ Representative and the Concessionaire in connection here with and authorizes 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 here to, and the Escrow Bank accepts such appointment pursuant to the terms hereof.

2.1.2. The Concessionaire here by declares that all rights, title and interest in and to the Escrow Account shall be vested in the Escrow Bank and held in trust for the Authority, the Lenders’ Representative and the Concessionaire, and applied in accordance with the terms of this Agreement. No person other than the Authority, the Lenders’ Representative and the Concessionaire shall have any rights here under as the beneficiaries of or as third party beneficiaries under this Agreement.

### **2.2. Acceptance of Escrow Bank**

The Escrow Bank here by 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 Concessionaire, Senior Lenders or the Authority with the Escrow Bank. In performing its functions and duties under this Agreement, the Escrow Bank shall act in trust for the benefit of, and as agent for, the Authority, the Lenders' Representative and the Concessionaire or their nominees, successors or assigns, in accordance with the provisions of this Agreement.

### **2.3. Establishment and operation of Escrow Account**

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

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

2.3.3. The Escrow Bank and the Concessionaire shall, after consultation with the Lenders' Representative, agree on the detailed mandates, terms and conditions, and operating procedures for the Escrow Account, but in the event of any conflict or inconsistency between this Agreement and such mandates, terms and conditions, or procedures, this Agreement shall prevail.

### **2.4. Escrow Bank's fee**

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

### **2.5. Rights of the parties**

The rights of the Authority, the Lenders' Representative and the Concessionaire in the monies held in the Escrow Account are set forth in their entirety in this Agreement and the Authority, the Lenders' Representative and the Concessionaire shall have no other rights against or to the monies in the Escrow Account.

### **2.6. Substitution of the Concessionaire**

The Parties hereto acknowledge and agree that upon substitution of the Concessionaire with the Nominated Company, pursuant to the Substitution Agreement, it shall be deemed for the purposes of this Agreement that the Nominated Company is a Party hereto and the

Nominated Company shall accordingly be deemed to have succeeded to the rights and obligations of the Concessionaire under this Agreement on and with effect from the date of substitution of the Concessionaire with the Nominated Company.

### **3. DEPOSITS INTO ESCROW ACCOUNT**

#### **3.1. Deposits by the Concessionaire**

3.1.1. The Concessionaire agrees and undertakes that it shall deposit into and/or credit the Escrow Account with:

- a) All monies received in relation to the Project from any source, including the Senior Lenders, lenders of Subordinated Debt and the Authority;
- b) All funds received by the Concessionaire from its share-holders, in any manner or form;
- c) All Fee levied and collected by the Concessionaire; any other revenues, deposits or capital receipts, as the case maybe, from or in respect of the Project; and
- d) All proceeds received pursuant to any insurance claims.

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

#### **3.2. Deposits by the Authority**

The Authority agrees and undertakes that, as and when due and payable, it shall deposit into and/or credit the Escrow Account with:

- a) Grant and any other monies disbursed by the Authority to the Concessionaire;
- b) All Fee collected by the Authority in exercise of its rights under the Concession Agreement; and
- c) Termination Payments:

#### **3.3. Deposits by Senior Lenders**

The Lenders' Representative agrees, confirms and under takes that the Senior Lenders shall deposit into and/ or credit the Escrow Account with all disbursements made by them in relation to or in respect of the Project; provided that notwithstanding anything to the contrary contained in this Agreement, the Senior Lenders shall be entitled to make direct payments to the EPC Concessionaire under and in accordance with the express provisions contained in this behalf in the Financing Agreements.

#### **3.4. Interest on deposits**

The Escrow Bank agrees and under takes that all interest accruing on the balances of the Escrow Account shall be credited to the Escrow Account; provided that the Escrow Bank shall be entitled to appropriate therefrom the fee and expenses due to it from the

Concessionaire in relation to the Escrow Account and credit the balance remaining to the Escrow Account.

#### **4. WITHDRAWALS FROM ESCROW ACCOUNT**

##### **4.1. Withdrawals during Concession Period**

4.1.1. At the beginning of every month, or at such shorter intervals as the Lenders' Representative and the Concessionaire 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 a month, then retain such monies in such Sub-Accounts and pay out there from on the Payment Date(s):

- a) All taxes due and payable by the Concessionaire for and in respect of the Project;
- b) All payments relating to construction of the Project, subject to and in accordance with the conditions, if any, set forth in the Financing Agreements;
- c) O&M Expenses, subject to the ceiling, if any, set forth in the Financing Agreements;
- d) O&M Expenses incurred by the Authority, provided it certifies to the Escrow Bank that it had incurred such expenses in accordance with the provisions of the Concession Agreement and that the amounts claimed are due to it from the Concessionaire;
- e) monthly proportionate provision of Debt Service due in an Accounting Year; (g) Deleted;
- f) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire pursuant to the Concession Agreement;
- g) monthly proportionate provision of debt service payments due in an Accounting Year in respect of Subordinated Debt;
- h) any reserve requirements set forth in the Financing Agreements; and
- i) Balance, if any, in accordance with the instructions of the Concessionaire.

4.1.2. Not later than 60(sixty) days prior to the commencement of each Accounting Year, the Concessionaire shall provide to the Escrow Bank, with prior written approval of the Lenders' Representative, details of the amounts likely to be required for each of the payment obligations set forth in this Clause 4.1; provided that such amounts may be subsequently modified, with prior written approval of the Lenders' Representative, if fresh information received during the course of the year makes such modification necessary.

##### **4.2. Withdrawals upon Termination**

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

- a) All taxes due and payable by the Concessionaire for and in respect of the Project;
- b) 90% (ninety percent) of Debt Due excluding Subordinated Debt;
- c) All payments and Damages certified by the Authority as due and payable to it by the Concessionaire pursuant to the Concession Agreement, including {Premium,}and any claims in connection with or arising out of Termination;
- d) Retention and payments arising out of, or in relation to, liability for defects and deficiencies set forth in Article 28 of the Concession Agreement;
- e) Outstanding Debt Service including the balance of Debt Due;
- f) Outstanding Subordinated Debt
- g) Incurred or accrued O&M Expenses;
- h) Any other payments required to be made under the Concession Agreement; and
- i) Balance, if any, in accordance with the instructions of the Concessionaire:
- j) Provided that the disbursements specified in Sub-clause (j) of this Clause 4.2 shall be undertaken only after the Vesting Certificate has been issued by the Authority.

#### **4.3. Application of insufficient funds**

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

#### **4.4. Application of insurance proceeds**

Notwithstanding anything in this Agreement, the proceeds from all insurance claims, except life and injury, shall be deposited into and/or credited to the Escrow Account and utilized for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or installation of the Project Facilities, and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Agreements.

#### **4.5. Withdrawals during Suspension**

Notwithstanding anything to the contrary contained in this Agreement, the Authority may exercise all or any of the rights of the Concessionaire during the period of Suspension under Article 29 of the Concession Agreement. Any instructions given by the Authority to the Escrow Bank during such period shall be complied with as if such instructions were given by the Concessionaire under this Agreement and all actions of the Authority hereunder shall be deemed to have been taken for and on behalf of the Concessionaire.

### **5. OBLIGATIONS OF THE ESCROW BANK**

#### **5.1. Segregation of funds**



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

**5.2. Notification of balances**

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

**5.3. Communications and notices**

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

- (a) May, in the absence of bad faith or gross negligence on its part, rely as to any matters off act which might reasonably be expected to be within the knowledge of the Concessionaire upon a certificate signed by or on behalf of the Concessionaire;
- (b) May, in the absence of bad faith or gross negligence on its part, rely upon the authenticity of any communication or document believed by it to be authentic;
- (c) Shall, within 5(five) business days after receipt, deliver a copy to the Lenders' Representative of any notice or document received by it in its capacity as the Escrow Bank from the Concessionaire or any other person here under or in connection here with; and
- (d) Shall, within 5(five) business days after receipt, deliver a copy to the Concessionaire of any notice or document received by it from the Lenders' Representative in connection herewith.

**5.4. No set off**

The Escrow Bank agrees not to claim or exercise any right of setoff, 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. Following events shall constitute an event of default by the Concessionaire (an “**Escrow Default**”) unless such event of default has occurred as a result of Force Majeure or any act or omission of the Authority or the Lenders’ Representative:

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

6.1.2. Upon occurrence of an Escrow Default, the consequences there of shall be dealt with under and in accordance with the provisions of the Concession Agreement.

## **7. TERMINATION OF ESCROW AGREEMENT**

### **7.1. Duration of the Escrow Agreement**

This Agreement shall remain in full force and effect so long as any sum remains to be advanced or is outstanding from the Concessionaire in respect of the debt, guarantee or financial assistance received by it from the Senior Lenders, or any of its obligations to the Authority remain to be discharged, unless terminated earlier by consent of all the Parties or otherwise in accordance with the provisions of this Agreement.

### **7.2. Substitution of Escrow Bank**

The Concessionaire may, by not less than 45 (forty five) days prior notice to the Escrow Bank, the Authority and the Lenders’ Representative, terminate this Agreement and appoint a new Escrow Bank, provided that the new Escrow Bank is acceptable to the Lenders’ Representative and arrangements are made satisfactory to the Lenders’ Representative 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 Concessionaire and the Lenders' Representative made on or after the payment by the Concessionaire of all outstanding amounts under the Concession Agreement and the Financing Agreements 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 Concessionaire. Upon closure of the Escrow Account here under, the Escrow Agreement shall be deemed to be terminated.

## **8. SUPPLEMENTARY ESCROW AGREEMENT**

### **8.1. Supplementary escrow agreement**

The Lenders' Representative and the Concessionaire shall be entitled to enter in to 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 rights and obligations of Senior Lenders and lenders of Subordinated Debt, investment of surplus funds, restrictions on withdrawals by the Concessionaire 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 there from, 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 Concessionaire will indemnify, defend and hold the Authority, Escrow Bank and the Senior Lenders, acting through the Lenders' Representative, 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 Concessionaire of any of its obligations under this Agreement or on account of failure of the Concessionaire to comply with Applicable Laws and Applicable Permits.

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

9.1.3. The Escrow Bank will indemnify, defend and hold the Concessionaire 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 fulfill its obligations under this Agreement materially and adversely affecting the performance of the Concessionaire's obligations under the Concession 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 9.1 or in respect of which it is entitled to reimbursement (the "Indemnified Party"), it shall notify the other Party responsible for indemnifying such claim hereunder (the "Indemnifying Party") within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

## **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 the Rules of Arbitration of the Dispute Resolution by the Government of *Andhra Pradesh*, (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 Vijayawada 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 Vijayawada shall have jurisdiction over all matters arising out of or relating to this Agreement.

### **11.2. Waiver of sovereign immunity**

The Authority 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 Authority 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 judgment or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgment that may be made or given in connection there with).

### **11.3. Priority of agreements**

In the event of any conflict between the Concession Agreement and this Agreement, the provisions contained in the Concession 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 it is in writing and signed by the duly authorized 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 authorized 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 there under 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 here under.

#### **11.7. Survival**

11.7.1. Termination of this Agreement:

- (a) Shall not relieve the Parties of any obligations here under 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 3 (three) years following the date of such termination or expiry of this Agreement.

**11.8. Severability**

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

**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 address for service of each Party, its facsimile number or e-mail is 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. Authorized representatives**

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

**11.13. Original Document**

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

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

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

(Signature)  
(Name)  
(Designation)  
(Address)  
(Fax No.)  
(Email address)  
SIGNED, SEALED AND DELIVERED

SIGNED, SEALED AND  
DELIVERED  
For and on behalf of  
SENIOR LENDERS by Representative: the I

(Signature)  
(Name)  
(Designation)  
(Address)  
(Fax No.)  
(Email address)  
SIGNED, SEALED AND DELIVERED



**SCHEDULE – M: INFLUENT / EFFLUENT TREATMENT / WATER QUALITY**

**Raw Effluent / Water Characteristics of CETP (Basic Parameters)**

S. No.	Quality Parameter	Concentration	
		HTDiS	LTDiS
1	pH	5.5 – 9.0	5.5 – 9.0
2	TSS	< 3500 mg/l	< 1000 mg/l
3	TDS	>12000 mg/l	<= 12000 mg/l
4	COD	>8000 mg/l	<= 8000 mg/l
5	Ammonical Nitrogen as N	<1000 mg/l	< 50 mg/l
6	Oil & Grease	< 20 mg/l	< 20 mg/l

**Raw Effluent / Water Characteristics of CETP (Other Parameters)**

**LTDS Effluent Quality Analysis**

S. No.	Test Parameter	Method of Testing	Unit	Result
1	Turbidity	IS 3025 (Part 10)	NTU	40.3
2	Alkalinity as (CaCO <sub>3</sub> )	IS 3025 (Part 23)	mg/L	Nil
3	M. Alkalinity as (CaCO <sub>3</sub> )	IS 3025 (Part 23)	mg/L	367.2
4	Total Hardness as (CaCO <sub>3</sub> )	IS 3025 (Part 21)	mg/L	360
5	Calcium as Ca	IS 3025 (Part 46)	mg/L	88
6	Magnesium as Mg	IS 3025 (Part 46)	mg/L	34
7	Silica as SiO <sub>2</sub>	IS 3025 (Part 35)	mg/L	19.13
8	Sodium as Na	APHA 3500 Na	mg/L	1079
9	Potassium as K	APHA 3500 K	mg/L	101
10	Chloride	IS 3025 (Part 32)	mg/L	370.5
11	Sulphate	IS 3025 (Part 24)	mg/L	337.02
12	Nitrate as NO <sub>3</sub>	APHA 4500 NO3	mg/L	24.1
13	Iron as Fe	APHA 3125	mg/L	0.43

S. No.	Test Parameter	Method of Testing	Unit	Result
14	Fluoride as F	APHA 4500 (SPADNS Method)	mg/L	0.82

#### HTDS Effluent Quality Analysis

S. No.	Test Parameter	Method	Unit	Result
1	pH	IS 3025 (Part 11)	--	7.27
2	Turbidity	IS 3025 (Part 10)	NTU	21
3	TSS	APHA 2540-D	mg/L	3412
4	P. Alkalinity as (CaCO <sub>3</sub> )	IS 3025 (Part 23)	mg/L	Nil
5	M. Alkalinity as (CaCO <sub>3</sub> )	IS 3025 (Part 23)	mg/L	4794
6	Total Hardness as (CaCO <sub>3</sub> )	IS 3025 (Part 21)	mg/L	120
7	Calcium as Ca	IS 3025 (Part 46)	mg/L	32
8	Magnesium as Mg	IS 3025 (Part 46)	mg/L	9.7
9	Silica as SiO <sub>2</sub>	IS 3025 (Part 35)	mg/L	46.28
10	Sodium as Na	APHA 3500 Na	mg/L	27164
11	Potassium as K	APHA 3500 K	mg/L	3224
12	Chloride	IS 3025 (Part 32)	mg/L	20639
13	Sulphate	IS 3025 (Part 24)	mg/L	7667.22
14	Nitrate as NO <sub>3</sub>	APHA 4500 NO3	mg/L	8146.7
15	Iron as Fe	APHA 3125	mg/L	0.56
16	Fluoride as F	APHA 4500 (SPADNS Method)	mg/L	377.92
17	Oil and Grease	IS 3025 (Part 39)	mg/L	0.26
18	Ammonical Nitrogen as N	APHA 4500 NH3	mg/L	1026

#### HTDS Effluent Quality Analysis (GC Analysis)

S. No.	Test Parameter	Method	Unit	Result
1	Acetic acid	In house Method	ppm	84.38

S. No.	Test Parameter	Method	Unit	Result
2	Iodide Solution	In house Method	ppm	Not detached
3	Chloroform	In house Method	mg/kg	12.55
4	Methanol	In house Method	mg/kg	2036.90
5	Ethyl acetate	In house Method	mg/kg	1133.85
6	Toluene	In house Method	mg/kg	28.95
7	Acetonitrile	In house Method	mg/kg	778.30
8	N-Heptane	In house Method	mg/kg	16.05
9	Methylene Dichloride	In house Method	mg/kg	252.00
10	Methy iso Butyl Ketone	In house Method	mg/kg	Absent
11	Iso propyl Alcohol	In house Method	mg/kg	877.25
12	Acetonitrile + Toulene	In house Method	mg/kg	807.25
13	Ethyl Acetate + Methylene Chloride	In house Method	mg/kg	1385.85
14	Iso propyl Alcohol + Cyclohexane	In house Method	mg/kg	877.25
15	N - Heptane +THF	In house Method	mg/kg	45.00
16	Iso propyl alcohol + Toluene	In house Method	mg/kg	2914.15
17	Ethyl acetate +N-Heptane	In house Method	mg/kg	1149.90
18	Acetone	In house Method	mg/kg	210.75
19	Cyclohexane	In house Method	mg/kg	BLQ
20	N-Hexane	In house Method	mg/kg	BLQ

## **SCHEDULE – N: PANEL OF CHARTERED ACCOUNTANTS**

### **1. Panel of Chartered Accountants**

Pursuant to the provisions of Clause 26.2.1 of the Agreement, the Authority and the Concessionaire shall prepare a mutually agreed panel of 10 (ten) reputable firms of Chartered Accountants having their registered offices in India (the “**Panel of Chartered Accountants**”). The criteria for preparing such Panel and the procedure to be adopted in this behalf shall be as set forth in this Schedule-N.

### **2. Invitation for empanelment**

2.1.1. The Authority shall invite offers from all reputable firms of Chartered Accountants who fulfill the following eligibility criteria, namely:

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

2.1.2. Interested firms meeting the eligibility criteria shall be required to submit a statement of their capability including the bio-data of all the practicing Chartered Accountants on its rolls. In particular, each firm shall be required to furnish year-wise information relating to the names of all the companies with an annual turnover exceeding Rs.100,00,00,000 (Rs. one hundred crore) whose annual accounts were audited by such firm in any of the preceding 5 (five) Accounting Years.

### **3. Evaluation and selection**

3.1. The information furnished by each firm shall be scrutinized and evaluated by the Authority and 1 (one) point shall be awarded for each annual audit of the companies specified in Paragraph 2.1.1 above. (For the avoidance of doubt, a firm which has conducted audit of the annual accounts of any such company for five years shall be awarded five points).

3.2. The Authority shall prepare a list of all the eligible firms along with the points scored by each such firm and 10 (ten) firms scoring the highest points shall be identified and included in the draft Panel of Chartered Accountants.

**4. Consultation with the Concessionaire**

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

**5. Mutually agreed panel**

5.1. The Authority shall, after considering all relevant factors including the comments, if any, of the Concessionaire, finalize and constitute a panel of 10 (ten) firms which shall be deemed to be the mutually agreed Panel of Chartered Accountants.

5.2. After completion of every five years from the date of preparing the mutually agreed Panel of Chartered Accountants, or such earlier period as may be agreed between the Authority and the Concessionaire, a new panel shall be prepared in accordance with the provisions of this Schedule- N.

## SCHEDULE – O: SUBSTITUTION AGREEMENT

THIS SUBSTITUTION AGREEMENT is entered in to on this the \_\_\_\_\_ Day of \_\_\_\_\_ 2023

### AMONGST

- 1 The Andhra Pradesh Industrial Infrastructure Corporation Ltd., established under the Andhra Pradesh Industrial Infrastructure Corporation Ltd. Government of Andhra Pradesh represented by its Andhra Pradesh Industrial Infrastructure Corporation Ltd. & 9th Floor, APIIC Towers, Plot No-1, IT Park, Mangalagiri, Guntur District, Andhra Pradesh - 522503 (hereinafter referred to as the “Authority” which expression shall unless repugnant to the context or meaning there of include its administrators, successors and assigns);
- 2 \_\_\_\_\_, accompany incorporated under the provisions of the Companies Act, 2013 and having its registered office at \_\_\_\_\_ (herein after referred to as the “**Concessionaire**” which expression shall unless repugnant to the context or meaning thereof include its successors and permitted assigns and substitutes);
- 3 \_\_\_\_\_ name and particulars of Lenders 'Representative and having its registered office at \_\_\_\_\_, acting for and on behalf of the Senior Lenders as their duly authorized agent with regard to matters arising out of or in relation to this Agreement (herein after referred to as the “**Lenders' Representative**”, which expression shall unless repugnant to the context or meaning there of include its successors and substitutes);

### WHEREAS:

- (A) The Authority has entered into a Concession Agreement dated \_\_\_\_\_ with the Concessionaire (the “Concession Agreement”) for the Strengthening, Upgradation, Augmentation, Establishment, Operation and Maintenance of Industrial Infrastructure on DBFOT basis for APSEZ Atchutapuram Industrial Area developed by APIIC, Anakapalli District, Andhra Pradesh hereto and marked as Annex-A to form part of this Agreement.
- (B) Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.
- (C) Senior Lenders have requested the Authority to enter into this Substitution Agreement for securing their interests through assignment, transfer and

substitution of the Concession to a Nominated Company in accordance with the provisions of this Agreement and the Concession Agreement.

- (D) In order to enable implementation of the Project including its financing, construction, operation and maintenance, the Authority has agreed and undertaken to transfer and assign the Concession to a Nominated Company in accordance with the terms and conditions set forth in this Agreement and the Concession Agreement.

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

## **1. DEFINITIONS AND INTERPRETATION**

### **1.1. Definitions**

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

**“Agreement”** means this Substitution Agreement and any amendment there to made in accordance with the provisions contained in this Agreement;

**“Financial Default”** means occurrence of a material breach of the terms and conditions of the Financing Agreements or a continuous default in Debt Service by the Concessionaire for a minimum period of 3 (three) months;

**“Lenders’ Representative”** means the person referred to as the Lenders’ Representative in the foregoing Recitals;

**“Nominated Company”** means a company, incorporated under the provisions of the Companies Act, 1956/2013, selected by the Lenders’ Representative, on behalf of Senior Lenders, and proposed to the Authority for assignment/transfer of the Concession as provided in this Agreement;

**“Notice of Financial Default”** shall have the meaning ascribed there to in Clause 3.2.1; and

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

### **1.2. Interpretation**

- 1.2.1. References to Lenders’ Representative shall, unless repugnant to the context or meaning thereof, mean references to the Lenders’ Representative, acting for and on behalf of Senior Lenders.

1.2.2. References to Clauses are, unless stated otherwise, references to Clauses of this Agreement.

1.2.3. 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 Concession Agreement shall, unless repugnant to the context, have the meaning ascribed there to in the Concession Agreement.

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

## **2. ASSIGNMENT**

### **2.1. Assignment of rights and title**

The Concessionaire hereby agrees to assign the rights, title and interest in the Concession to, and in favour of, the Lenders' Representative pursuant to and in accordance with the provisions of this Agreement and the Concession Agreement by way of security in respect of financing by the Senior Lenders under the Financing Agreements.

## **3. SUBSTITUTION OF THE CONCESSIONAIRE**

### **3.1. Rights of substitution**

3.1.1. Pursuant to the rights, title and interest assigned under Clause 2.1, the Lenders' Representative shall be entitled to substitute the Concessionaire by a Nominated Company under and in accordance with the provisions of this Agreement and the Concession Agreement.

3.1.2. The Authority hereby agrees to substitute the Concessionaire by endorsement on the Concession Agreement in favour of the Nominated Company selected by the Lenders' Representative in accordance with this Agreement. (For the avoidance of doubt, the Senior Lenders or the Lenders' Representative shall not be entitled to operate and maintain the Project Facilities as Concessionaire either individually or collectively).

### **3.2. Substitution upon occurrence of Financial Default**

3.2.1. Upon occurrence of a Financial Default, the Lenders' Representative may issue a notice to the Concessionaire (the "**Notice of Financial Default**") along with particulars thereof, and send a copy to the Authority for its information and record. A Notice of Financial Default under this Clause 3 shall be conclusive evidence of such Financial Default and it shall be final and binding upon the Concessionaire for the purposes of this Agreement.



3.2.2. Upon issue of a Notice of Financial Default here under, the Lenders' Representative may, without prejudice to any of its rights or remedies under this Agreement or the Financing Agreements, substitute the Concessionaire by a Nominated Company in accordance with the provisions of this Agreement.

3.2.3. At any time after the Lenders' Representative has issued a Notice of Financial Default, it may by notice require the Authority to suspend all the rights of the Concessionaire and undertake the operation and maintenance of the Project Facilities in accordance with the provisions of Article-33 of the Concession Agreement, and upon receipt of such notice, the Authority shall undertake Suspension under and in accordance with the provisions of the Concession Agreement. The afore said Suspension shall be revoked upon substitution of the Concessionaire by a Nominated Company, and in the event such substitution is not completed within 180 (one hundred and eighty) days from the date of such Suspension, the Authority may terminate the Concession Agreement forth with by issuing a Termination Notice in accordance with the provisions of the Concession Agreement; provided that upon written request from the Lenders' Representative and the Concessionaire, the Authority may extend the afore said period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days.

### **3.3. Substitution upon occurrence of Concessionaire Default**

3.3.1. Upon occurrence of a Concessionaire Default, the Authority shall by a notice inform the Lenders' Representative of its intention to issue a Termination Notice and grant 15 (fifteen) days 'time to the Lenders' Representative to make a representation, stating the intention to substitute the Concessionaire by a Nominated Company.

3.3.2. In the event that the Lenders' Representative makes a representation to the Authority within the period of 15 (fifteen) days specified in Clause 3.3.1, stating that it intends to substitute the Concessionaire by a Nominated Company, the Lenders' Representative shall be entitled to undertake and complete the substitution of the Concessionaire by a Nominated Company in accordance with the provisions of this Agreement within a period of 180 (one hundred and eighty) days from the date of such representation, and the Authority shall either withhold Termination or undertake Suspension for the aforesaid period of 180 (one hundred and eighty) days; provided that upon written request from the Lenders' Representative and the Concessionaire, the Authority shall extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days.

### **3.4. Procedure for substitution**

3.4.1. The Authority and the Concessionaire hereby agree that on or after the date of Notice of Financial Default or the date of representation to the Authority under Clause 3.3.2, as the case may be, the Lenders' Representative may, without prejudice to any of the other rights or remedies of the Senior Lenders, invite, negotiate and procure offers, either by private negotiations or public auction or tenders for the takeover and transfer of the Project

including the Concession to the Nominated Company upon such Nominated Company's assumption of the liabilities and obligations of the Concessionaire towards the Authority under the Concession Agreement and towards the Senior Lenders under the Financing Agreements.

3.4.2. To be eligible for substitution in place of the Concessionaire, the Nominated Company shall be required to fulfill the eligibility criteria that were laid down by the Authority for short-listing the Bidders for award of the Concession; provided that the Lenders' Representative may represent to the Authority that all or any of such criteria may be waived in the interest of the Project, and if the Authority determines that such waiver shall not have any material adverse effect on the Project, it may waive all or any of such eligibility criteria.

3.4.3. Upon selection of a Nominated Company, the Lenders' Representative shall request the Authority to:

- a) Accede to transfer to the Nominated Company the right to construct, operate and maintain the Project Facilities in accordance with the provisions of the Concession Agreement;
- b) Endorse and transfer the Concession to the Nominated Company, on the same terms and conditions, for the residual Concession Period; and
- c) Enter into a Substitution Agreement with the Lenders' Representative and the Nominated Company on the same terms as are contained in this Agreement.

3.4.4. If the Authority has any objection to the transfer of Concession in favor of the Nominated Company in accordance with this Agreement, it shall within 15 (fifteen) days from the date of proposal made by the Lenders' Representative, give a reasoned order after hearing the Lenders' Representative. If no such objection is raised by the Authority, the Nominated Company shall be deemed to have been accepted. The Authority there upon shall transfer and endorse the Concession within 15 (fifteen) days of its acceptance/deemed acceptance of the Nominated Company; provided that in the event of such objection by the Authority, the Lenders' Representative may propose another Nominated Company where upon the procedure set forth in this Clause 3.4 shall be followed for substitution of such Nominated Company in place of the Concessionaire.

### **3.5. Selection to be binding**

The decision of the Lenders' Representative and the Authority in selection of the Nominated Company shall be final and binding on the Concessionaire. The Concessionaire irrevocably agrees and waives any right to challenge the actions of the Lenders' Representative or the Senior Lenders or the Authority taken pursuant to this Agreement including the transfer/ assignment of the Concession in favor of the Nominated Company. The Concessionaire agrees and confirms that it shall not have any right to seek revaluation of assets of the Project or the Concessionaire's shares. It is hereby acknowledged by the Parties that the rights of the Lenders' Representative are irrevocable

and shall not be contested in any proceedings before any court or Authority and the Concessionaire shall have no right or remedy to prevent, obstruct or restrain the Authority or the Lenders' Representative from effecting or causing the transfer by substitution and endorsement of the Concession as requested by the Lenders' Representative.

#### **4. PROJECT AGREEMENTS**

##### **4.1. Substitution of Nominated Company in Project Agreements**

The Concessionaire shall ensure and procure that each Project Agreement contains provisions that entitle the Nominated Company to step into such Project Agreement, in its discretion, in place and substitution of the Concessionaire in the event of such Nominated Company's assumption of the liabilities and obligations of the Concessionaire under the Concession Agreement.

#### **5. TERMINATION OF CONCESSION AGREEMENT**

##### **5.1. Termination upon occurrence of Financial Default**

At any time after issue of a Notice of Financial Default, the Lenders' Representative may by a notice in writing require the Authority to terminate the Concession Agreement forth with, and upon receipt of such notice, the Authority shall undertake Termination under and in accordance with the provisions of Article 30 of the Concession Agreement.

##### **5.2. Termination when no Nominated Company is selected**

In the event that no Nominated Company acceptable to the Authority is selected and recommended by the Lenders' Representative within the period of 180 (one hundred and eighty) days or any extension thereof as set forth in Clause 3.3.2, the Authority may terminate the Concession Agreement forth with in accordance with the provisions thereof.

##### **5.3. Realization of Debt Due**

The Authority and the Concessionaire hereby acknowledge and agree that, without prejudice to their any other right or remedy, the Lenders' Representative is entitled to receive from the Concessionaire, without any further reference to or consent of the Concessionaire, the Debt Due upon Termination of the Concession Agreement. For realization of the Debt Due, the Lenders' Representative shall be entitled to make its claim from the Escrow Account in accordance with the provisions of the Concession Agreement and the Escrow Agreement.

#### **6. DURATION OF THE AGREEMENT**

##### **6.1. Duration of the Agreement**

This Agreement shall come into force from the date hereof and shall expire at the earliest to occur of the following events:

- (a) Termination of the Agreement; or

(b) No sum remains to be advanced, or is outstanding to the Senior Lenders, under the Financing Agreements.

## **7. INDEMNITY**

### **7.1. General indemnity**

7.1.1. The Concessionaire will indemnify, defend and hold the Authority and the Lenders' Representative harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense of whatever kind and nature arising out of any breach by the Concessionaire of any of its obligations under this Agreement or on account of failure of the Concessionaire to comply with Applicable Laws and Applicable Permits.

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

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

### **7.2 Notice and contest of claims**

In the event that any Party here to receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 7.1 or in respect of which it is entitled to reimbursement (the "**Indemnified Party**"), it shall notify the other Party responsible for indemnifying such claim here under (the "**Indemnifying Party**") within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, such approval not to 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.

## **8. DISPUTE RESOLUTION**

### **8.1. Dispute resolution**

8.1.1. Any dispute, difference or claim arising out of or in connection with this Agreement which is not resolved amicably shall be decided by reference to arbitration to a Board of Arbitrators comprising one nominee each of the Authority, Concessionaire and the Lenders' Representative. Such arbitration shall be held in accordance with the Dispute Resolution Rules by Government of Andhra Pradesh, (the "Rules") or such other rules as maybe mutually agreed by the Parties, and shall be subject to provisions of the Arbitration and Conciliation Act, 1996.

8.1.2. The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The venue of arbitration shall be Vijayawada and the language of arbitration shall be English.

## **9. MISCELLANEOUS PROVISIONS**

### **9.1. 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 Vijayawada shall have jurisdiction overall matters arising out of or relating to this Agreement.

### **9.2. Waiver of sovereign immunity**

The Authority 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. Progress 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 Authority 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 judgment or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgment that may be made or given in connection there with).

### **9.3. Priority of agreements**

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

#### **9.4. 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 authorized representatives of the Parties.

#### **9.5. Waiver**

9.5.1. 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 authorized representative of the Party; and
- c) Shall not affect the validity or enforceability of this Agreement in any manner.

9.5.2. Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation there under nor time or other indulgence granted by a 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.

#### **9.6. 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.

#### **9.7. Survival**

9.7.1. Termination of this Agreement:

- a) Shall not relieve the Parties of any obligations here under 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.

9.7.2. 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.

**9.8. Severability**

If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Clause 8 of this Agreement or otherwise.

**9.9. 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.

**9.10. 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.

**9.11. Language**

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

**9.12. 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 here to shall be entitled to remove and/or substitute or make fresh appointment of such authorized representative by similar notice.

**9.13. Original Document**

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

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

SIGNED, SEALED AND DELIVERED  
For and on behalf of

SIGNED, SEALED AND DELIVERED  
For and on behalf of

CONCESSIONAIRE by:

APIIC Ltd. by:

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

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

SIGNED, SEALED AND DELIVERED  
For and on behalf of

SENIOR LENDERS by the Lenders' Representative:

(Signature)  
(Name)  
(Designation)  
(Address)  
(Fax)  
(Email address)  
In the presence of:

1.

2.



## SCHEDULE – P: VESTING CERTIFICATE

(To be attached later)

1. The Andhra Pradesh Industrial Infrastructure Corporation Ltd. & 9th Floor, APIIC Towers, Plot No-1, IT Park, Mangalagiri, Guntur District, Andhra Pradesh - 522503 (The “Authority”) refers to the Concession Agreement dated \_\_\_\_\_ (The “Agreement”) entered into between the Authority and \_\_\_\_\_ (The “Concessionaire”) Selection of Developer for Strengthening, Upgradation, Augmentation, Establishment, Operation and Maintenance of Industrial Infrastructure on DBFOT basis for APSEZ Atchutapuram Industrial Area developed by APIIC, Anakapalli District, Andhra Pradesh.
2. The Authority hereby acknowledges compliance and fulfillment by the Concessionaire of the Divestment Requirements set forth in Clause 31.1 of the Agreement on the basis that upon issue of this Vesting Certificate, the Authority shall be deemed to have acquired, and all title and interest of the Concessionaire in or about the Project shall be deemed to have vested unto the Authority, free from any encumbrances, charges and liens whatsoever.
3. Notwithstanding anything to the contrary contained here in above, it shall be a condition of this Vesting Certificate that nothing contained here in shall be construed or interpreted as waiving the obligation of the Concessionaire to rectify and remedy any defect or deficiency in any of the Divestment Requirements and/or relieving the Concessionaire in any manner of the same. Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2023 at \_\_\_\_\_.

AGREED, ACCEPTED AND SIGNED  
DELIVERED

For and on behalf of

CONNCESSIONAIRE by:

(Signature)

(Name)

(Designation)

(Address)

In the presence of:

1.

SIGNED, SEALED AND

for and on behalf of

APIIC Ltd.

(Signature)

(Name)

(Designation)

(Address)

2.

## **SCHEDULE – Q: MAINTENANCE REQUIREMENTS**

**(See Clause 18.2)**

### **1. Maintenance Requirements**

- 1.1. The Concessionaire shall, at all times, operate and maintain the respective PROJECT components in accordance with the provisions of the Agreement, Applicable Laws and Applicable Permits. In particular, the Concessionaire shall, at all times during the Operation Period, conform to the maintenance requirements set forth in this Schedule-Q (the “Maintenance Requirements”).
- 1.2. The Concessionaire shall repair or rectify any defect or deficiency set forth in Paragraph 2 of this Schedule-Q within the time limit specified therein and any failure in this behalf shall constitute a breach of the Agreement. Upon occurrence of any breach hereunder, the Authority shall be entitled to recover Damages as set forth in Clause 18.5 of the Agreement, without prejudice to the rights of the Authority under the Agreement, including Termination thereof.
- 1.3. The Concessionaire shall at all times operate and maintain the PROJECT and its components in accordance with the Central Public Health and Environmental Engineering Organization (CPHEEO) Manual on Operation and Maintenance of PROJECT issued by the Ministry of Urban Development, Government of India,

### **2. Repair/rectification of defects and deficiencies**

The obligations of the Concessionaire in respect of Maintenance Requirements shall include repair and rectification of the defects and deficiencies of the PROJECT components within a time frame as specified by the Independent Engineer / Chief Engineer.

### **3. Other defects and efficiencies**

- 3.1. If any additional defects or deficiencies exist in the PROJECT components, the Concessionaire shall undertake repair or rectification in accordance with Good Industry Practice.
- 3.2. In respect of any defect or deficiency, the Independent Engineer/ Chief Engineer may, inconformity with Good Industry Practice, specify the permissible limit of deviation or deterioration with reference to the Specifications and Standards, and any deviation or deterioration beyond the permissible limit shall be repaired or rectified by the Concessionaire within the time limit specified by the Independent Engineer/ Chief Engineer.

### **4. Extension of time limit**

Notwithstanding anything to the contrary specified in this Schedule-Q, if the nature and extent of any defect or deficiency justifies more time for its repair or rectification than the time specified herein, the Concessionaire shall be entitled to additional time in conformity with Good Industry Practice. Such additional time shall be determined by the Independent Engineer / Chief Engineer and conveyed to the Concessionaire and the Authority with reasons thereof.

**5. Emergency repairs/restoration**

Notwithstanding anything to the contrary contained in this Schedule-Q, if any defect, deficiency or deterioration in any of the PROJECT component included in the Project Development Plan poses danger to the life or property of the Users thereof, the Concessionaire shall promptly take all reasonable measures for eliminating or minimizing such danger.

**6. Daily Inspection by the Concessionaire**

The Concessionaire shall, through its engineer, undertake a daily visual inspection of the PROJECT components and maintain a record there of in a Register to be kept in such form and manner as the Independent Engineer/ Chief Engineer may specify. Such record shall be kept in safe custody of the Concessionaire and shall be open to inspection by the Authority and the Independent Engineer at any time during office hours.

**7. Divestment Requirements**

All defects and deficiencies shall be repaired and rectified by the Concessionaire so that the PROJECT components conform to the Maintenance Requirements on the Transfer Date.