



**DEPARTMENT OF DEFENCE PRODUCTION (DDP) /  
DIRECTORATE GENERAL OF QUALITY ASSURANCE (DGQA)  
MINISTRY OF DEFENCE (MOD)  
GOVERNMENT OF INDIA (GOI)**

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**Request for Proposal (RFP)**

**VOLUME. I**

**FOR**

**DEVELOPMENT, OPERATION AND MAINTENANCE OF DEFENCE  
TESTING INFRASTRUCTURE (DTI) FOR AMMUNITION TESTS  
UNDER THE DEFENCE TESTING INFRASTRUCTURE SCHEME (DTIS)**

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**Reference No. 12575/DGQA/DTIS/Ammunition**

**DDP / DGQA**

**DQA (WP), Floor 6, "B" Block, MoD Complex, Africa Avenue,  
New Delhi-110023, India**

**Website: [www.dggadefence.gov.in](http://www.dggadefence.gov.in)**

**Phone: 011-23012080, 011-23013805**

**06 December 2021**

**DISCLAIMER**

1. The information contained in this Request for Proposal document (the “RFP”) or subsequently provided to Bidder(s), whether verbally or in documentary or any other form, by or on behalf of the Department of Defence Production (DDP)/ Directorate General of Quality Assurance (DGQA) or any of its employees or advisors, is provided to Bidder(s) on the terms and conditions set out in this RFP and such other terms and conditions subject to which such information is provided
2. This RFP is not an agreement and is neither an offer nor invitation by the DDP/ DGQA to the prospective Bidder(s) or any other person. The purpose of this RFP is to provide interested parties with information that may be useful to them in the formulation of their proposal pursuant to this RFP. This RFP includes statements, which reflect various assumptions and assessments arrived at by the DDP/ DGQA in relation to the Project. Such assumptions, assessments and statements do not purport to contain all the information that each Bidder may require.
3. This RFP may not be appropriate for all persons, and it is not possible for the DDP/ DGQA, its employees or advisors to consider the investment objectives, financial situation and particular needs of each party who reads or uses this RFP. The assumptions, assessments, statements and information contained in this RFP may not be complete, accurate, adequate or correct. Each Bidder should, therefore, conduct its own investigations and analysis and should check the accuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments, statements and information contained in this RFP and obtain independent advice from appropriate sources.
4. Information provided in this RFP to the Bidder(s) is on a wide range of matters, some of which may depend upon interpretation of law. The information given is not intended to be an exhaustive account of statutory requirements and should not be regarded as a complete or authoritative statement of law. DDP/ DGQA accepts no responsibility for the accuracy or otherwise for any interpretation or opinion on law expressed herein.
5. DDP/ DGQA, its employees and advisors make no representation or warranty and shall have no liability to any person, including any Bidder, under any law, statute, rules or regulations or tort, principles of restitution or unjust enrichment or otherwise for any loss, damages, cost or expense which may arise from or be incurred or suffered on account of anything contained in this RFP or otherwise, including the accuracy, adequacy, correctness, completeness or reliability of the RFP and any assessment, assumption, statement or information contained therein or deemed to form part of this RFP or arising in any way with selection of Bidders for participation in the Bidding Process.
6. DDP/ DGQA also accepts no liability of any nature whether resulting from negligence or otherwise howsoever caused arising from reliance of any Bidder upon the statements contained in this RFP. DDP/ DGQA may, in its absolute discretion but without being under any obligation to do so, update, amend or supplement the information, assessment or assumptions contained in this RFP.
7. The issue of this RFP does not imply that DDP/ DGQA is bound to select a bidder or to appoint the Selected Bidder or Implementation agency, as the case maybe, for the Project and reserves the right to reject all or any of the Bids or Bids without assigning any reasons whatsoever.
8. The Bidder shall bear all its costs associated with or relating to the preparation and submission of its Bid including but not limited to preparation, copying, postage, delivery fees, expenses associated with any

demonstrations or presentations which may be required by DDP/DGQA or any other costs incurred in connection with or relating to its Bid. All such costs and expenses will remain with the Bidder and DDP/DGQA shall not be liable in any manner whatsoever for the same or for any other costs or other expenses incurred by a Bidder in preparation or submission of the Bid, regardless of the conduct or outcome of the Bidding Process.

**TABLE OF CONTENTS**

**Contents**

DISCLAIMER .....	2
NOTICE OF INVITING BID .....	5
SECTION – I: INTRODUCTION & BACKGROUND .....	7
SECTION – II: INSTRUCTIONS TO BIDDER (ITB) .....	16
SECTION – III: BID DATA SHEET .....	37
SECTION – IV: FRAUD & CORRUPT PRACTICES .....	40
SECTION – V: PRE-BID MEETING .....	43
SECTION – VI: MISCELLANEOUS .....	45
APPENDICES .....	47
Appendix – A48	
<b>Annexure-I</b> .....	51
Appendix – B .....	53
Appendix – C .....	56
Appendix – D .....	57
Appendix – E .....	62
Appendix – F.....	63
Appendix – G.....	64
Appendix – H.....	65
Appendix – I .....	66
Appendix – J .....	69
Appendix – K.....	70
Appendix – L .....	71
Appendix – M.....	72
Appendix – N.....	164
Appendix – O.....	166
Appendix – P.....	167
APPENDIX Q - DTIS.....	170
Appendix R.....	180
Appendix S.....	181
Appendix T .....	182

**DDP / DGQA**  
**DQA (WP), Floor 6, “B” Block, MoD Complex, Africa Avenue,**  
**New Delhi-110023, India**

**Website: [www.dgqadefence.gov.in](http://www.dgqadefence.gov.in)**

**Phone: 011-23012080, 011-23013805**

**Email: “\*\*\*\*\*”**

**Websites: “[www.dgqadefence.gov.in](http://www.dgqadefence.gov.in)”, “<https://eprocure.gov.in/epublish/app/>” &  
“<https://ddpmod.gov.in>”**

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**NOTICE OF INVITING BID**

Place: New Delhi

Date: 06.12.2021

Respected Sir/ Madam,

1. The Government of India (GOI) has launched a new scheme called Defence Testing Infrastructure Scheme (DTIS) for setting up of Greenfield Defence Testing Infrastructure (required for defence and aerospace related production), as a common facility under private sector with Government assistance in the country. This scheme aims to provide a focused, structured and significant thrust to indigenous defence manufacturing by providing state of the art testing facilities available to the defence development and production industry in the country.
2. In this regard, DDP / DGQA invites online RFP Applications from reputed entities, registered and incorporated in India, for determining their interest in “*Development, Operation and Management of Defence Testing Infrastructure (DTI) for Ammunition tests under DTIS*”. The scheme guidelines and the RFP document have been published on the websites “[www.dgqadefence.gov.in](http://www.dgqadefence.gov.in)”, “<https://eprocure.gov.in/epublish/app/>” & “<https://ddpmod.gov.in>” and can be downloaded from [these respective websites \(the “Official Websites”\)](#).
3. The RFP document containing the details of project background & objective, document submission requirements and scope of work etc. is enclosed.
4. Interested Bidders are requested to submit their responses to the document, through “<https://eprocure.gov.in/epublish/app/>”, on or before <1600hrs on 27.01.20212 and it shall be clearly marked to the address mentioned below:

**DDP / DGQA**

**DQA (WP), Floor 6, “B” Block, MoD Complex, Africa Avenue,**  
**New Delhi-110023, India**

**Website: [www.dgqadefence.gov.in](http://www.dgqadefence.gov.in)**

**Phone: 011-23012080, 011-23013805**

**Email: “[dtis-dqawp@navy.gov.in](mailto:dtis-dqawp@navy.gov.in)”**

5. Some important dates for this RFP process are as follows:

(i)	Document download start date	08.12.2021 at 0900 hrs
(ii)	Date of submission of Pre-bid queries	08.12.2021 at 1100 hrs
(iii)	Pre-bid meeting	22.12.2021 at 1500 hrs
(iv)	Last date of submission of Bid	27.01.2022 at 1600 hrs

6. All clarifications / corrigenda / addenda will be published only on the Official Websites mentioned above.
7. DDP / DGQA reserves the right to accept or reject any or all Bids without assigning any reason and no correspondence shall be entertained in this regard.



**(Cdr. Kuldip S Nehra)**  
**Cdr QA-DTIS**

**Enclosure:** RFP document

**SECTION – I: INTRODUCTION & BACKGROUND**

1. BACKGROUND &  
INTROUCTION

1.1 The Directorate General of Quality Assurance (DGQA) (hereinafter referred to as the “**Authority**”) is under the Department of Defence Production (DDP), Ministry of Defence (MOD). The Authority provides Quality Assurance (QA) cover for the entire range of arms, ammunitions, equipment and stores supplied to the Armed Forces. The establishments under this organisation are spread all over the country specifically where mainly the Ordnance Factory Boards (OFBs), Defence Public Sector undertakings (DPSUs) and industrial base exist with an aim to provide an eco-system to foster innovation & technology development and encourage Indian industry to invest in the A&D sector.

1.2 **Defence Testing Infrastructure Scheme (DTIS) (enclosed at Appendix I):**

Under “Make in India”, the GOI has accorded high priority to development of manufacturing base of aerospace and defence (A&D) sector in the country so as to reduce dependence on imports. Towards this, the Government has announced establishment of Defence Industrial Corridors (DICs) in Uttar Pradesh (U.P.) and Tamil Nadu (T.N.). Several other initiatives such as preference to procurement from Indian vendors under the Defence Procurement Procedure (DPP), simplification of Make procedure, introduction of simplified procedure for Make II sub-category, liberalization of the licensing regime & Foreign Direct Investment (FDI) policy by raising the cap on FDI in the defence sector, simplification of export procedure, streamlining of defence offset guidelines, innovations for Defence Excellence (iDEX) and Defence Investors Cell etc. have also been created with an aim to provide an eco-system to foster innovation & technology development and encourage Indian industry to invest in the A&D sector.



- 1.3 *Objective of DTIS:* The objective of the proposed Scheme is to promote indigenous defence production, with special focus on participation of MSMEs and Start Ups by bridging gaps in defence testing infrastructure in the country. Setting up of Defence Testing Infrastructure will provide easy access and thus meet the testing needs of the domestic defence industry.

One of the main impediments for domestic defence production is lack of easily accessible state-of-the-art testing infrastructure. The defence testing infrastructure (DTI) is often capital intensive requiring continuous upgradation and it is not economically viable for individual defence industrial units to set up in-house testing facilities. The DTIS aims at setting up of Greenfield DTIs (required for A&D related production), as a common facility under private sector with Government assistance in DICs (priority area) and other industrial clusters. The proposed scheme plans to enhance defence manufacturing industry by creating DTIs and addressing quality and certification requirements. The main focus would be on creating appropriate infrastructure for development and growth of the A&D industry in the country. The scheme will boost the indigenous defence production, with special focus on participation of MSMEs and Start Ups by bridging gaps in DTI in the country. Setting up of DTI will provide easy access and thus meet the testing needs of the domestic defence industry.

1.4 *Scope of DTIS:*

- a. The aim of DTIS is to set up 8 (eight) DTIs with a total grant-in-aid of INR 400 crore (Rupees Four Hundred crore) from the GOI and the scheme is to be implemented and the facilities to be made operational before 2025;
- b. Each DTI will be setup through a Special Purpose Vehicle (SPV) (the Special Purpose Vehicle (SPV)/ Implementation Agency (IA), which may be promoted / constituted by private entities (industrial / manufacturing entity, industry associations, R&D / academic institutions, existing testing establishment entities etc.) and Government or public entities (DPSUs, State Governments, Central Government agencies etc.);
- c. The IA/ SPV will be incorporated as a Section 8 company under the Companies Act 2013.
- d. The scheme would provide financial assistance to the IA/ SPV in the form of grant-in-aid for setting up testing and certification facilities for manufacturers of defence equipment / systems;
- e. The financial assistance for each DTI facility will be limited to 75% (seventy five percent) of the project cost. The project cost for establishment of the DTI facility under DTIS (the “Project Cost”) shall exclude the cost of the land and the establishment cost. The broad norms for funding of DTIs shall be as follows:
  - I. Land: to be provided by IA/SPV
  - II. Capex for building:  $\leq 20\%$  of Project Cost
  - III. Test equipment, installation, training:  $\geq 80\%$  of Project Cost
- f. The test facilities planned to be set up have been divided into 3 (three) types, namely, Small, Medium and Large. The indicative estimated Project Cost of each type of DTI facility is given in the table below:

S. No.	Type	Estimated Project Cost (INR)	Nos
1.	Small	< 20 crore	03
2.	Medium	20 – 50 crore	03
3.	Large	> 50 crore	02

The project cost of Ammunition Test facility is estimated to be of Medium to Large category and Grant in Aid will be upto 75% of the project cost as per DTIS guidelines given at Para 6.3 of Appendix – Q of RFP

- g. The IA/SPV shall be responsible for operation and Management of assets created under the scheme by way of collecting user charges plus applicable GST.
- h. The IA/ SPV will be responsible for obtaining all necessary statutory approvals / clearances including those for Ammunition compliance and quality standards as applicable.

2. DTI Facility for Ammunition testing 2.1

In broad terms, Ammunitions comprise of materials that are fired, scattered, dropped or detonated from any weapon, that includes both expendable weapons (e.g., bombs, missiles, grenades, land mines) and parts of other weapons (e.g., bullets and warheads). Ammunitions are classified into four types as shown below:

- (a) Small / personal arms: Less than 12.5mm
- (b) Medium caliber: 12.5mm to 40mm
- (c) High / large caliber: 40mm to 155mm
- (d) Miscellaneous: (1) Guided Ammunitions; (2) Propellants; and (3) Drop bombs, etc.

A demand gap assessment study on Ammunitions testing requirements was carried out.

As per the gap assessment study, the total supply for testing for Ammunitions in the country currently stands at INR 900 – 1,000 crore as against an estimated total market demand of approximately INR 400 - 500 crore. This market demand is expected to reach approximately INR 1,100–1,200 crore by 2030, primarily driven by increasing indigenisation in defence manufacturing. The estimated market size and growth rate was also validated through interaction with various stakeholders who are involved in manufacturing of Ammunitions in the county.

2.2

Major tests for the Ammunitions can be grouped into generic and special-to-type. tests Generic tests are common for all the Ammunitions and special-to-type tests are specific to particular types of Ammunitions. The following certifications and standards would be required to be adhered to by the envisioned DTI test facility for Ammunitions:

- (a) Firing standards
- (b) Safety standards
- (c) OFB standards
- (d) DRDO standards

The proposed integrated testing facility for Ammunition tests will provide the necessary testing infrastructure required for undertaking these tests. It should have the necessary certification/ accreditations to be able to provide certification and calibration of the component/ system/ equipment as per applicable standard and codes.

For further details on the nature of the tests that will be carried out by the proposed integrated testing facility, please refer to Appendix – P. The Appendix P lists the mandatory and additional tests for the proposed facility.

2.3

The DTI facility under the DTIS can be developed at any location pan India, as preferred by the Bidder subject to land being arranged by the Bidder. However, a location assessment was also carried out as part of the gap assessment study and preferred clusters were identified for setting up the Ammunition test facility (1) Uttar Pradesh (Kanpur-Amethi region) (2) Maharashtra (Mumbai-Pune-Nashik and Nagpur region) (3) Madhya Pradesh (Jabalpur Region) (4) Tamil Nadu (Salem-Coimbatore-Nilgiris region) (5) Telangana (Hyderabad) (6) West Bengal (Kolkata) states were identified as suitable locations for setting up integrated Ammunition testing facility. This assessment takes into consideration existing manufacturing unit, ancillary industries, testing facilities and future demand for the same. Based on the key clusters, assessment of the A&D or other applicable policies in the states and available infrastructure for establishment of the DTI facility was also undertaken.

3. Brief Description about  
the Bidding Process

3.1

The Authority has adopted a Single stage two envelope system (collectively referred to as the "Bidding Process") for selection of the bidder for award of the Project. Under this process, the bid shall be invited under two parts. Eligibility and qualification of the Bidder will be first examined based on the details submitted under first envelope (Technical Bid) with respect to eligibility requirements and qualifications criteria prescribed in this RFP. (The "Bidder", which expression shall, unless repugnant to the context, include the members of the Joint Venture). The Financial Bid under the second envelope shall be opened only for those Bidders whose Technical Bids are responsive to eligibility, qualifications requirements and is scoring a minimum of 70 marks as per this RFP.

- 3.2 The Bidding Document as uploaded on the website of “[https://eprocure.gov.in/epublish/app /](https://eprocure.gov.in/epublish/app/)” & “<https://ddpmod.gov.in>” can be viewed and downloaded by anyone including intending bidder. The bids are to be submitted in hard copy along with the mandatory documents such as irrevocable and unconditional Bank Guarantee of any Nationalized or all Commercial Scheduled Bank against Bid Security, Power of Attorney & All other documents shall be as per Notice Inviting e-tender / RFP in the Drop Box provided at the below mentioned address.

**Venue for Bid submission**

**DDP / DGQA**

**DQA (WP), Floor 6, “B” Block, MoD Complex, Africa Avenue,  
New Delhi-110023, India**

- 3.3 **Deleted**
- 3.4 Interested bidders are being called upon to submit their Bid in accordance with the terms specified in this Bidding Document. The Bid shall be valid for a period of not less than 180 days from the date specified in Bid Data Sheet for submission of BIDs (the “Bid Due Date”).
- 3.5 The Bidder shall prepare and submit a detailed project report for setting up the proposed DTI facility as part of the Bid and shall indicate the manner and modalities for operation and Management of the testing facility after its creation in its proposals for consideration as a part of the DPR as provided in Clause 10 of ITB.
- 3.6 During the Bidding Process, Bidders are invited to examine the Project in greater detail, and to carry out, at their cost, such studies as may be required for submitting their respective Bids for award of the contract for the Project.
- 3.7 Brief description about the bidding process is illustrative below:
- (a) Bidders meeting the eligibility criteria as defined in Section – II Instructions to Bidders (ITB) Clause 2.1 and 12 shall be considered for further stage of evaluation.
  - (b) Bidders who have been pre-qualified as per the criteria defined in Clause 2.1 and 12; will be evaluated as per the criteria provided in Clause 13 & 14. The Technical Bids of only those Bidders who fulfil the criteria as provided in Section – II ITB Clause 13 & 14, shall be taken up for further scoring. Bidders who do not qualify the criteria provided in Section – II ITB Clause 21. and 12, shall not be considered for further evaluation.
  - (c) The evaluation of the Technical Bids submitted by the Bidders shall be done as per the scoring parameters as provided in Section-II ITB Clause 17. Bidders need to score a minimum of 70 marks to be qualified for Financial Bid opening.
  - (d) The Financial Bid of the only those Bidders who are qualifying as per the above criteria, shall be opened.

3.8 In this RFP, the term “**Lowest Bidder**” shall mean the Bidder who is offering to take the lowest Grant in Aid subject to fulfilling the clause 12,13,14 & 17. Generally, the Lowest Bidder shall be the selected Bidder. The remaining Qualified Bidders shall be kept in reserve and may, in accordance with the process specified in this RFP, be invited for negotiations in case such Lowest Bidder withdraws or is not selected for any reason. In the event of withdrawal or non-selection of the Lowest Bidder, the Authority may, in its discretion, either invite fresh Financial Bids from the remaining Qualified Bidders or annul the Bidding Process.

3.9 As part of the Bidding Document, the Authority has provided a draft Contract Agreement along with the RFP.

Bids are being invited for the Project, on the basis of the financial grant (the "**Grant**") required by a Bidder for implementing the Project, subject to the provisions of the DTIS.

4. Details of Bid security

4.1 The lead member of the Bidder shall furnish the Bid security as part of its Bid, a Bid security of INR 80,00,000/- (Eighty Lakhs) in the form of an irrevocable and unconditional bank guarantee issued by nationalized bank, or a commercial scheduled bank in India having a Net worth of at least INR 1000 Crore (Rs. One Thousand Crore), in favor of the Authority in the Format at Annexure I (the “Bank Guarantee”) and having validity period of not less than 180 days (One Hundred Eighty) from the Bid due date, inclusive of a claim period of 60 (sixty) days, and may be extended as may be mutually agreed between the Authority and Bidder from time to time. In case the Bank Guarantee is issued by a Foreign Bank outside India, confirmation of the same by any nationalized Bank in India is required. For the avoidance of doubt, Scheduled Bank shall mean a bank as defined under section 2(e) of the Reserve Bank of India Act, 1934.

If the lead member of the Bidder is a registered MSME/ startup who has been recognized as Start-ups by Department for Promotion of Industry & Internal Trade (DPITT), then it will be required to submit a Bid securing declaration as per Appendix T. The Bidder shall submit documentary evidence to the extent as per the GOI notifications in this regard in order to avail the benefits of the same.

5. Schedule of Bidding Process

5.1 The Authority shall endeavour to adhere to the following schedule:

S No	Event description	Date
1.	Last date for receiving queries	21.12.2021
2.	Pre-Bid Conference	22.12.2021
3.	Authority response to queries latest by	27.12.2021

4.	Bid Due Date / Bid Submission Date	27.01.2022
5.	Opening of Technical Bids	31.01.2022

Any queries or request for additional information concerning this RFP shall be submitted by a letter or an e-mail correspondence to the officer designated in ITB Clause 6 by the specified date. The envelopes/ communications shall clearly bear the following identification/ title: “Queries/Request for Additional Information: RFP for Development, Operation and Management of Defence Testing Infrastructure (DTI) for Ammunition testing under the Defence Testing Infrastructure Scheme (DTIS)”

**SECTION – II: INSTRUCTIONS TO BIDDER (ITB)**



**General**

- 1. Scope of the Bidder**      **1.1**      The Authority wishes to receive Technical and Financial Bids in order to appoint an Implementation agency for Development of Defence Testing Infrastructure (DTI) for Ammunition Testing under the Defence Testing Infrastructure Scheme (DTIS).
- 2. Eligibility of the Bidder**      **2.1**      For determining the eligibility of the Bidder for their qualification hereunder, the following shall apply:
- a. The Bidder shall be a Joint Venture (JV)/ Consortium of minimum five (05) constituent members. However, contribution from each JV member shall not exceed 40% of the share capital of the JV/ consortium. The Bidder shall propose a lead member of the JV / Consortium and the JV / Consortium members should not be an Associate of any other JV / Consortium members of the Bidder or any other Applicant. The lead member shall submit a Letter of Intent as per Appendix C which shall be duly signed by the authorised signatory of each constituent member.
  - b. Each constituent member of the JV/ consortium should be a private entity registered in India and/or State Government agencies in order to qualify for forming the Implementation Agency., Such an entity can be either from private sector ((Industrial / Manufacturing entity (including MSME, Start-ups, Proprietorship firms etc.), or an Industry association, R&D or Academic institution or existing testing establishment entities etc. or Government or public sector (DPSUs, State Governments, Central Government agencies etc.) entities.
  - c. Out of five (5) constituent members, at least three (3) constituent members should be in existence for a period of at least three (3) years as on last date of submission of Bid Application. which shall be substantiated through submission of company profiles, company charter documents, annual reports, certificates and any other relevant document etc.
  - d. Each constituent member of the Bidder shall have positive (+ve) net worth as on last date of submission of Bid Application. However, exception to this criterion may be considered for those constituent members who have been recognized as Start-ups by Department for Promotion of Industry & Internal Trade (DPITT). The Bidder shall submit documentary evidence to the extent as per the GOI notifications in this regard in order to avail the benefits of the same.
  - e. None of the constituent member of the Bidder should have been blacklisted by Central or State Government as on the date of submission of Bid. The Bidders shall submit declaration in this regard from all the constituent members on their company letter heads as per the format provided in this RFP document.
- 3 Implementing Agency**      **3.1**      Each DTI will be setup through a Special Purpose Vehicle (SPV), hereinafter referred to as the Implementation Agency, which may be promoted/constituted by private entities (Industry, Industry association, R&D/Academic institution) and/or State

Government agencies. The constituent members of the Implementing Agency shall subject to provisions of Clause 2 above and other provisions of DTIS.

The Implementing Agency under the scheme shall be a Section 8 company registered under the Companies Act,2013. The Bidder will be given a time period of 45 days from the date of issue of Letter of Award to constitute the SPV for the project.

**3.2** The Implementing Agency shall be responsible for setting up of DTI under the DTIS. The Implementing agency shall also be responsible for operation and Management of assets created under the scheme, in a self-sustainable manner, by way of collecting user charges plus applicable GST.

The Implementing Agency will have to arrange the land for the DTI facility to be built. The IA may not necessarily be the owner of the land but should have access to the land via lease for at least 30 years from the date of response to RFP at the time of submitting the bid and shall provide documentary evidence for the same. The Bidder shall note that the proposed land should be encumbered free, freehold and mortgage free at the time of bidding.

The JV members of the IA should be an individual organization and should not have any relation among each other or shall not be having any common share holding.

The Implementation agency shall be responsible for obtaining statutory clearances required for development of the proposed DTI facility.

**3.3** The IA/ SPV once incorporated, will not be permitted to change in the composition of its constituent members or their respective shareholding for the next 2 years starting from the date of commercial operation date or issuance of completion certificate whichever is later. After completion of the above-mentioned time period of 2 years,

- i) the IA/SPV can undertake change in shareholding of the constituent members only after obtaining prior written approval from the Authority, however subject to the provisions of the DTIS;
- ii) the IA/SPV shall be required to maintain the same number of constituents members as at the bidding stage throughout the existence of the IA/ SPV. However, if the IA/ SPV wants to change/ replace any constituent member, it shall be required to obtain a prior written approval from the Authority for the same, subject to provisions of DTIS.

**4. Right to accept or reject any or all Bids**

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

**4.2** Authority reserves the right to verify all statements, information and documents submitted by the Bidder in response to the RFP or the Bidding Documents and the Bidder shall, when so required by the Authority, make available all such information, evidence and documents as may be necessary for such verification. Any such verification, or lack of such verification, by the Authority shall not relieve the Bidder

of its obligations or liabilities hereunder nor will it affect any rights of the Authority thereunder

- 4.3 The Authority reserves the right to reject any Bid and appropriate the Bid security if:
- a. At any time, a material misrepresentation is made or uncovered, or
  - b. the Bidder does not provide, within the time specified by the Authority, the supplemental information sought by the Authority for evaluation of the Bid.
- Such misrepresentation/ improper response shall lead to the disqualification of the Bidder. The disqualification will be applicable for all participants of the bidder. If such disqualifications/ rejection occurs after the Bids have been opened and the selected bidder gets disqualified/ rejected, the Authority reserves the rights to:
- i. invite the remaining Bidders to submit their Bids in accordance with RFP or:
  - ii. take any such measure as may be deemed fit in the sole discretion of the Authority, including annulment of the Bidding process.

- 4.4 In case it is found during the evaluation or at any time before signing of the Contract Agreement or after its execution and during the period of subsistence thereof, including the Contract thereby granted by the Authority, that one or more of the qualification conditions have not been met by the Bidder, or the Bidder has made material misrepresentation or has given any materially incorrect or false information, the Bidder shall be disqualified forthwith if not yet appointed as the Implementation agency either by issue of the LOA or entering into of the Contract Agreement, and if the Selected Bidder has already been issued the LOA or has entered into the Contract Agreement, as the case may be, the same shall, notwithstanding anything to the contrary contained therein or in this RFP, be liable to be terminated, by a communication in writing by the Authority to the Selected Bidder or the Implementation agency, as the case may be, without the Authority being liable in any manner whatsoever to the Selected Bidder or Implementation agency and without prejudice to any other right or remedy which the Authority may have under this RFP, the Bidding Documents, the Contract Agreement or under applicable law. In such event, Authority reserves its right to forfeit Bid Security or Performance Security as the case may be and impose those penalties as per the terms of the Contract Agreement and applicable laws.

**5. Contents of the Bidding Document**

- 5.1 This RFP comprises the disclaimer set forth hereinabove, the contents as listed below and will additionally include any addenda issued by the Authority

**Part 1: Request for Proposal**

Section: I – Introduction & Background  
Section: II – Instruction to Bidders  
Section: III – Bid Data Sheet  
Section: IV – Fraud and Corrupt practices  
Section: V – Pre – Bid Meeting  
Section: VI - Miscellaneous

**Appendices**

I. Letter comprising the Bid

- II. Particulars of the Bidder
- III. Power of Attorney for Lead Member of JV/ Consortium
- IV. Power of Attorney for signing of Bid
- V. Joint Bidding Agreement for JV/ Consortium
- VI. Technical capacity of the Bidder
- VII Financial capacity of the bidder
- VIII Undertaking by the Bidder
- IX. Statement of Legal Capacity
- X. Bid security
- XI. Details of land proposed for the project
- XII. Non – Disclosure Agreement
- XIII. Detailed Project Report
- XIV. Contract Agreement
- XV. Letter comprising the Financial Bid
- XVI. Price Bid

**Part 2: Contract/ Agreement**

The Draft contract agreement provided by the Authority as part of the Bid document shall be deemed to be part of this RFP.

**6. Clarifications 6.1**

Bidders requiring any clarification on the RFP may notify the Authority by writing a letter or an e-mail correspondence in accordance with Clause 5.1. They should send in their queries before the date specified in the schedule of Bidding Process contained in Clause 1.5. The Authority shall endeavor to respond to the queries within the period specified therein, but no later than 10 (ten) days prior to the Bid Due Date. The responses will be uploaded on the website ([https://eprocure.gov.in/epublish/app /](https://eprocure.gov.in/epublish/app/)” & “<https://ddpmod.gov.in>). The Authority will mention all the queries and its responses thereto without identifying the source of queries. The Bidder shall send letter or e-mail to the following correspondence address.

Attention of	Cdr. QA-DTIS, DQA(WP)
Designation	Commander
Address	DQA (WP), Floor 6, “B” Block, MoD Complex, Africa Avenue, New Delhi-110023
Tel no.	011-23012080, 23013805
Email Address	<a href="mailto:Dtis-dqawp@navy.gov.in">Dtis-dqawp@navy.gov.in</a>

**6.2**

The Authority shall endeavor to respond to the questions raised or clarifications sought by the Bidders. However, the Authority reserves the right not to respond to any question or provide any clarification, in its sole discretion, and nothing in this Clause 6.1 shall be taken or read as compelling or requiring the Authority to respond to any question or to provide any clarification.

**6.3**

The Authority may also on its own motion, if deemed necessary, issue interpretations and clarifications to all Bidders. All clarifications and interpretations issued by the

Authority shall be deemed to be part of the Bidding Documents. Verbal clarifications and information given by Authority or its employees or representatives shall not in any way or manner be binding on the Authority.

**7. Amendment of RFP**      **7.1**      At any time prior to the Bid Due Date, the Authority may, for any reason, whether at its own initiative or in response to clarifications requested by a Bidder, modify the RFP by the issuance of Addenda.

Any Addendum thus issued will be uploaded on the Authority's website i.e. "https://eprocure.gov.in/epublish/app /" & "https://ddpmod.gov.in"

**7.2**      In order, to afford the Bidders a reasonable time for taking an Addendum into account, or for any other reason, the Authority may, in its sole discretion, extend the Bid Due Date.

**8. Preparation and Submission of Bid**      **8.1**      Language: The Bid and all related correspondence and documents in relation to the Bidding Process shall be in English language. Supporting documents and printed literature furnished by the Bidder with the Bid may be in any other language provided that they are accompanied by translations of all the pertinent passages in the English language, duly authenticated and certified by the Bidder. Supporting materials, which are not translated into English, may not be considered. For the purpose of interpretation and evaluation of the Bid, the English language translation shall prevail.

**Format & Signing of the Bid**      **8.2**      The Bidder shall provide all the information sought under this RFP. The Authority will evaluate only those Bids that are received in the required formats and complete in all respects. Incomplete and/or conditional Bids shall be liable to rejection.

The Bid prepared by the Bidder shall comprise Technical Bid (together with documents required to be submitted along therewith pursuant to this RFP) and Financial Bid.

The Bid document shall be signed in blue ink by the authorized representative of the bidder/ or a person or persons duly authorized to bind the Bidder to the contract. The later authorization shall be indicated by duly notarized written power of attorney accompanying the Bid in original. All the pages/documents of the Bid shall be signed in blue ink by the authorized representative(s) of the bidder to sign the bid and each page of the Bid should be serially numbered. The Bidders are advised to prepare a Table of Contents at the start of the Bid duly highlighting each sections and page number of the key components of the Bid. The Bidder shall submit the Bid in a sealed envelope and mark the envelope as "BID".

The technical and financial bid shall be placed in separate envelope and marked as "Technical Bid" and "Financial Bid" respectively. Both of the envelope's shall be placed in an outer envelope, which shall be sealed. Each of the envelopes shall clearly bear the following identifications:

"Bid for DEVELOPMENT, OPERATION AND MAINTENANCE OF DEFENCE TESTING INFRASTRUCTURE (DTI) FOR AMMUNITION TESTING UNDER THE DEFENCE TESTING INFRASTRUCTURE SCHEME (DTIS)"

and shall clearly indicate the name and address of the bidder. In addition, the bid due date should be indicated on the right-hand top corner of each of the envelopes.

Each of the envelope shall be addressed to the address and details as provided ITB clause 6.1 of this RFP document.

If the envelopes are not sealed and market as instructed above, the authority assumes no responsibility for the misplacement or premature opening of the contents of the bid submitted and consequent losses, if any suffered by the bidder.

**Bid due date**      **8.3**      Bids should be submitted by the Bidder in hard copy in the Drop box provided at the address mentioned in Section -I Introduction & Background Clause 3.2 not later than the time specified on the prescribed date. The Authority, may, at its discretion, extend this deadline for submission of Bid by amending the Bid document, in which case all rights and obligations of the Authority and Bidders previously subject to the deadline will thereafter be subject to the deadline as extended.

**Late Bids**      **8.4**      Bids received by the Authority after the specified time on the Bid Due Date shall not be eligible for consideration and shall be summarily rejected. The Authority will not be responsible for any delay in receipt of Bids.

**Modifications/  
Substitution/  
Withdrawal  
of Bids**      **8.5**      The Bidder may modify/ substitute/ withdraw his/her Bid after submission, provided that written notice of the modification, substitutions or withdrawal is received by the authority before the bid due date. No bid shall be modified, substituted or withdrawn by the bidder on or after the bid due date.

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

No Bid may be withdrawn in the time period between the deadline of submission of Bids and the expiration of period of bid validity. Withdrawal of a bid during this interval may result in the forfeiting of Bidder's Bid security.

The Bidder can re-submit his/her Bid as when required before the Bid submission end date and time. The Bid submitted earlier will be replaced by the new one. The payment made by the Bidder earlier will be used for revised Bid and the revised Bid will be considered for evaluation purposes.

**9. Document Submission requirement**      **9.1**      The Bidder shall submit the hard copy of the Bid along with the following documents as mentioned below at the address mentioned in Section: I Clause 3:

**Technical Bid**

- a. Appendix – A: Letter comprising the Technical Bid along with the receipt of Bid processing/ Tender Fee
- b. Appendix – A: Annexure-I- Particulars of the Bidder
- c. Appendix – B: Power of Attorney of the Lead Member of the JV
- d. Appendix – C: Power of Attorney for signing the Bid

- e. Appendix – D: Joint Bidding Agreement
- f. Appendix – E: Technical capacity of the bidder/ Work Experience
- g. Appendix – F: Financial capacity of the bidder
- h. Appendix – G: Undertaking to be provided by the bidder
- i. Appendix – H: Statement of Legal capacity
- j. Appendix – I: Bid Security
- k. Appendix – J: Land Details for the Project
- l. Appendix – K: Non – Disclosure Agreement
- m. Appendix – L: Detailed Project Report
- n. Appendix – M: Contract Agreement
- o. Appendix – P: List of Tests and Equipment
- p. Appendix Q- DTIS Scheme Guidelines
- q. Appendix – R: List of proposed mandatory tests
- r. Appendix – S: List of proposed additional tests
- s. Appendix -P Bid Securing Declaration

**Financial Bid**

- a. Appendix – N: Letter Comprising the Financial Bid
- b. Appendix – O: Price Bid

**10. Detailed  
Project  
Report**

**10.1**

The bidders are required to submit a Detailed Project Report (DPR) which shall provide the key details for the development, construction, operation and management of the Project and shall be a binding document as part of the Contract Agreement.

The DPR prepared by the bidder should be comprehensive enough to cover each aspect of the activities which the Bidder proposes to take up for setting up the DTI facility under the DTIS and shall include but not limited to the following:

- Executive Summary: Overall summary of the proposal which may include Market potential, project cost estimate & PRR & ERR
- Market Potential of Ammunition testing
  - Current market scenario of Ammunition testing
  - Current demand & supply for testing facility & Gap identified for Ammunition testing
  - Future Demand of Testing for Ammunition testing
  - Future growth envisaged for the Ammunition testing market in India
  - Market risk and proposed risk mitigation plan
- Technical Analysis
  - Type of the tests required for Ammunition testing (detailed technical specifications)
  - Similar experience of bidder (as per ITB clause 17.2)
  - Type of facilities proposed for undertaking tests
  - Certifications as per National / International Standards proposed
  - User fee proposed to be levied for each test
  - Process flow of the testing procedure
  - Number of tests in a year against list of tests as per Appendix -P
  - Future forecast/ projections of Tests for the next 15 years.
  - Measurable outcomes ex. expected reduction in testing cost and time.

- Infrastructure Facility
  - Project site (Proposed location of the facility with land details)
  - Layout plan of the facility
  - Detailed design of the proposed facility including building layout, utilities, specialized works for testing and testing equipment
  - Key Machineries & equipment to be installed for performing the tests.
    - Capacity/ size/ specifications catering to the standard
    - Technical specifications of the machines to be utilized.
  - Project completion schedule (construction plan, project milestones)
  - Statutory clearances/ approval required (timelines)
- Operation & Management
  - Operating & monitoring mechanism proposed
  - Organization chart for O&M Phase
  - Framework of operation to maintain KPIs (accreditations and certification to be obtained and maintained etc)
  - Obligations of the Bidder during O&M
  - Operation & Management Cost
- Project Cost Analysis
  - Project Cost for Development with breakup of civil cost and equipment cost
  - Schedule for Release of Grant
  - Operation & Management Cost
  - Total Cost for Development
- Financial Analysis
  - Assumptions made for Financial analysis
  - Means of financing & Financial Structuring of the project
  - Project Internal Rate of Return
  - Equity Rate of Return
  - Sensitivity Analysis
  - Financial Model

*Note: The Bidder will be required to submit all necessary supporting documents to back up the details mentioned in the Detailed Project Report.*

**11. Operation and Management**

**11.1**

The Bidder will be required to undertake the Operation and Management of the Testing facility created in a self -sustainable manner.

The assets created shall be operated under the DTIS scheme on the basis of levying user fee charges for utilizing the testing facility without any discrimination. The Bidder should propose a dynamic mode of operation which shall support continuous utilization of the assets and ensure the funds required for the Management is readily available.

The Bidder shall ensure that there is a mechanism created for the O&M of the assets in line with the provisions of Contract agreement and enough manpower is deputed for the same.



**12. Eligibility  
Criteria**

**12.1** For determining the eligibility of the Bidder for their qualification hereunder, the following shall apply:

The Bidder shall be a JV/ Consortium of minimum five (05) constituent members. However, contribution from each JV member shall not exceed 40% of the share capital of the JV/ consortium. The Bidder shall propose a lead member of the JV / Consortium and the JV / Consortium members should not be an Associate of any other JV / Consortium members of the Bidder or any other Bidder. The lead member shall submit a Letter of Intent as per Appendix C which shall be duly signed by the authorised signatory of each constituent member.

**12.2** Each constituent member of the JV/ consortium should be a private entity registered in India and/or State Government agencies in order to qualify for forming the Implementation Agency., Such an entity can be either from private sector ((Industrial / Manufacturing entity (including MSME, Start-ups, Proprietorship firms etc.), or an Industry association, R&D or Academic institution or existing testing establishment entities etc. or Government or public sector (DPSUs, State Governments, Central Government agencies etc) entities.

**12.3** Out of five (5) constituent members, at least three (3) constituent members should be in existence for a period of at least three (3) years as on last date of submission of Bid Application. which shall be substantiated through submission of company profiles, company charter documents, annual reports, certificates and any other relevant document etc

**12.4** Each constituent member of the Bidder shall have positive (+ve) net worth as on last date of submission of bid. However, exception to this criterion may be considered for those constituent members who have been recognized as Start-ups by Department for Promotion of Industry & Internal Trade (DPITT). The Bidder shall submit documentary evidence to the extent as per the GOI notifications in this regard in order to avail the benefits of the same.

**12.5** None of the constituent member of the Bidder should have been blacklisted by Central or State Government as on the date of submission of Bid. The Bidder shall submit declaration in this regard from all the constituent members on their respective letter head as per Appendix: G.

**13. Work  
Experience**

**13.1** The Bidder shall demonstrate the technical competency with the help of documentary evidence (Combined of all the JV/ consortium members) the following:

- Three completed works costing not less than the amount equal to 40 (forty) percent of the project cost or,
- Two completed works costing not less than the amount equal to 50 (fifty) percent of the project cost or,
- One completed work costing not less than the amount equal to 80 (eighty) percent of the project cost

*(Note: As per GFR clause 3.3.6(iii) (b)*

1. The term “Work” above is defined a “Experience in carrying out assignments such as R&D/ Testing of Ammunition test in the last 7 years ending last day of month previous to the one in which the Bids have been invited.
2. The term “Project Cost” is defined as the “The total cost of development of the proposed DTI facility by the bidder in the DPR, excluding the cost of land, establishment cost and any recurring expenditure”
3. The Bidder would be required to provide documentary evidence to support their claim. The documentary evidence should be in the form of Letter of Award & Completion certificate on the client letterhead)

- 14. Financial parameters**      **14.1**      The bidder shall demonstrate the financial competency with the help of documentary evidence the following:
- The Average Annual turnover of the bidder in the last three financial years (i.e. 2017-18, 2018-19 & 2019-20) (Combined of all the JV/ consortium members) shall be equivalent to 100% of the Project cost.

- 15. Evaluation Process**      **15.1**      Opening and Evaluation of Bids
- The Authority shall open the bids, in the presence of the bidders who choose to attend on the prescribed date and time of opening of bid at Clause 1.5. The Bidder’s representatives who all are present shall sign an attendance sheet evidencing their presence. In the event of the specified date Bid opening declared a holiday for the Authority, the Bids shall be opened at the appointed time and place on the next working day.

- Test responsiveness (checklist)**      **of 15.2**      As a first step towards evaluation of the Technical Bids, the Authority shall determine whether each Technical Bid is responsive to the requirements of this RFP. A Technical bid shall be considered responsive only if:
- Technical Bid is received in hard copy before the last date & time of submission as per the format as described in the RFP.
  - Documents listed at clause 9.1 are complete in all respect
  - Technical bid is accompanied by the Bid security as per Appendix - I
  - Technical Bid is accompanied by the Power of Attorney as per Appendix - C
  - Technical Bid is accompanied by Power of Attorney for Lead Member of consortium and Joint Bidding Agreement
  - Technical bid contains all information (complete in all respect)
  - Technical bid does not contain any condition or qualification
  - Technical Bid is duly signed by the authorized signatory.

The Authority reserves the right to reject any technical bid which is non- responsive and no request for alteration, modification, substitution or withdrawal shall be entertained by the Authority in respect of such bid.

- Confidentiality**      **15.3**      Information relating to the examination, clarification, evaluation and recommendation for the qualified bidders shall not be disclosed to any person who is not officially

concerned with the process or is not a retained professional advisor advising the Authority in relation to or matters arising out of or concerning the bidding process. The Authority will treat all information, submitted as part of the Bid, in confidence and will require all those who have access to such material to treat the same in confidence. The Authority may not divulge any such information unless it is directed to do so by any statutory entity that has the power under law to require its disclosure or is to enforce or assert any right or privilege of the statutory entity and/ or the Authority or as may be required by law or in connection with any legal process.

**Clarifications**

**15.4**

Bidders requiring any clarifications on the RFP may notify the Authority in writing via email in accordance with clause 6.1 They should send in their queries before the date mentioned in the Schedule of Bidding Process specified in Clause 1.5. The Authority shall endeavor to respond to the queries within the period specified therein, but no later than 15 days prior to the Bid Due date. The response will be uploaded on the on the e-procurement portal website “[https://eprocure.gov.in/epublish/app /](https://eprocure.gov.in/epublish/app/)” & “<https://ddpmod.gov.in>”.

The Authority shall endeavor to reply to the queries / clarifications raised by the bidders. However, the Authority reserves the right not to respond to any question/ or provide any clarifications, in its so discretion, and nothing in this clause shall be taken or read as compelling or requiring the Authority to respond to any questions or to provide any clarification.

The Authority may also on its own motion, if deemed necessary, issue interpretations and clarifications to all bidders. All clarifications and interpretations issued by the Authority shall be deemed to be part of the bidding documents. Verbal clarifications and information given by the Authority or its employees or representatives shall not in any way or manner be binding on the Authority.

**Opening and evaluation of Financial Bids**

**15.5**

The Authority shall inform the venue and time of opening of the Financial Bid to the Technically qualified bidders through email. The Authority shall open the Financial Bids on date and time in presence of the authorized representatives of the Bidders who may choose to attend at the address mentioned below. The Authority shall publicly announce the assessed bid price for each of the Technically qualified bidders. The Authority shall prepare a record of opening of the Financial Bids.

**Venue for Bid submission**

**DDP / DGQA**

**DQA (WP), Floor 6, “B” Block, MoD Complex, Africa Avenue,**

**New Delhi-110023, India**

**Selection of Bidders**

**15.6**

Subject to the provisions of Clause 4, the Bidder whose Bid is adjudged as responsive in terms of clause 15.2, fulfilling the criteria of ITB clause 2.1,12,13, 14 and obtaining the minimum qualifying score as per clause 17 and who’s assessed Bid is the lowest, shall be declared as the selected bidder.

In the event, that, the assessed bid price of two or more bidder is the same, the Authority shall identify the selected bidder by the highest technical score attained by the bidders in the Technical evaluation criteria.

In the event the Lowest Bidder is not selected for any reason, the Authority shall ask the second lowest bidder for negotiations to match the lowest offer of the L-1 bidder. In the event, that the second lowest bidder fails to match the offer. The Authority shall annul the bidding process and invite all eligible bidders to submit the fresh bids.

After selection, a letter of award (LOA) shall be issued, in duplicate by the Authority to the selected bidder and the selected bidder shall within 7 days(s) of the receipt of the LOA, sign and return the duplicate copy of the LOA in acknowledgement thereof. In the event, duplicate copy of the LOA duly signed by the bidder is not received within the stipulated time, the Authority may, unless it consents to extension of time for submission thereof, appropriate the bid security of such bidder as damages on account of failure of the selected bidder to acknowledge the LOA.

After acknowledgment of LOA as aforesaid by the selected bidder, it shall cause the bidder to execute the Agreement within the period prescribed in clause 5.1. The selected bidder shall not be entitled to seek any deviation, modification or amendment in the Agreement.

**Contacts during bid evaluation**

**15.7**

Bids shall be deemed to be under consideration immediately after they are opened and until such time the Authority makes official intimation of award/ rejection to the Bidders. While the Bids are under consideration, bidders and / or their representatives or other interested parties are advised to refrain, save and except as required under the Bidding documents, from contacting by any means, the Authority and/or their employees/ representatives on matters related to the Bids under considerations.

**Proprietary data**

**15.8**

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

**Correspondence with Bidder**

**15.9**

Save and except as provided in the RFP, the Authority shall not entertain any correspondence with any bidder in relation to the acceptance or rejection of any Bid. However, the Authority would display the result of the technical evaluation on its web portal including reasons for non-responsiveness, if any and the financial bid will be opened thereafter.

**Conflict of Interest**

**15.10**

A Bidder or any of its constituents shall not have conflict of interest. All bidders found to have a conflict of interest shall be disqualified. A Bidder shall be considered to be in conflict of interest with one or more parties in the bidding process, if, including but not limited to:

- JV/ consortium members of a bidder cannot be members of any other JV/ consortium either directly or indirectly through any of its Associates<sup>1</sup>, so that a conflict of interest does not arises amongst the bidders.

<sup>1</sup> "Associate" means, in relation to either Party {and / or JV / Consortium Members}, a person who controls, is controlled by, or is under the common control with such Party {or JV / Consortium Member} (as used in this definition, the expression "control" means, with respect to a person which is a company or corporation,

(a) the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such person; or

(b) holding more than 50% (fifty percent) of the voting rights of such person by virtue of an agreement; or

(c) the power to govern the policy decisions of such person under statute or an agreement; or

- They have controlling stakeholders in common; or
- They receive or have received any direct or indirect subsidy from any of them; or
- They have the same legal representative for purpose of this bid; or
- They have a relationship with each other, directly or through common third parties, that puts them in a position to have access to material information about or improperly influence the bid of another bidder, or influence the decision of the Authority regarding the bidding process; or
- A bidder participates in more than one bid in this bidding process, either individually or as a partner in a joint venture. This will result in the disqualification of all bids in which the bidder is involved.
- A bidder, joint venture partner, associates, parent company, or any affiliated entity, participated as a consultant in the preparation of the design or technical specifications of the services that are subject of the bid; or
- A bidder was affiliated with a firm or entity that has been hired (or is proposed to be hired) by the Authority as Engineer for the contract; or
- A bidder would be providing goods, works, or non-consulting services resulting from or directly related to consulting services for the preparation or implementation of the project specified in the RFP that it provided or were provided by any affiliate that directly or indirectly controls, is controlled by, or is under common control with that firm.

**16. Evaluation Parameters**

- 16.1** Only those Bidders, who meet the eligibility criteria as specified in Clause 2.1 and 12 above shall qualify for the next stage of evaluation of Technical Bids as per Clause 13 and 14. Bids of the firms who do not meet these criteria shall be rejected and will not be evaluated further.

Authority will undertake evaluation of the Technical Bids of the Bidders fulfilling the above-mentioned criteria and shall assign marks as per the scoring given at Clause 17.1 (c). Each responsive bid shall be scrutinized to ascertain the fulfillment of the aspects as described in Clause 10 and relevant provisions of this RFP document and DTIS scheme.

**17. Technical scoring framework**

- 17.1** a. Bidders fulfilling the requirement of Clause 16, will be qualified for the next stage of technical evaluation. The marking for the technical evaluation will be as per clause 17.1 (c). Bidders who score at least **70 marks out of 100** in the overall technical evaluation would be eligible for the next stage of evaluation, i.e., financial bid opening.

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(d) to appoint or remove the majority of the members of the board of directors; or  
(e) to cast the majority of votes at a meeting of the board of directors;  
and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person by operation of law or by contract or otherwise

- b. SPV members can jointly meet the scoring criteria, i.e., if one member of the consortium meets the required technical criteria, the consortium will be considered meeting the respective criteria
- c. Bidders will be awarded highest score for providing highest number of tests as well as highest capacity, highest capability and wider range for each test. Bidders offering Mil standards certifications and global certifications for each test will be awarded highest marks.
- d. The bidders are required to submit duly signed and stamped Appendix R & S providing the list of Mandatory and Additional tests proposed to be undertaken by the bidder.
- e. The evaluation committee will score the Technical Bids based on the technical evaluation criteria provided below:

*Table 1 : Overview of Technical Evaluation Criteria*

S. No	Criteria Segment	Marks
a.	Similar experience	10
b.	Tests and testing range, capability and capacity	30
c.	Certifications and military standards	10
d.	Detailed project report (DPR)	30
e.	Presentation on DPR including business proposal, tests and testing capacities, test equipment, standards, infrastructure, etc.	20
Total		100

**Similar Experience 17.2** Similar experience refers to Bidder having experience in executing similar work which includes undertaking testing, calibration, quality control, certification etc., and similar industry which includes aerospace and defence, automotive, heavy industries, electronics, mechanical, etc. The Bidder will need to provide these details as part of their DPR.

*Table 2 : Similar Experience*

S. No.	Requirement	Supporting Documents / Details	Max Marks	Scoring
1.	Number of different type of	Bidder to provide self-certification accompanied with	5	• 1 mark for 2 type of tests

	tests in similar industry	supporting documents.  <i>(Note: The self-certificate shall be signed by the Chairman/ Managing Director/CEO/ Head of the organization.)</i>		<ul style="list-style-type: none"> <li>• 2 marks for 3 to 5 type of tests</li> <li>• 3 marks for 6 to 8 type of tests</li> <li>• 4 marks to 9 to 10 type of tests</li> <li>• 5 marks for &gt;10 type of tests</li> </ul>
2.	Number of years of experience in the ammunition testing	Bidder to provide self-certification accompanied with supporting documents.  <i>(Note: The self-certificate shall be signed by the Chairman/ Managing Director/ CEO/ Head of the organization.)</i>	5	<ul style="list-style-type: none"> <li>• 5 marks for &gt;5 years of experience in ammunition testing, QC and certification</li> <li>• 4 marks for 1 to &lt;=5 to &gt;4 years of experience in ammunition QC and certification</li> <li>• 3 marks for &lt;=4 to &gt;3 years of experience in ammunition testing, QC and certification</li> <li>• 2 marks for &lt;=3 to &gt;2 years of experience in ammunition testing, QC and certification</li> <li>• 1 mark for &lt;=2 to &gt;1 years of experience in ammunition</li> </ul>

				testing, QC and certification
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**Tests and testing capability, range and capacity**

**17.3** As part of the tests and testing capabilities scoring criteria, Bidders will be required to provide details of the tests they will be providing as part of their DTIS facility. The marks will be awarded based on the test range, capability and capacity offered by the bidders for each test.

- a. Range: It refers to the operating range of the test equipment for each test. The bidder offering the highest range for a particular test will be awarded maximum marks of 0.2.
- b. Capacity: It refers to the number of tests that can be carried out per year using the test equipment. The bidder offering the highest capacity for a particular test will be awarded maximum marks of 0.2.
- c. Capability: It refers to the size of the equipment being tested. The bidder offering the highest capability for a particular test will be awarded maximum marks of 0.2.

*Table 3 : Technological Capabilities*

S. No.	Parameter	Supporting Documents / Details	Max Marks	Scoring
1.	Proposed mandatory tests (total 36 tests), as mentioned in Appendix P	Signed Undertaking by the bidder	<ul style="list-style-type: none"> <li>• 21.6 marks</li> <li>• 0.6 mark per test</li> </ul>	<ul style="list-style-type: none"> <li>• Maximum marks for each test will be allocated to the bidder offering the maximum range, capability and capacity for the test</li> <li>• The marks provided to other bidders will be proportionate to its proposed range and capacity for each test as compare to that of the highest range, capability and capacity proposed by any bidder</li> <li>• Calculation of the score is shown below this table along with an example</li> </ul>
2.	Tests proposed in addition to the mandatory tests (total	Signed Undertaking by the bidder	<ul style="list-style-type: none"> <li>• 8.4 marks</li> <li>• 0.6 mark per test</li> </ul>	<ul style="list-style-type: none"> <li>• Maximum marks for each test will be allocated to the bidder offering the maximum range, capability and capacity for the test</li> <li>• The marks provided to other bidders will be proportionate to its proposed range and capacity for</li> </ul>



	14 additional tests), as mentioned in Appendix-P			<p>each test as compare to that of the highest range, capability and capacity proposed by any bidder</p> <ul style="list-style-type: none"> <li>• Calculation of the score is shown below this table along with an example</li> </ul>
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Total technical score for mandatory tests =  $\sum$  Technical score of each mandatory test

Technical score for each mandatory test =  $\{0.33 * (\text{Range of the test proposed by the bidder} / \text{maximum range proposed by any bidder}) + 0.33 * (\text{Capacity of the test proposed by the bidder} / \text{maximum capacity proposed by any bidder}) + 0.33 * (\text{Capability of the test proposed by the bidder} / \text{maximum capability proposed by any bidder})\} \times 0.6$

For example, let us say, for vibration and shock test the maximum capacity proposed by any bidder is 1000 units per year. The highest frequency range for the test is 20 MHz to 40 MHz. The highest size/dimension of equipment being proposed to be tested for a 40mm caliber ammunition. Now if Bidder A proposes to provide an vibration and shock test for frequency range of 20 MHz to 30 MHz with an annual capacity of 900 units per year for 16mm caliber ammunition, the technical score for the bidder for vibration and shock test will be given by:

Technical score for vibration and shock test for Bidder A =  $\{0.33*(10/20) + 0.33*(900/1000) + 0.33*(500/1000)\} * 0.6 = \{0.165+ 0.297+0.165\} * 0.6 = 0.38$

Similarly, total technical score for additional tests =  $\sum$  Technical score of each additional test

Technical score for each additional test =  $\{0.33 * (\text{Range of the test proposed by the bidder} / \text{maximum range proposed by any bidder}) + 0.33 * (\text{Capacity of the test proposed by the bidder} / \text{maximum capacity proposed by any bidder}) + 0.33 * (\text{Capability of the test proposed by the bidder} / \text{maximum capability proposed by any bidder})\} \times 0.6$

**Certifications and military standards**

**17.4** As part of the certifications and military standards scoring criteria, Bidders will be required to provide details of the certifications they will be providing as part of their DTIS facility.

*Table 4 : Certifications and military standards*

S. No.	Requirement	Supporting Documents / Details	Max Marks	Scoring
1.	International certifications	Accreditations	5	• 5 marks for upto 100%

				<p>proposed tests</p> <ul style="list-style-type: none"> <li>• 4 marks for upto 90% proposed tests</li> <li>• 3 marks for upto 80% proposed tests</li> <li>• 2 marks for upto 70% proposed tests</li> <li>• 1 mark for upto 60% proposed tests</li> </ul>
2.	Mil Standards	Certifications	5	<ul style="list-style-type: none"> <li>• 5 marks for upto 100% proposed tests</li> <li>• 4 marks for upto 90% proposed tests</li> <li>• 3 marks for upto 80% proposed tests</li> <li>• 2 marks for upto 70% proposed tests</li> <li>• 1 mark for upto 60%</li> </ul>

				proposed tests
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**Detailed project report (DPR)**

**17.5** DPR being submitted by the Bidder as part of their Bid, will be evaluated and scored basis the keys aspects as provided below:

**Table 14 DPR Evaluation**

S. No.	Requirement	Max Marks
1	<b>Understanding of the requirement and ability of the proposed facility to meet DTIS objectives</b>	30
2	<b>Coverage of the following areas –</b> 1. Market understanding & Revenue (estimated market potential) 2. Business model 3. Infrastructure plan 4. Proposed test and test capabilities (including capability, range and capacity) 5. Details of the test facility and testing capabilities 6. Financial sustainability model 7. Certification (National & International) 8. Standards (Mil-standards) 9. O&M Philosophy 10. Measurable outcomes envisaged	

**Presentation on DPR including business proposal, tests and testing capabilities / capacities, test equipment, standards, infrastructure, etc.**

**17.6** Bidders will be required to give a presentation on business proposal, proposed tests, test capabilities etc., to the evaluation committee. Date and time of the presentation will be communicated to the Bidder if their proposal qualifies the pre-qualification stage.

*Table 5 : Presentation evaluation*

S. No.	Requirement	Max Marks
1	<b>Understanding of the requirement</b>	20
2	<b>Technical Presentation covering following areas –</b> 1. Proposed business model 2. Estimated market potential 3. Financial sustainability model 4. Infrastructure being created 5. Proposed test and test capabilities (including capability, range and capacity)	

	6. Details of the test facility and testing capabilities 7. Operations plan (processes, tools, technologies) 8. Certifications and standards	
3	Relevant Case Study presentation, along with the strategy/plan to use the key learnings for DTIS Project	
4	Answer to the queries raised by the Committee members	

**18. Completion Certificate**

**18.1** The Implementation Agency/ SPV will be issued a completion certificate by the Authority after completion and commissioning of the DTI facility. To obtain the completion certificate, the Implementation Agency shall be required to achieve the following:

- The IA/ SPV has achieved the completion of the Project as per the Scope of the Project, DPR and the determining of the tests to be successful and the demonstration of the readiness as per the Contract Agreement
- The IA/ SPV has obtained necessary statutory approvals for the Project
- The IA/ SPV has obtained necessary accreditations and certification for undertaking the operations of the prescribed testing infrastructure as per the DPR, Scope of the Project and as per the Contract
- The IA/ SPV has obtained necessary calibration certificates of all the Equipment/ Machineries

**SECTION – III: BID DATA SHEET**

**BID DATA SHEET**

<b>Reference</b>	<b>Particulars</b>	<b>Description</b>
ITB1.1	Authority	Director General of Quality Assurance, India, Ministry of Defence
ITB 15.6	Method of Selection	Least Cost (Grant in Aid) Selection
ITB	Name of the Assignment / Job	DEVELOPMENT, OPERATION AND MANAGEMENT OF DEFENCE TESTING INFRASTRUCTURE (DTI) FOR AMMUNITION TESTING UNDER THE DEFENCE TESTING INFRASTRUCTURE SCHEME (DTIS)
ITB 5.1	Last Date & time for submission of Bid	<p><b>Date :</b> 27.01.2022</p> <p><b>Time :</b> Latest by 1500 Hrs (IST)</p> <p><b>Submission :</b> Offline submission (Hardcopy) One Original and One Copy along with a CD containing a scanned copy of the Technical Bid.</p> <p style="text-align: center;"><b>Address: DDP / DGQA</b> <b>DQA (WP), Floor 6, “B” Block , MoD Complex,</b> <b>Africa Avenue</b> <b>New Delhi-110023, India</b></p>
ITB 5.1	Pre- Bid Meeting	<p><b>Date :</b> 22.12.2021</p> <p><b>Time :</b> 1500 hrs</p> <p><b>Venue: Online through video Conferencing</b></p>
ITB 5.1	Last date for seeking clarifications	<p><b>Date :</b> 21.12..2021</p> <p><b>Time :</b> 1800 hrs</p> <p><b>Email Id:</b> <a href="mailto:dtis-dqawp@navy.gov.in">dtis-dqawp@navy.gov.in</a></p>
I&B 4.1	EMD/ Bid Security	EMD BID SECURITY DECLARATION
ITB 5.1	Bid Validity Period	180 Days
ITB	JV / Consortium	Allowed
ITB 6.1	Authorized Representative	<p>Name: Cdr. QA-DTIS, DQA(WP)</p> <p>Email: <a href="mailto:Dtis-dqawp@navy.gov.in">Dtis-dqawp@navy.gov.in</a></p>
ITB 5.1	Bid opening Date	<p><b>Date:</b> 31.01.2022</p> <p><b>Time:</b> 1430 hrs</p>

-	Make in India	As per policy of Govt. of India to encourage 'Make in India' and promote manufacturing and production of goods and services in India, the provisions vide order no. P-45021/2/2017-PP (B.E-II) dated 04.06.2020 on the subject "Public Procurement (Preference to Make in India), Order 2017 – Revision" shall be fully applicable
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**SECTION – IV: FRAUD & CORRUPT PRACTICES**



1. Fraud & Corrupt  
practices

1.1 The Bidders and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Bidding Process and subsequent to the issue of the LOA and during the subsistence of the Contract Agreement. Notwithstanding anything to the contrary contained herein, or in the LOA or the Contract Agreement, the Authority may reject a Bid, withdraw the LOA, or terminate the Contract Agreement, as the case may be, without being liable in any manner whatsoever to the Bidder or Implementation agency, as the case may be, if it determines that the Bidder or Implementation agency, as the case may be, has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the Bidding Process. In such an event, the Authority shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, as Damages, without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and/ or the Contract Agreement, or otherwise.

Without prejudice to the rights of the Authority under the above Clause hereinabove and the rights and remedies which the Authority may have under the Bidding Documents, LOA or the Contract Agreement, or otherwise if a Bidder or the Implementation agency, as the case may be, is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Bidding Process, or after the issue of the LOA or the execution of the Contract Agreement, such Bidder or the Implementation agency shall not be eligible to participate in any tender or RFP issued by the Authority during a period of 2 (two) years from the date such Bidder or the Implementation agency, as the case may be, is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practices, as the case may be

For the purposes of this Section IV, the following terms shall have the meaning hereinafter respectively assigned to them:

(a) “corrupt practice” means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Bidding Process (for avoidance of doubt, offering of employment to, or employing, or engaging in any manner whatsoever, directly or indirectly, any official of the Authority who is or has been associated in any manner, directly or indirectly, with the Bidding Process or the LOA or

has dealt with matters concerning the Contract Agreement or arising therefrom, before or after the execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of the Authority, shall be deemed to constitute influencing the actions of a person connected with the Bidding Process); or (ii) save and except as permitted under sub-clause (d) of ITB Clause 2.1, engaging in any manner whatsoever, whether during the Bidding Process or after the issue of the LOA or after the execution of the Contract Agreement, as the case may be, any person in respect of any matter relating to the Project or the LOA or the Contract Agreement, who at any time has been or is a legal, financial or technical advisor of the authority in relation to any matter concerning the Project;

fraudulent practice” means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the Bidding Process;

coercive practice” means impairing or harming or threatening to impair or harm, directly or indirectly, any person or property to influence any person’s participation or action in the Bidding Process;

undesirable practice” means (i) establishing contact with any person connected with or employed or engaged by the Authority with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Bidding Process; or (ii) having a Conflict of Interest; and

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

**SECTION – V: PRE-BID MEETING**

1. Pre-Bid meeting
  - 1.1 A Pre-bid meeting shall be held as per the date and time mentioned in the Notice Inviting Bid and as per the details mentioned below. The bidders willing to attend the Pre-bid meeting should inform the Authority beforehand in writing and / or through email. The representatives attending the Pre-bid meeting must submit an authority letter, through email, duly signed by the authorized signatory of his / her organization permitting the representatives to attend the Pre-bid meeting on behalf of the respective Applicant.
  - 1.2 During the course of Pre-bid meeting, the bidders will be free to seek clarifications and make suggestions for consideration by the Authority. The Authority will endeavour to provide clarifications and such further information as it may, in its sole discretion, consider appropriate.
  - 1.3 The Bidder is advised to study the Bidding Documents completely and submit the queries in writing or by email to the Authority. The queries should be sent to the Authority at least 2 (two) working days before the scheduled Pre- Bid Conference.
  - 1.4 It is to inform that a maximum of 05 (five) representative of each bidder shall be allowed to participate in the Pre-bid conference.

**SECTION – VI: MISCELLANEOUS**

1. Miscellaneous

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

**APPENDICES**

**Appendix – A**  
**Letter Comprising the Technical Bid**

To,

.....  
DQA (WP)/ DDP DGQA  
Floor 6, “B” Block,  
MoD Complex, Africa Avenue,  
New Delhi-110023

**Sub:** Bid for Development, Operation and Management of Defence Testing Infrastructure (DTI) for Ammunition testing under the Defence Testing Infrastructure Scheme (DTIS)

Dear Sir,

With reference to your RFP document dated ..... we, having examined the RFP, Contract Agreement and other related documents and understood its content, hereby submit our Bid for the aforesaid project. The Bid is unconditional and unqualified. We undertake to fully co-operate with the Authority throughout the bidding process.

2. We acknowledge that the Authority will be relying on the information provided in the Bid and the documents accompanying such Bid for selection of the Bidders for the aforesaid project, and we certify that all information provided in the Bid and in all is true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying such Bid are true copies of their respective originals.
3. This statement is made for the express purpose of qualifying as a Bidder for (Name of the Project)
4. We shall make available to the Authority any additional information it may find necessary or require to supplement or authenticate the documents submitted along with Bid.
5. We acknowledge the right of the Authority to reject our Bid without assigning any reason or otherwise and hereby waive, to the fullest extent permitted by applicable law, our right to challenge the same on any account whatsoever.
6. We certify that in the last three years, any of the Joint Venture Members have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial Authority or a judicial pronouncement or arbitration award, nor been expelled from any project or contract by any public Authority nor have had any contract terminated by any public Authority for breach on our part.
7. We declare that:
  - a. We have examined and have no restrictions to the RFP document, Contract Agreement and other documents accompanied with this RFP including any addendum issued by the Authority; and



- b. We or any member of our JV/ consortium have not been blacklisted by central or any state government as on the date of submission of the Bid.
  - c. We, agree if the work is awarded to us, we shall be responsible for obtaining statutory clearances required for weapons and ammunition (if required)
  - d. We shall not undertake this project by availing funding from any other scheme of the Government of India.
8. We understand that the Authority may cancel the Bidding Process at any time and that you are neither bound to accept any Bid that you may receive nor to invite the Bidders to Bid for the Project, without incurring any liability to the Bidders, in accordance with Section II Clause 4 of the RFP document.
  9. We believe that we/ our Joint Venture/ proposed Joint Venture satisfy (ies) the Technical and Financial Capacity and other criteria and meet(s) all the requirements as specified in the RFP document and are qualified to submit a Bid.
  10. We declare that we/ any Member of the Joint Venture are not a Member of a/ any other Joint Venture applying for bid.
  11. We certify that in regard to matters other than security and integrity of the country, we/ any Member of the Joint Venture have not been convicted by a Court of Law or indicted or adverse orders passed by a regulatory Authority which could cast a doubt on our ability to undertake the Project or which relates to a grave offence that outrages the moral sense of the community.
  12. We further certify that in regard to matters relating to security and integrity of the country, we/ any Member of the Joint Venture have not been charge-sheeted by any agency of the Government or convicted by a Court of Law.
  13. We further certify that no investigation by a regulatory Authority is pending either against us/ any Member of the Joint Venture or against our CEO or any of our directors/ managers/ employees.
  14. We undertake that in case due to any change in facts or circumstances during the Bidding Process, we are attracted by the provisions of disqualification in terms of the provisions of this RFP, we shall intimate the Authority of the same immediately.
  15. The Statement of Legal Capacity as per format provided at Appendix-H of the RFP document, and duly signed, is enclosed. The power of attorney for signing of bid and the power of attorney for Lead Member of Joint Venture, as per format provided at Appendix-B and C respectively of the RFP, are also enclosed.
  16. We hereby irrevocably waive any right or remedy which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by the Authority in connection with the selection of Bidders, selection of the Bidder, or in connection with the selection/ Bidding Process itself, in respect of the above mentioned Project and the terms and implementation thereof.

17. In the event of my/ our being declared as the Selected Bidder, I/we agree to enter into an Agreement in accordance with the draft that has been provided to me/us prior to the BID Due Date. We agree not to seek any changes in the aforesaid draft and agree to abide by the same.
18. We have studied all the Bidding Documents carefully and also surveyed the project. We understand that except to the extent as expressly set forth in the Agreement, we shall have no claim, right or title arising out of any documents or information provided to us by the Authority or in respect of any matter arising out of or relating to the Bidding Process including the award of Agreement.
19. We certify that in terms of RFP requirement, Our/ members of our JV members have positive net worth at the time of the submission of this RFP.
20. We agree and undertake to abide by all the terms and conditions of the RFP document.
21. We agree and undertake to be jointly and severally liable for all the obligations of the Implementation agency under the contract agreement.
22. We are providing the Bid Security of INR ..... as specified in clause ..... of the RFP to the Authority in accordance with the RFP conditions.
23. We shall keep Bid valid for 180 days from the Bid due date specified in the RFP.
24. We hereby submit our bid and offer a Bid price as indicated in our Financial Bid for undertaking the aforesaid project in accordance with the Bidding documents and the Agreement.
25. We agree and understand that the Bid is subject to the provisions of the Bidding Documents. In no case, I/We shall have any claim or right of whatsoever nature if the Project is not awarded to me/us or our Bid is not opened or rejected.
26. We agree and understand that the selected bidder shall incorporate a Section – 8 company under the Companies Act 2013.

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

Yours Faithfully,

Date: (signature, name and designation of the Authorised signatory)

Place: Name and seal of the Bidder/ Lead Member

**Annexure-I**  
**Particulars of the Bidder**

Information required against Sr No. 1 to 4 and 7 to 8 should be provided for all the members of the Consortium/ JV.

1. Applicant No (Lead Bidder)
  - (a) Name of the Bidder
  - (b) Country of Incorporation
  - (c) Address of Communication
  - (d) Date of incorporation and/ or commencement of business
  
2. Brief Description of the company including details of its main lines of business and proposed role and responsibilities in this project.
  
3. Details of the individual(s) who will serve as the point of contact/ communication for the Authority:
  - a. Name:
  - b. Designation
  - c. Company
  - d. Address
  - e. Telephone Number
  - f. E-mail Address
  - g. Fax Number
  
4. Particulars of the Authorized Signatory of the bidder
  - a. Name:
  - b. Designation
  - c. Address
  - d. Phone Number
  - e. Fax Number
  
5. A Copy of the Jt. Bidding Agreement, as envisaged in clause.....should be attached to the bid
  
6. Information regarding the role of each member should be provided as per table below:

S.No	Name of the Member	Role* of each member	Percentage\$ of proposed equity shareholding in the SPV
1			
2			
3			
4			
5			

\*The role of each Member, as may be determined by the bidder, should be indicated which member is the Lead member of the consortium.

\$The Percentage equity should be in accordance with clause .....

7. The following information shall also be provided for each member of the consortium: Name of the Bidder/ Member of the Consortium:

S.No	Criteria	Yes	No
1.	Has the Bidder/ constituent of the consortium been barred by the Central/ state Government, or any entity controlled by it, from participating in any project?		
2.	If the answer to 1 is yes, does the bar subsist as on the date of bid?		
3.	Has the Bidder/ constituent of the consortium been penalized due to any other reason in relation to execution of a contract, in the last three years?		

8. A Statement by each of the Members of the Consortium disclosing material non-performance or contractual non-compliance in past projects, contractual disputes and litigation/ arbitration in the recent past is given below (attach extra sheets, if necessary).

(signature, name and designation of the Authorised signatory)

Notes:

1. The Bidder is requested to attach Copy of Memorandum & Article of Association for each of the JV members/ Consortium members along with this appendix.
2. The Bidder is requested to avoid attaching brochure of their organization along with this appendix.

**Appendix – B**  
**Power of Attorney for Lead member of Joint Venture**

Whereas the (The Authority) has invited the bids from interested parties for the Development, Operation and Management of Defence Testing Infrastructure (DTI) for Ammunition testing under the Defence Testing Infrastructure Scheme (DTIS) (the “Project).

Whereas the following members (1)....., (2).....,(3).....(4)..... and (5) ..... (collectively the “Consortium”) being Members of the Consortium are interested in bidding for the Project in accordance with the terms and conditions of the RFP and other connected documents in respect of the Project, and

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

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS

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

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

IN WITNESS WHEREOF WE THE PRINCIPALS ABOVE NAMED HAVE EXECUTED THIS  
POWER OF ATTORNEY ON THIS ..... DAY OF 20.....

For

.....

(Signature)

.....

(Name & Title)

For

.....

(Signature)

.....

(Name & Title)

For

.....

(Signature)

.....

(Name & Title)

For

.....

(Signature)

.....

(Name & Title)

Witness:

1. ....

2. ....

*To be notarized and submitted in Original*

*Notes:*

- *The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.*
- *Also, wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a board or shareholders' resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.*

- *For a Power of Attorney executed and issued overseas, the document will also have to be legalised by the Indian Embassy and notarised in the jurisdiction where the Power of Attorney is being issued. However, the Power of Attorney provided by Bidders from countries that have signed the Hague Legislation Convention 1961 are not required to be legalised by the Indian Embassy if it carries a conforming Apostille certificate.*

**Appendix – C**  
**Power of Attorney for signing the Bid**

Know all men by these present, We ..... (name of the firm and address of the registered office) do hereby irrevocably constitute, nominate, appoint and authorise Mr/Ms (name) ..... son/daughter/wife of ..... and presently residing at, who is presently employed with us/ the Lead Member of our JV/ Consortium and holding the position of , as our true and lawful attorney (hereinafter referred to as the “Attorney”) to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our Bid for the proposed project for Development, Operation and Management of Defence Testing Infrastructure (DTI) for Ammunition testing under the Defence Testing Infrastructure Scheme (DTIS) for Department of Defence Production, Ministry of Defence (the “Authority”) including but not limited to signing and submission of all Bids, bids and other documents and writings, participate in bidders and other conferences and providing information/ responses to the Authority, representing us in all matters before the Authority, signing and execution of all contracts including the Contract Agreement and undertakings consequent to acceptance of our bid, and generally dealing with the Authority in all matters in connection with or relating to or arising out of our bid for the said Project and/ or upon award thereof to us and/or till the entering into of the Contract Agreement with the Authority.

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

IN WITNESS WHEREOF WE, ..... , THE ABOVE NAMED PRINCIPAL  
HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS ..... DAY OF ..... 20....

For

(Signature, name, designation and address)

Witness:

1. ....
2. ....

*To be notarized and submitted in Original*



**Appendix – D**  
**Joint Bidding Agreement**

*(To be executed on Stamp paper of appropriate value)*

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

AMONGST

1. {Company 1.....} and having its registered office at ..... (hereinafter referred to as the “First part” which expression shall, unless repugnant to the context include its successors and permitted assigns)

AND

2. {Company 2.....} and having its registered office at ..... (hereinafter referred to as the “Second part” which expression shall, unless repugnant to the context include its successors and permitted assigns)

AND

3. {Company 3.....} and having its registered office at ..... (hereinafter referred to as the “Third part” which expression shall, unless repugnant to the context include its successors and permitted assigns)

AND

4. {Company 4.....} and having its registered office at ..... (hereinafter referred to as the “Fourth part” which expression shall, unless repugnant to the context include its successors and permitted assigns)

AND

5. {Company 5.....} and having its registered office at ..... (hereinafter referred to as the “Fifth part” which expression shall, unless repugnant to the context include its successors and permitted assigns)

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

WHEREAS,

- (A), (hereinafter referred as the “Authority” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) has invited Bids (the Bids) by its request for Proposal No dated (the RFP) for the Development, Operation and Management of Defence Testing Infrastructure (DTI) for Ammunition testing under the Defence Testing Infrastructure Scheme (DTIS) for Department of Defence Production, Ministry of Defence.

- (B) The Parties are interested in jointly bidding for the Project as members of a consortium and in accordance of the terms and conditions of the RFP document and other bid documents in respect of the Project, and
- (C) It is a necessary condition under the RFP document that the members of the consortium shall enter into a Joint Bidding Agreement and furnish a copy thereof with the Bid

NOW IT IS HEREBY AGREED as follows:

**1. Definitions and Interpretations**

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

**2. Consortium**

- a. The Parties do hereby irrevocably constitute a consortium (the “Consortium”) for the purposes of jointly participating in the Bidding Process for the Project.
- b. The Parties hereby undertake to participate in the Bidding Process only through this Consortium and not individually and/ or through any other consortium constituted for this Project, either directly or indirectly or through any of their Associates.

**3. Covenants**

The Parties hereby undertake that in the event the Consortium is declared the selected Bidder and awarded the Project, it shall incorporate a special purpose vehicle (the SPV”) under section -8 of the Indian Companies Act, 2013 for entering into a Contract Agreement with the Authority and for performing all its obligations as the Implementation agency in terms of the Contract Agreement for the Project.

**4. Role of the Parties**

The Parties hereby undertake to perform the roles and responsibilities as described below:

- (a) Party of the First Part shall be the Lead member of the Consortium and shall have the power of attorney from all Parties for conducting all business for and on behalf of the Consortium during the Bidding Process and until the Appointed Date under the Contract Agreement when all the obligations of the SPV shall become effective;
- (b) Party of the Second Part shall be {the Technical Member of the Consortium ; }
- (c) Party of the Third Part shall be {the Financial Member of the Consortium }; and
- (d) Party of the Fourth Part shall be the additional Other Member of the Consortium.
- (e) Party of the Fifth Part shall be the additional other Member of the Consortium

**5. Joint and Several Liability**

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

**6. Shareholding in the SPV**

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

First Party:

Second Party:

Third Party;

Fourth Party:

Fifth Party;

**7. Representation of the Parties**

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

(a) Such Party is duly organized, validly existing and in good standing under the laws of its incorporation and has all requisite power and Authority to enter into this Agreement;

(b) The execution, delivery and performance by such Party of this Agreement has been authorised by all necessary and appropriate corporate or governmental action and a copy of the extract of the charter documents and board resolution/ power of attorney in favour of the person executing this Agreement for the delegation of power and Authority to execute this Agreement on behalf of the Consortium Member is annexed to this Agreement, and will not, to the best of its knowledge:

- (i) require any consent or approval not already obtained;
- (ii) violate any Applicable Law presently in effect and having applicability to it;
- (iii) violate the memorandum and articles of association, by-laws or other applicable organisational documents thereof;
- (iv) violate any clearance, permit, concession, grant, license or other governmental authorisation, approval, judgement, order or decree or any mortgage agreement, indenture or any other instrument to which such Party is a party or by which such Party or any of its properties or assets are bound or that is otherwise applicable to such Party; or
- (v) create or impose any liens, mortgages, pledges, claims, security interests, charges or Encumbrances or obligations to create a lien, charge, pledge, security interest, encumbrances or mortgage in or on the property of such Party, except for encumbrances that would not, individually or in the aggregate, have a material adverse effect on the financial condition or prospects or business of such Party so as to prevent such Party from fulfilling its obligations under this Agreement;

(c) this Agreement is the legal and binding obligation of such Party, enforceable in accordance with its terms against it; and

(d) there is no litigation pending or, to the best of such Party's knowledge, threatened to which it or any of its Affiliates is a party that presently affects or which would have a material adverse effect on the financial condition or prospects or business of such Party in the fulfillment of its obligations under this Agreement.

**8. Termination**

This Agreement shall be effective from the date hereof and shall continue in full force and effect until financial close of the Project is achieved under and in accordance with the Contract Agreement, in case the Project is awarded to the Consortium. However, in case the Consortium is either not qualified for the Project or does not get selected for award of the Project, the Agreement will stand terminated in case the Bidder is not qualified or upon return of the Bid Security by the Authority to the Bidder, as the case may be

**9. Miscellaneous**

- a. This Joint Bidding Agreement shall be governed by laws of India.
- b. The Parties acknowledge and accept that this Agreement shall not be amended by the Parties without the prior written consent of the Authority.

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

SIGNED, SEALED AND DELIVERED For and on behalf of

LEAD MEMBER by:

.....

(Signature)

.....

(Name)

.....

(Designation)

SIGNED, SEALED AND DELIVERED For and on behalf of  
SECOND PART by:

.....

(Signature)

.....

(Name)

.....

(Designation)

SIGNED, SEALED AND DELIVERED For and on behalf of  
THIRD PART by:

.....

(Signature)

.....

(Name)

.....

(Designation)

SIGNED, SEALED AND DELIVERED For and on behalf of  
FOURTH PART by:

.....  
(Signature)

.....  
(Name)

.....  
(Designation)

SIGNED, SEALED AND DELIVERED For and on behalf of  
FIFTH PART by:

.....  
(Signature)

.....  
(Name)

.....  
(Designation)

In presence of

1.

2.

*Notes:*

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

**Appendix – E**

**Work Experience/ Technical Capacity of the bidder**

<b><u>S.No</u></b>	<b><u>Name of the work and its location</u></b>	<b><u>Name of the client and Contact details</u></b>	<b><u>Date of start</u></b>	<b><u>Date of Work Completion</u></b>	<b><u>Project/ Work cost</u></b>	<b><u>Project Type and Details</u></b>	<b><u>Supporting document attached</u></b>

*Note: The Above-mentioned information is to be substantiated with the document evidence such as Work order/ Contract agreement/ Work completion certificate from the client duly signed by the authorized signatory.*

Signature of the Authorized representative with Seal

**Appendix – F**

**Financial capacity of the Bidder**

S.No	Name of the JV/ Consortium Member	Proposed Equity share in shareholding in consortium (%)	Annual Turnover in each of the Financial years			Net Worth Year -1
			Year -1	Year-2	Year -3	
1						
2						
3						
4						
5						
<b>Total</b>						

The above mentioned information needs to be supplied by each member of the consortium and shall be duly certified by the Statutory auditor of the Bidder, in case the bidder does not have a statutory auditor, it may provide the certificate from its Chartered Accountant.

Signature of the Statutory Auditor

Signature of the Authorized representative

Stamp/ Seal

Stamp/ Seal

Notes:

1. The Bidder and its constituent/ consortium members shall attach copies of the duly audited balance sheets and financial statements for the above mentioned period. The financial statements shall:
  - a. Reflect the financial situation of the Bidder
  - b. Be audited by a statutory auditor
  - c. Be complete, including all notes to the financial statements; and
  - d. Correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted).
2. Year 1 will be the latest completed financial year preceding the bidding. Year 2 shall be the year immediately preceding Year-1 and so on.
3. “Net Worth” shall mean (Subscribed and Paid-up Equity + Reserves) less (aggregate value of the accumulated losses + deferred expenditure + miscellaneous expenditure not written off + reserves not available for distribution to equity shareholders) but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation
4. “Turnover” means the gross amount of revenue recognised in the profit and loss account from the sale, supply, or distribution of goods or on account of services rendered, or both, by a company during a financial year.

**Appendix – G**  
**Undertaking by the Bidder**

To,

.....  
DQA (WP)/ DDP DGQA  
Floor 6, “B” Block,  
MoD Complex, Africa Avenue,  
New Delhi-110023

**Sub:** Bid for Development, Operation and Management of Defence Testing Infrastructure (DTI) for Ammunition testing under the Defence Testing Infrastructure Scheme (DTIS)

Dear Sir,

With reference to the above-mentioned RFP document. We, ..... (1)....., (2).....,(3).....(4)..... and (5).....(collectively the “Consortium”) being Members of the Consortium hereby make the following declarations:

1. No alteration has been made in any form in the downloaded Tender document
2. I/ We have not been banned or blacklisted by any Government or Quasi government agency or public sector undertaking.
3. We confirm that the proposed project if awarded to us will not use any funding under any other scheme.
4. We confirm that we will ensure to proper utilization of the financial grant being provided to us under the DTIS, if the project is awarded to us.

Signature of the Authorized  
Representative with Seal



**Appendix – H**  
**Statement of Legal Capacity**

*(To be submitted on the letterhead of the bidder/ lead member of consortium)*

To,

.....  
DQA (WP)/ DDP DGQA  
Floor 6, “B” Block,  
MoD Complex, Africa Avenue,  
New Delhi-110023

**Sub:** Bid for Development, Operation and Management of Defence Testing Infrastructure (DTI) for Ammunition testing under the Defence Testing Infrastructure Scheme (DTIS)

Dear Sir,

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

We have agreed that.....(insert member’s name) will act as the Lead Member of our consortium and we have agreed that ..... (insert individual’s name) will act as our representative/will act as the representative of the consortium on its behalf\* and has been duly authorized to submit the RFP. Further, the authorized signatory is vested with requisite powers to furnish such letter and authenticate the same.

Thanking you,

Yours faithfully,

(Signature, name and designation of the authorized signatory)

For and on behalf of

\* Please strike out whichever is not applicable.

**Appendix – I**  
**Bid Security**

1. In consideration of you,.....(name & address of the Authority) (hereinafter referred to as the “Authority”, which expression shall unless it be repugnant to the subject or context thereof include its, successors and assigns) having agreed to receive the Bid of..... (a company registered under the Companies Act, 1956/ 2013) and having its registered office at ..... (and acting on behalf of its Consortium) (hereinafter referred to as the “Bidder” which expression shall unless it be repugnant to the subject or context thereof include its/their executors, administrators, successors and assigns), for the Project (name of the Project) (hereinafter referred to as “the Project”) pursuant to the RFP Document dated ..... issued in respect of the Project and other related documents including without limitation the draft Contract Agreement (hereinafter collectively referred to as “Bidding Documents”), we ..... (Name of the Bank) having our registered office at ..... and one of its branches at ..... (hereinafter referred to as the “Bank”), at the request of the Bidder, do hereby in terms of Section II, Clause 4.1 of the RFP Document, irrevocably, unconditionally and without reservation guarantee the due and faithful fulfilment and compliance of the terms and conditions of the Bidding Documents (including the RFP Document ) by the said Bidder and unconditionally and irrevocably undertake to pay forthwith to the Authority an amount of INR..... (Rupees in words .only) (hereinafter referred to as the “Guarantee”) as our primary obligation without any demur, reservation, recourse, contest or protest and without reference to the Bidder if the Bidder shall fail to fulfil or comply with all or any of the terms and conditions contained in the said Bidding Documents.
2. Any such written demand made by the Authority stating that the Bidder is in default of the due and faithful fulfilment and compliance with the terms and conditions contained in the Bidding Documents shall be final, conclusive and binding on the Bank.
3. We, the Bank, do hereby unconditionally undertake to pay the amounts due and payable under this Guarantee without any demur, reservation, recourse, contest or protest and without any reference to the Bidder or any other person and irrespective of whether the claim of the Authority is disputed by the Bidder or not, merely on the first demand from the Authority stating that the amount claimed is due to the Authority by reason of failure of the Bidder to fulfil and comply with the terms and conditions contained in the Bidding Documents including failure of the said Bidder to keep its Bid open during the Bid validity period as set forth in the said Bidding Documents for any reason whatsoever. Any such demand made on the Bank shall be conclusive as regards amount due and payable by the Bank under this Guarantee. However, our liability under this Guarantee shall be restricted to an amount not exceeding INR ..... (Rupees ).
4. This Guarantee shall be irrevocable and remain in full force for a period of 180 (one hundred and eighty) days from the Bid Due Date inclusive of a claim period of 60 (sixty) days i.e. upto date ..... or for such extended period as may be mutually agreed between the Authority and the Bidder, and agreed to by the Bank, and shall continue to be enforceable till all amounts under this Guarantee have been paid. We, the Bank, further undertake not to revoke this Guarantee during its currency except with the previous express consent of the Authority in writing.

5. We, the Bank, further agree that the Authority shall be the sole judge to decide as to whether the Bidder is in default of due and faithful fulfilment and compliance with the terms and conditions contained in the Bidding Documents including, inter alia, the failure of the Bidder to keep its Bid open during the Bid validity period set forth in the said Bidding Documents, and the decision of the Authority that the Bidder is in default as aforesaid shall be final and binding on us, notwithstanding any differences between the Authority and the Bidder or any dispute pending before any Court, Tribunal, Arbitrator or any other Authority.
6. The Guarantee shall not be affected by any change in the constitution or winding up of the Bidder or the Bank or any absorption, merger or amalgamation of the Bidder or the Bank with any other person.
7. In order, to give full effect to this Guarantee, the Authority shall be entitled to treat the Bank as the principal debtor. The Authority shall have the fullest liberty without affecting in any way the liability of the Bank under this Guarantee from time to time to vary any of the terms and conditions contained in the said Bidding Documents or to extend time for submission of the Bids or the Bid validity period or the period for conveying acceptance of Letter of Award by the Bidder or the period for fulfilment and compliance with all or any of the terms and conditions contained in the said Bidding Documents by the said Bidder or to postpone for any time and from time to time any of the powers exercisable by it against the said Bidder and either to enforce or forbear from enforcing any of the terms and conditions contained in the said Bidding Documents or the securities available to the Authority, and the Bank shall not be released from its liability 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 said Bidder or any other forbearance, act or omission on the part of the Authority or any indulgence by the Authority to the said Bidder or by any change in the constitution of the Authority or its absorption, merger or amalgamation with any other person or any other matter or thing whatsoever which under the law relating to sureties would but for this provision have the effect of releasing the Bank from its such liability.
8. Any notice by way of request, demand or otherwise hereunder shall be sufficiently given or made if addressed to the Bank and sent by courier or by registered mail to the Bank at the address set forth herein.
9. We undertake to make the payment on receipt of your notice of claim on us addressed to [name of Bank along with branch address] and delivered at our above branch which shall be deemed to have been duly authorised to receive the said notice of claim.
10. It shall not be necessary for the Authority to proceed against the said Bidder before proceeding against the Bank and the guarantee herein contained shall be enforceable against the Bank, notwithstanding any other security which the Authority may have obtained from the said Bidder or any other person and which shall, at the time when proceedings are taken against the Bank hereunder, be outstanding or unrealized.
11. We, the Bank, further undertake not to revoke this Guarantee during its currency except with the previous express consent of the Authority in writing.
12. The Bank declares that it has power to issue this Guarantee and discharge the obligations contemplated herein, the undersigned is duly authorised and has full power to execute this Guarantee for and on behalf of the Bank.

13. For the avoidance of doubt, the Bank's liability under this Guarantee shall be restricted to INR ..... crore (amount in words). The Bank shall be liable to pay the said amount or any part thereof only if the Authority serves a written claim on the Bank in accordance with paragraph 9 hereof, on or before [ (indicate date falling 180 days after the Bid Due Date)].

Signed and Delivered by ..... Bank

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

(Signature of the Authorised Signatory) (Official Seal)

**Appendix – J**  
**PROJECT SITE PARTICULARS**

To,

.....  
DQA (WP)/ DDP DGQA  
Floor 6, “B” Block,  
MoD Complex, Africa Avenue,  
New Delhi-110023

**Sub:** Bid for Development, Operation and Management of Defence Testing Infrastructure (DTI) for Ammunition testing under the Defence Testing Infrastructure Scheme (DTIS)

Dear Sir,

With reference to the above mentioned project, we ..... (name of the Bidder) propose to develop the facility at ..... (name of the location) in.....(name of the city/ state). The proposed facility is owned by ..... (name of the owner) / leased by ..... (name of the lease) for a period of ..... Years and is of ..... (size of the land) without any encumbrances and is free of any restrictions.

All relevant documents of the land showing the ownership details and access to the land, along with a layout plan are enclosed with the bid at ..... (page number) which shows the owner of the land / lease agreement of the land is also attached with the same.

Signature of the Authorized  
Representative with Seal

**Appendix – K**  
**NON-DISCLOSURE AGREEMENT**

*(To be submitted on the letter head of lead member of the Applicant)*

1. The Applicant (onsite and support team members) shall keep confidential and shall not without the written consent of the Government - divulge to any third party, any documents, data or other information furnished directly or indirectly by the Government in connection with the contract, whether such information has been furnished prior to, during or following termination of the contract.
2. The Applicant also undertakes not to use any information gained by virtue of this Project, in any form, to prepare, develop, market or sell any system or product for utilization by any other client. The Applicant agrees to retain the confidential information of the organization in strict confidence, to protect the security, integrity and confidentiality of such information and to not permit unauthorized access to or unauthorized use, disclosure, publication or dissemination of such information.
3. The Applicant shall adopt and/ or maintain security processes and procedures to safeguard the confidentiality of all information received from the Government.
4. The Applicant shall not disclose or in any way assist or permit the disclosure of any information related to the Government to any third party or person without the express written consent of the Government.
5. The Applicant shall not send any information or data related to the project at any time outside India for the purpose of storage, processing, analysis or handling.
6. The Applicant shall not engage or appoint any non-resident Indian / foreigner to undertake any activity related to the Project. The Applicant will not discuss with any member of public, media, press or any other person about the nature of arrangement / contract between the Government and the Applicant or the nature of services to be provide by the Applicant to the Government.
7. Upon the completion of period of contract, the Applicant will ensure that all documents, memoranda, notes and other writings or electronic records prepared by it that include any confidential information are returned to the Government.
8. If there is any unauthorized disclosure or loss of any of confidential information by the Applicant or any of its representatives, Applicant will promptly, at its own expense, notify the Government in writing and take all actions as may be necessary to minimize any damage to the Government as a result of such disclosure or loss.
9. The obligation not to disclose Confidential Information shall remain in effect after the date of conclusion of the contract and the provisions of this clause shall survive termination, for whatever reason of the contract.

Signature (in capacity of)

Name

Designation

Company Seal

Place\_\_\_\_\_

Date\_\_\_\_\_

**Appendix – L**  
**DETAILED PROJECT REPORT**

To,

.....  
DQA (WP)/ DDP DGQA  
Floor 6, “B” Block,  
MoD Complex, Africa Avenue,  
New Delhi-110023

**Sub:** Bid for Development, Operation and Management of Defence Testing Infrastructure (DTI) for Ammunition testing under the Defence Testing Infrastructure Scheme (DTIS)

Dear Sir,

With reference to the above-mentioned subject, we hereby submit our Detailed Project Report for” Bid for Development, Operation and Management of Defence Testing Infrastructure (DTI) for Ammunition testing under the Defence Testing Infrastructure Scheme (DTIS)”. This DPR provides a composite overview of the facility proposed to be developed under the DTIS and covers the aspects in line with ITB Clause-10 of the RFP document.

Signature of the Authorized  
Representative with Seal

**Appendix – M**  
**CONTRACT AGREEMENT**





**DEPARTMENT OF DEFENCE PRODUCTION (DDP) /  
DIRECTORATE GENERAL OF QUALITY ASSURANCE (DGQA)  
MINISTRY OF DEFENCE (MOD)  
GOVERNMENT OF INDIA (GOI)**

---

**DRAFT CONTRACT AGREEMENT  
VOLUME. II**

---

**DEVELOPMENT, OPERATION AND MAINTENANCE OF DEFENCE  
TESTING INFRASTRUCTURE (DTI) FOR AMMUNITIONS UNDER THE  
DEFENCE TESTING INFRASTRUCTURE SCHEME (DTIS)**

---

**Reference No. \*\*\*\*\***

**DDP / DGQA  
DQA (WP), Floor 6, “B” Block, MoD Complex, Africa Avenue,  
New Delhi-110023, India  
Website: [www.dggadefence.gov.in](http://www.dggadefence.gov.in)  
Phone: 011-23012080, 011-23013805**

**DECEMBER 2021**

**(A) TABLE OF CONTENTS**

**(B)**  
[TABLE OF CONTENTS](#) ..... 73  
[ARTICLE 1 - DEFINITIONS AND INTERPRETATION](#) ..... 77

<a href="#">ARTICLE 2 - SCOPE OF THE PROJECT</a> .....	80
<a href="#">ARTICLE 3 - CONDITIONS PRECEDENT</a> .....	81
<a href="#">ARTICLE 4 - OBLIGATIONS OF THE IMPLEMENTATION AGENCY</a> .....	84
<a href="#">ARTICLE 5 - OBLIGATIONS OF THE AUTHORITY</a> .....	90
<a href="#">ARTICLE 6 - REPRESENTATION AND WARRANTIES</a> .....	91
<a href="#">ARTICLE 7 - DISCLAIMER</a> .....	94
<a href="#">ARTICLE 8 - PERFORMANCE SECURITY</a> .....	95
<a href="#">ARTICLE 9 - PROJECT SITE</a> .....	97
<a href="#">ARTICLE 10 - DESIGN AND CONSTRUCTION OF THE PROJECT</a> .....	98
<a href="#">ARTICLE 11 - MONITORING OF CONSTRUCTION</a> .....	100
<a href="#">ARTICLE 12 - COMPLETION OF PROJECT CONSTRUCTION</a> .....	101
<a href="#">ARTICLE 13 - ENTRY INTO COMMERCIAL SERVICE</a> .....	102
<a href="#">ARTICLE 14 - OPERATION AND MAINTENANCE (O&amp;M)</a> .....	103
<a href="#">ARTICLE 15 - MONITORING OF O&amp;M</a> .....	104
<a href="#">ARTICLE 16 - FINANCIAL CLOSE</a> .....	105
<a href="#">ARTICLE 17 - GRANT-IN-AID</a> .....	106
<a href="#">ARTICLE 18 - USER FEE</a> .....	108
<a href="#">ARTICLE 19 - ESCROW ACCOUNT</a> .....	109
<a href="#">ARTICLE 20 - INSURANCE</a> .....	111
<a href="#">ARTICLE 21 - ACCOUNTS AND AUDIT</a> .....	113
<a href="#">ARTICLE 22 - FORCE MAJEURE</a> .....	115
<a href="#">ARTICLE 23 - TERMINATION</a> .....	119
<a href="#">ARTICLE 24 - ASSIGNMENT AND CHARGES</a> .....	122
<a href="#">ARTICLE 25 - LIABILITY AND INDEMNITY</a> .....	123
<a href="#">ARTICLE 26 - DISPUTE RESOLUTION</a> .....	126
<a href="#">ARTICLE 27 - REDRESSAL OF PUBLIC GRIEVANCES</a> .....	128
<a href="#">ARTICLE 28 - MISCELLANEOUS</a> .....	129
<a href="#">ARTICLE 29 – DEFINITIONS</a> .....	133
<a href="#">SCHEDULE - A</a> .....	141
<a href="#">SCHEDULE - B</a> .....	142
<a href="#">SCHEDULE - C</a> .....	143
<a href="#">SCHEDULE - D</a> .....	153
<a href="#">SCHEDULE - E</a> .....	156
<a href="#">SCHEDULE - F</a> .....	157
<a href="#">SCHEDULE - G</a> .....	158
<a href="#">SCHEDULE - H</a> .....	160
<a href="#">SCHEDULE - I</a> .....	162
<a href="#">SCHEDULE - J</a> .....	164

### CONTRACT AGREEMENT

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

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

**BETWEEN:**

1. The Government of India (GOI) represented by Department of Defence Production/Directorate General of Quality Assurance, Ministry of Defence (“DDP/DGQA, MOD”) and having its principal office at DQA (WP), Floor 6, “B” Block, MoD Complex, Africa Avenue, New Delhi-110023, India, India (hereinafter referred to as the “**Authority**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) of the One Part;

**AND**

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

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

**WHEREAS:**

- (C) The GOI had established Defence Testing Infrastructure Scheme (DTIS) with an aim to promote setting up of greenfield DTIs across various identified domains, required for A&D related production, by providing financial assistance to various implementation agencies in the form of grant-in-aid. The scheme plans to enhance defence manufacturing industry in India by creating DTIs and addressing quality and certification requirements for development and growth of the A&D industry in the country;
- (D) For the aforesaid purpose, the GOI had entrusted the responsibility to implement the DTIS to the Authority and the Authority had shortlisted Ammunitions domain as one of the DTI facility under the DTIS and has agreed to support the Implementation Agency by providing grant-in-aid in accordance with the terms and conditions to be set forth in a Contract Agreement to be entered into;
- (E) The Authority had prescribed the technical and commercial terms and conditions, and invited Bids (“the **Request for Proposal**” or “**RFP**”) by its Request for Proposal No. \*\*\*\*\* dated \*\*\*\*\* for development, operation and maintenance of greenfield DTI facility for Ammunitions under the DTIS, as amended from time to time (collectively, “**Request for Proposal**” or “**RFP**”);
- (F) After evaluation of the Bids received, the Authority had accepted the Bid of the {selected Bidder/Consortium}, *inter alia*, the {the selected Bidder/Consortium} comprising \*\*\*\*\* , \*\*\*\*\* , \*\*\*\*\* , \*\*\*\*\* and \*\*\*\*\* (individually referred to as “**Consortium Member**” and collectively the “**Consortium**”) with \*\*\*\*\* as its lead member (the “**Lead Member**”). The Authority issued its Letter of Award No. \*\*\*\*\* dated \*\*\*\*\* (hereinafter called the “**LOA**”) to the {selected

---

<sup>£</sup> Instruction to Bidders

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

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

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

Bidder/Consortium} requiring, *inter alia*, the execution of this Contract Agreement within 45 (forty five) days of the date of issue thereof;

- (G) {The selected Bidder/Consortium has since promoted and incorporated the Implementation Agency as a Section 8 company under the Companies Act 2013 with CIN \*\*\*\*\*, and} has requested the Authority to accept the Implementation Agency as the entity which shall undertake and perform the obligations and exercise the rights of the {selected Bidder/Consortium under the LOA} including the obligation to enter into this Contract Agreement pursuant to the LOA for undertaking the Project;
- (H) {By its letter dated \*\*\*\*\*, the Implementation Agency has also joined in the said request of the selected Bidder/Consortium to the Authority to accept it as the entity which shall undertake and perform the obligations and exercise the rights of the selected Bidder/Consortium including the obligation to enter into this Contract Agreement pursuant to the LOA. The Implementation Agency has further represented to the effect that it has been promoted by the selected Bidder/Consortium for the purposes hereof}; and
- (I) The Authority has {agreed to the said request of the selected Bidder/Consortium and the Implementation Agency, and has} accordingly agreed to enter into this Contract Agreement with the Implementation Agency for undertaking the Project, subject to and on the terms and conditions set forth hereinafter.

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

## (J) ARTICLE 1 - DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

The words and expressions beginning with capital letters and defined in this Agreement (including those in Article 29) shall, unless the context otherwise requires, have the meaning ascribed thereto herein, and the words and expressions defined in the Schedules and used therein shall have the meaning ascribed thereto in the Schedules.

### 1.2 Interpretations

1.2.1 In this Agreement, unless the context otherwise requires:

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

- (l) any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;
- (m) references to any date, period or Project Milestone shall mean and include such date, period or Project Milestone as may be extended pursuant to this Agreement;
- (n) any reference to any period commencing “**from**” a specified day or date and “**till**” or “**until**” a specified day or date shall include both such days or dates; provided that if the last day of any period computed under this Agreement is not a business day, then the period shall run until the end of the next business day;
- (o) the words importing singular shall include plural and vice versa;
- (p) references to any gender shall include the other and the neutral gender;
- (q) “**lakh**” means a 100,000 (hundred thousand) and “**crore**” means 10,000,000 (ten million);
- (r) “**indebtedness**” shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
- (s) references to the “**winding-up**”, “**dissolution**”, “**insolvency**”, or “**reorganization**” of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganization, dissolution, arrangement, protection or relief of debtors;
- (t) save and except as otherwise provided in this Agreement, any reference, at any time, to any agreement, deed, instrument, licence or document of any description shall be construed as reference to that agreement, deed, instrument, licence or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this Sub-clause (t) shall not operate so as to increase liabilities or obligations of the Authority hereunder or pursuant hereto in any manner whatsoever;
- (u) any agreement, consent, approval, authorization, notice, communication, information or report required under or pursuant to this Agreement from or by any Party or the Project Monitoring Committee or the Project Consultant shall be valid and effective only if it is in writing under the hand of a duly authorised representative of such Party or the Project Monitoring Committee or the Project Consultant, as the case may be, in this behalf and not otherwise;
- (v) the Schedules and Recitals to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
- (w) references to Recitals, Articles, Clauses, Sub-clauses, Provisos or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-clauses, Provisos and Schedules of or to this Agreement; and reference to a Paragraph shall, subject to anything to the contrary specified therein, be construed as a reference to a Paragraph of the Schedule in which such reference appears;
- (x) the damages payable by either Party to the other of them, as set forth in this Agreement, whether on *per diem* basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the “**Damages**”); and

- (y) time shall be of the essence in the performance of the Parties' respective obligations. If any time period specified herein is extended, such extended time shall also be of the essence.
- 1.2.2 Unless expressly provided otherwise in this Agreement, any Documentation required to be provided or furnished by the Implementation Agency to the Authority and/or the Project Monitoring Committee and/or the Project Consultant shall be provided free of cost and in 3 (three) copies, and if the Authority and/or the Project Monitoring Committee and/or the Project Consultant is required to return any such Documentation with their comments and/or approval, they shall be entitled to retain 2 (two) copies thereof.
- 1.2.3 The rule of construction, if any, that a contract should be interpreted against the parties responsible for the drafting and preparation thereof, shall not apply.
- 1.2.4 Any word or expression used in this Agreement shall, unless otherwise defined or construed in this Agreement, bear its ordinary English meaning and, for these purposes, the General Clauses Act 1897 shall not apply.

### **1.3 Measurements and Arithmetic Conventions**

All measurements and calculations shall be in the metric system and calculations done to 2 (two) decimal places, with the 3<sup>rd</sup> (third) digit of 5 (five) or above being rounded up and below 5 (five) being rounded down.

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

- 1.4.1 This Agreement, and all other agreements and documents forming part of or referred to in this Agreement are to be taken as mutually explanatory and, unless otherwise expressly provided elsewhere in this Agreement, the priority of this Agreement and other documents and agreements forming part hereof or referred to herein shall, in the event of any conflict between them, be in the following order:
- (a) this Agreement; and
- (b) all other agreements and documents forming part hereof or referred to herein,
- i.e. the Agreement at (a) above shall prevail over the agreements and documents at (b)(b) above.
- 1.4.2 Subject to the provisions of Clause 1.4.11.4.1, in case of ambiguities or discrepancies within this Agreement, the following shall apply:
- (a) between 2 (two) or more Clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in other Clauses;
- (b) between the Clauses of this Agreement and the Schedules, the Clauses shall prevail;
- (c) between any 2 (two) Schedules, the Schedule relevant to the issue shall prevail; and
- (d) between any value written in numerals and that in words, the latter shall prevail

**(K) ARTICLE 2 - SCOPE OF THE PROJECT**

**2.1 Scope of the Project**

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

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



**(L) ARTICLE 3 - CONDITIONS PRECEDENT**

**3.1 Conditions Precedent**

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

be fulfilled by the date specified therein shall have been satisfied in full, and such Applicable Permits are in full force and effect. The Implementation Agency shall intimate to the Authority, within 15 (fifteen) days of receiving the LOA, about any clearance or permit required from the Government;

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

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

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

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

### **3.3 Deemed Termination upon delay**

Without prejudice to the provisions of Clauses 3.2, and subject to the provisions of Clause 8.2, the Parties expressly agree that in the event the Appointed Date does not occur, for any reason whatsoever, before 180 (one hundred eighty) days from the date of this Agreement or the extended period provided in accordance with this Agreement, all rights, privileges, claims and entitlements of the Implementation Agency under or arising out of this Agreement shall be

deemed to have been waived by, and to have ceased with the concurrence of the Implementation Agency, and the Contract Agreement shall be deemed to have been terminated by mutual agreement of the Parties. Provided, however, that in the event the delay in occurrence of the Appointed Date is for reasons attributable to the Implementation Agency, the Performance Security of the Implementation Agency shall be encashed and appropriated by the Authority as Damages thereof.

**(M) ARTICLE 4 - OBLIGATIONS OF THE IMPLEMENTATION AGENCY**

**4.1 General obligations of the Implementation Agency**

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

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

being properly maintained or the level of services is below the Applicable Standards, the Implementation Agency shall take such corrective measures upon being served with a notice to the said effect by the Authority. Failure of the Implementation Agency to comply with the requirements of the notice within the time period stipulated therein would be considered a breach of the terms of this Agreement by the Implementation Agency.

#### **4.2 Obligations relating to Project Agreements**

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

#### **4.3 Obligations relating to Change in Ownership**

- 4.3.1 The Implementation Agency shall not undertake or permit any Change in Ownership, except with the prior written approval of the Authority.
- 4.3.2 Notwithstanding anything to the contrary contained in this Agreement, the Implementation Agency agrees and acknowledges that:
- (a) all acquisitions of Equity by an acquirer, either by himself or with any person acting in concert, directly or indirectly, including by transfer of the direct or indirect legal or beneficial ownership or control of any Equity, in aggregate of 25% (twenty-five per cent) or more of the total Equity of the Implementation Agency; or

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

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

For the purposes of this Clause 4.3.2:

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

#### **4.4 Obligations relating to non-discriminatory access**

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

#### **4.5 Obligations relating to security clearance**

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

#### **4.6 Obligations relating to procurement of goods and services**

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

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

#### **4.7 Obligations relating to management of the Implementation Agency**

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

- (a) to alter or add to the provisions of the memorandum of association of the Implementation Agency;
- (b) to alter or add to the articles of association of the Implementation Agency;
- (c) to change the name of the Implementation Agency and reduce the constitution of minimum 5 (five) number of Consortium Members forming part of the Implementation Agency;
- (d) to reduce the share capital of the Implementation Agency;
- (e) to commence any new lines of business;
- (f) to keep registers and returns at any other place than within city, town or village in which the registered office is situated;
- (g) to relocate the registered office of the Implementation Agency outside the limits of the State;
- (h) to enter into any contract or agreement with a related party with respect to such related party's appointed to any office or place of profit in the company, its subsidiary company or associate company;
- (i) to apply for corporate insolvency proceedings under the Insolvency and Bankruptcy code, 2016;
- (j) to apply to a court to wind-up the Company;
- (k) to wind-up the Company voluntarily;
- (l) to change the name of the Project;
- (m) for various other matters pertaining to the winding up of the Implementation Agency; and
- (n) any other matter which is required by the Companies Act, 2013 (or the relevant Act in force) or any statutory re-enactment thereof to be passed by a special resolution of the shareholders of the Implementation Agency



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

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

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

#### **4.9 Auditing the Project**

- (a) The Implementation Agency shall maintain books recording the procedure followed at the Project.
- (b) The Implementation Agency expressly agrees to furnish to its Statutory Auditor, the details of the records maintained in furtherance of Clause 4.9.1.
- (c) On or before the 31<sup>st</sup> (thirty-first) day of May each Year, the Implementation Agency shall provide to the Authority, for the preceding Accounting Year, a statement duly audited by its Statutory Auditors giving summarized information on (a) the procedure undertaken at the Project; and (b) details of the Users availing the Services with the type of Service availed.
- (d) The Authority shall have the right to inspect the records of the Implementation Agency during office hours and obtain copies of such records duly certified by the Statutory Auditors, for verification.

#### **4.10 Risks and Responsibility for the Project**

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

#### **4.11 Disclaimer for responsibility of Project**

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

#### **4.12 Sole purpose of the Implementation Agency**

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

**(N) ARTICLE 5 - OBLIGATIONS OF THE AUTHORITY**

**5.1 General obligations of the Authority**

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

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

**(O) ARTICLE 6 - REPRESENTATION AND WARRANTIES**

**6.1 Representation and warranties of the Implementation Agency**

The Implementation Agency represents and warrants to the Authority that:

- (a) it is duly organized and validly existing under the laws of India, and has full power and authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (b) it has taken all necessary corporate and other actions under Applicable Laws to authorize the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- (c) this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement will be legally valid, binding and enforceable obligations against it in accordance with the terms hereof;
- (d) it is subject to the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising there under including any obligation, liability or responsibility hereunder;
- (e) the information furnished in the Bid and as updated on or before the date of this Agreement is true and accurate in all respects as on the date of this Agreement;
- (f) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of its Memorandum and Articles of Association {or those of any member of the Consortium} or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- (g) there are no actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its obligations under this Agreement;
- (h) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legal binding order of any Government Instrumentality which may result in any Material Adverse Effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would have a Material Adverse Effect or adversely affect the performance of its obligations under this Agreement;
- (i) it has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a Material Adverse Effect on its ability to perform its obligations under this Agreement;
- (j) it shall at no time undertake or permit any Change in Ownership except in accordance with the provisions of Clause 4.3 and that the {selected Bidder/Consortium Members}, together with {its/their} Associates, hold not less than 51% (fifty one per cent) of its issued and paid up Equity as on the date of this Agreement; during the Construction Period, and 2 (two) years thereafter.

At any time, after expiry of the aforesaid shareholding period, the Implementation Agency can approach the Authority for approval proposing a new Consortium/Consortium Member.

The Authority may at its sole discretion consider and approve it subject to the Consortium/Consortium Members meeting the eligibility criteria as prescribed in Request for Proposal for the Project. Provided further that the Implementation Agency shall at no time reduce the constitution of minimum 5 (five) number of Consortium Members forming part of the Implementation Agency; and

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

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

## **6.2 Representation and warranties of the Authority**

The Authority represents and warrants to the Implementation Agency that:

- (a) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Agreement, exercise its rights and perform its obligations, under this Agreement;
- (b) it has taken all necessary actions under Applicable Laws to authorize the execution, delivery and performance of this Agreement;
- (c) it has the financial standing and capacity to perform its obligations under this Agreement;
- (d) this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- (e) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Instrumentality which may result in any Material Adverse Effect on the Authority's ability to perform its obligations under this Agreement; and
- (f) it has complied with Applicable Laws in all material respects

## **6.3 Disclosure**

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

**(P) ARTICLE 7 - DISCLAIMER**

**7.1 Disclaimer**

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

## **(Q) ARTICLE 8 - PERFORMANCE SECURITY**

### **8.1 Performance Security**

- 8.1.1 The Implementation Agency shall, for the performance of its obligations hereunder, provide to the Authority no later than 60 (sixty) days from the date of this Agreement, an irrevocable and unconditional guarantee from a Bank for a sum equivalent to Rs. \*\*\*\*\*<sup>£</sup> (Rupees \*\*\*\*\*<sup>£</sup>) in the form set forth in **Schedule D** (the “**Performance Security**”). Until such time the Performance Security is provided by the Implementation Agency 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 Implementation Agency.
- 8.1.2 Notwithstanding anything to the contrary contained in this Agreement, in the event Performance Security is not provided by the Implementation Agency within a period of 60 (sixty) days from the date of this Agreement, the Authority may encash the Bid Security and appropriate the proceeds thereof as Damages, and thereupon all rights, privileges, claims and entitlements of the Implementation Agency under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Implementation Agency, and this Agreement shall be deemed to have been terminated by mutual agreement of the Parties.

### **8.2 Appropriation of Performance Security**

Upon occurrence of an Implementation Agency’s Default or failure to meet any Condition Precedent, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate from the Performance Security the amounts due to it for and in respect of such Implementation Agency’s Default or for failure to meet any Condition Precedent. Upon such encashment and appropriation from the Performance Security, the Implementation Agency shall, within 15 (fifteen) days thereof, replenish, in case of partial appropriation, to the original level of the Performance Security, and in case of appropriation of the entire Performance Security provide a fresh Performance Security, as the case may be, failing which the Authority shall be entitled to terminate this Agreement in accordance with Article 24. Upon such replenishment or furnishing of a fresh Performance Security, as the case may be, the Implementation Agency shall be entitled to an additional Cure Period of 90 (ninety) days for remedying the Implementation Agency’s Default or for satisfying any Condition Precedent, and in the event of the Implementation Agency not curing its default or meeting such Condition Precedent within such Cure Period, the Authority shall be entitled to encash and appropriate such Performance Security as Damages, and to terminate this Agreement in accordance with Article 24.

### **8.3 Release of Performance Security**

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

### **8.4 References to Performance Security**

References to Performance Security occurring in this Agreement for and in respect of any period prior to the delivery of the Performance Security by the Implementation Agency to the Authority,

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<sup>£</sup> 5% of the estimated Total Project Cost set forth in the Detailed Project Report

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 Implementation Agency, and the amount so determined shall be appropriated from the Bid Security or Performance Security, as the case may be.



**(R) ARTICLE 9 - PROJECT SITE**

**9.1 The Site**

The site of the Project shall comprise the land area described in the Detailed Project Report and mentioned in **Schedule E** which shall be provided by the Implementation Agency under and in accordance with this Agreement (the “**Site**”) for the development of the Project. For the avoidance of doubt, it is hereby acknowledged and agreed that references to the Site shall be construed as references to the land area required for the Project as set forth in the Schedule E and shall include use of the Site for development of the Project.

**9.2 Procurement of the Site**

9.2.1 The Implementation Agency acknowledges and agrees that prior to the Appointed Date, it shall have procured issuance of the statutory notification under Applicable Laws for vesting of all land comprising the Project and has taken possession of the total area thereof. In case the Implementation Agency is not owner of the Site, the minimum lease period of the Site shall be at least 30 years from the Appointed Date; provided further that the Implementation Agency shall submit necessary Documentation in this regard as part of Conditions Precedent as per Clause 3.1.3.

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

**9.3 Site to be free from Encumbrances**

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

**9.4 Access rights of the Authority and others**

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

**(T) ARTICLE 10 - DESIGN AND CONSTRUCTION OF THE PROJECT**

**10.1 Obligations prior to commencement of construction**

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

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

**10.2 Construction of the Project**

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

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

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

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<sup>£</sup> Scheduled Completion Date as set forth in the Detailed Project Report

### **10.3 Extension of Time**

- 10.3.1 Without prejudice to any other provision of this Agreement for and in respect of extension of time, the Implementation Agency shall be entitled to extension of time in the Project Completion Schedule (the "**Time Extension**") to the extent that completion of any Project Milestone is or will be delayed by any of the following reasons, namely:
- (a) occurrence of a Force Majeure event in accordance with Article 22;
  - (b) any delay, impediment or prevention caused by or attributable to the Authority and the Authority's personnel but does not include the inspection time/review time by the Authority or its representative/personnel; and
  - (c) any other cause or delay which entitles the Implementation Agency to Time Extension in accordance with the provisions of this Agreement
- 10.3.2 The Implementation Agency shall, no later than 15 (fifteen) business days from the occurrence of an event or circumstance specified in Clause 10.3.1, inform the Authority by notice in writing, stating in reasonable detail with supporting particulars, the event or circumstances giving rise to the claim for Time Extension in accordance with the provisions of this Agreement. Provided that the period of 15 (fifteen) business days shall be calculated from the date on which the Implementation Agency became aware, or should have become aware, of the occurrence of such an event or circumstance. Provided further that notwithstanding anything to the contrary contained in this Agreement, Time Extension shall be due and applicable only for the Project Facilities which are affected by the aforesaid events or circumstances and shall not in any manner affect the Project Completion Schedule for and in respect of the Project Facilities which are not affected hereunder.
- 10.3.3 In the event of the failure of the Implementation Agency to issue to the Authority a notice in accordance with the provisions of Clause 10.3.1 within the time specified therein, the Implementation Agency shall not be entitled to any Time Extension and its right for any such claims in future shall be forfeited. For the avoidance of doubt, in the event of failure of the Implementation Agency to issue notice as specified in this Clause 10.3.2, the Authority shall be discharged from any and all liabilities in connection with such claim.
- 10.3.4 The Authority shall, on receipt of the claim in accordance with the provisions of Clause 10.3.2, examine the claim expeditiously within the time frame specified herein. In the event the Authority requires any clarifications to examine the claim, the Authority shall seek the same within 15 (fifteen) days from the date of receiving such claim. The Implementation Agency shall, on receipt of the communication of the Authority requesting for clarification, furnish the same to the Authority Representative within 10 (ten) days thereof. The Authority shall, within a period of 30 (thirty) days from the date of receipt of such clarifications, forward in writing to the Implementation Agency its determination of Time Extension. Provided that when determining each extension of time under this Clause 10.3, the Authority shall review previous determinations and may increase but shall not decrease the total Time Extension.

### **10.4 Compliance with Applicable Laws**

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

**(U) ARTICLE 11 - MONITORING OF CONSTRUCTION**

**11.1 Monthly progress reports**

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

**11.2 Quarterly Inspection**

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

**11.3 Delays during construction**

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

**(V) ARTICLE 12 - COMPLETION OF PROJECT CONSTRUCTION**

**12.1 Tests**

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

**12.2 Completion of Construction**

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

**(W) ARTICLE 13 - ENTRY INTO COMMERCIAL SERVICE**

**13.1 Commercial Operation Date (COD)**

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

**13.2 Damages for delay**

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

**(X) ARTICLE 14 - OPERATION AND MAINTENANCE (O&M)**

**14.1 O&M obligations of the Implementation Agency**

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

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

**(Y) ARTICLE 15 - MONITORING OF O&M**

**15.1 Half yearly status reports**

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

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



**(Z) ARTICLE 16 - FINANCIAL CLOSE**

**16.1 Financial Close**

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

**(AA) ARTICLE 17 - GRANT-IN-AID**

**17.1 Grant-in-Aid**

- 17.1.1 The Authority agrees to provide to the Implementation Agency financial support by way of an outright grant equal to the sum set forth in the Bid, namely, Rs. \*\*\*\*\* (Rupees in words \*\*\*\*\*) in accordance with the provisions of this Article 17 (the “Grant”); provided further that such Grant shall be limited to lowest of (i) Grant set forth in the Bid; and (b) 75% (seventy five percent) of the Total Project Cost. The Grant shall be utilised for the 2 (two) components of the Total Project Cost in the following manner:
- (i) the Grant to be utilised for meeting up to 20% (twenty percent) of the Total Project Cost towards Civil Cost; and
  - (ii) the Grant to be utilised for meeting up to 80% of the Total Project Cost towards Equipment Cost.
- 17.1.2 Subject to the conditions specified in this Clause 17.1, the Grant shall be credited to the Escrow Account and shall be applied by the Implementation Agency for meeting the Total Project Cost.
- 17.1.3 The Grant shall be disbursed to the Implementation Agency subject to the Implementation Agency achieving Financial Closure in accordance with Article 16 and shall not exceed the sum specified in Clause 17.1.1 and as accepted by the Authority and subject to the conditions of this Article 17.
- 17.1.4 The Grant shall be disbursed in instalments as per the schedule submitted in accordance with Clause 3.1.3 and as approved by the Authority and DTISC. The number of instalments shall not exceed 5 (five) for the entire Project.
- 17.1.5 The first instalment of Grant will be released against Bank Guarantee as per Schedule D and such instalment shall not exceed more than 20% (twenty percent) of the Grant.
- 17.1.6 For every subsequent instalment, the Implementation Agency shall submit a bond / Bank Guarantee regarding utilisation of funds as per Schedule D for an amount equivalent to the instalment. The Bank Guarantees shall remain in force and effect for a period of 180 (one hundred and eighty) days from COD of the Project; provided, however, that the Bank Guarantees shall not be released if the Implementation Agency is in breach of this Agreement.
- 17.1.7 The release of instalments by the Authority shall be subject to:
- (a) submission of Utilisation Certificate (UC) as per **Schedule G** by a Statutory Auditor for the amounts utilised and confirmation that these are in compliance of the terms and conditions of Clause 17.1;
  - (b) submission of pre-receipt bills for the funds to be disbursed along with a certificate that the Implementation Agency has not indulged in corrupt practices;
  - (c) a report from Project Consultant including certification of physical and financial progress of the Project; and
  - (d) proof of matching contribution of the funds having been invested by the Implementation Agency which shall be duly certified by a Statutory Auditor.
- 17.1.8 The Implementation Agency would be required to maintain subsidiary accounts of the Grant and furnish to the Project Consultant a set of audited statement of accounts after utilization of the Grant or whenever called for.
- 17.1.9 In the event, at the completion of the Project, the actual Total Project Cost is lower than the estimated Total project Cost, then the Implementing Agency shall return to the Authority the amount of Grant that has been disbursed in excess of amounts as pr provisions of Clause 17.1.1.

- 17.1.10 The Implementation Agency shall not utilize the interest earned on the recurring/nonrecurring Grant, released to it for any purpose. The interest earned shall be indicated in the Utilisation Certificate which shall be refunded to the Authority on a quarterly basis, after sanctioned Grant is utilized.
- 17.1.11 The Grant should not be a source of profit. If after examination of the audited accounts, the Authority comes to the conclusion that the Grant has been a source of profit, then the Implementation Agency shall forthwith refund the amount of Grant to the Authority with interest rate equal to 3% (three percent) above the Bank Rate.
- 17.1.12 In the event of occurrence of an Implementation Agency's Default, disbursement of Grant shall be suspended till such Implementation Agency's Default has been cured by the Implementation Agency. In the event any amount disbursed is in default of the terms and conditions of this Clause 17.1.10, the Authority shall have the right to recover the same from the Performance Guarantee and other Bank Guarantees as specified in Clause 17.1.6 or deduct in the subsequent instalment with interest rate equal to 3% (three percent) above the Bank Rate.
- 17.1.13 The Project Assets acquired / created by the Implementation Agency out of the Authority's financial assistance shall not be disposed, encumbered or utilized for purposes other than those for which funds have been released.

**(BB)ARTICLE 18 - USER FEE**

**18.1 Collection of Fee by the Implementation Agency**

- 18.1.1 On and from COD, the Implementation Agency has the right to demand, collect and appropriate fees from the Users (the “**Fee**”) for the Services set forth in **Schedule H**. The Implementation Agency shall fix the Fee based on market conditions and on such other conditions, if any, as may be notified and made applicable by a competent authority.
- 18.1.2 The Implementation Agency acknowledges and agrees that it shall provide the Services in a transparent and non-discriminatory manner to the Users and it shall not place, or cause to be placed, any restriction on such use, except to the extent specified in any Applicable Laws, Applicable Permits or the provisions of this Agreement.

**18.2 Display of Fee**

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

## (CC) ARTICLE 19 - ESCROW ACCOUNT

### 19.1 Escrow Account

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

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

### 19.2 Deposits into Escrow Account

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

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

### 19.3 Withdrawals during Construction Period

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

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

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

### 19.4 Withdrawals upon Termination

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

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

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

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

**(DD) ARTICLE 20 - INSURANCE**

**20.1 Insurance during Construction and Operation Period**

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

**20.2 Insurance Cover**

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

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

**20.3 Notice to the Authority**

No later than 30 (thirty) days prior to commencement of the Construction Period and the COD, as the case may be, the Implementation Agency shall by notice furnish to the Authority, in reasonable detail, information in respect of the insurances that it proposes to effect and maintain in accordance with this Article 20. Within 30 (thirty) days of receipt of such notice, the Authority may require the Implementation Agency to effect and maintain such other insurances as may be necessary pursuant hereto, and in the event of any difference or disagreement relating to any such insurance, the Dispute Resolution Procedure shall apply.

**20.4 Evidence of Insurance Cover**

All insurances obtained by the Implementation Agency in accordance with this Article 20 shall be maintained with insurers on terms consistent with Good Industry Practice. Within 15 (fifteen) days of obtaining any insurance cover, the Implementation Agency shall furnish to the Authority, notarized true copies of the certificate(s) of insurance, copies of insurance policies and premia payment receipts in respect of such insurance, and no such insurance shall be cancelled, modified, or allowed to expire or lapse until the expiration of at least 45 (forty five) days after notice of such proposed cancellation, modification or non-renewal has been delivered by the Implementation Agency to the Authority.

**20.5 Remedy for failure to insure**

If the Implementation Agency shall fail to effect and keep in force all insurances for which it is responsible pursuant hereto, the Authority shall have the option to either keep in force any such insurances, and pay such premia and recover the costs thereof from the Implementation Agency, or in

the event of computation of a Termination Payment, treat an amount equal to the Insurance Cover as deemed to have been received by the Implementation Agency.

**20.6 Waiver of subrogation**

All insurance policies in respect of the insurance obtained by the Implementation Agency pursuant to this Article 20 shall include a waiver of any and all rights of subrogation or recovery of the insurers there under against, *inter alia*, the Authority, and its assigns, successors, undertakings and their subsidiaries, affiliates, employees, insurers and underwriters, and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy or in any way connected with any loss, liability or obligation covered by such policies of insurances.

**20.7 Implementation Agency's waiver**

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

**20.8 Application of insurance proceeds**

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

**20.9 Compliance with conditions of insurance policies**

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



**(EE)ARTICLE 21 - ACCOUNTS AND AUDIT**

**21.1 Audited Accounts**

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

**21.2 Appointment of Auditors**

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

**21.3 Certification of claims by Statutory Auditors**

Any claim or document provided by the Implementation Agency to the Authority in connection with or relating to receipts, income, payments, costs, expenses, accounts or audit, and any matter incidental

thereto shall be valid and effective only if certified by its Statutory Auditors. For the avoidance of doubt, such certification shall not be required for exchange of information in the normal course of business including the submission of any periodic information in pursuance of the provisions of this Agreement, save and except where such certification is expressly provided.

**21.4 Set-off**

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

**21.5 Dispute Resolution**

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

**(FF) ARTICLE 22 - FORCE MAJEURE**

**22.1 Force Majeure**

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

**22.2 Non-Political Event**

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

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

**22.3 Indirect Political Event**

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

- (a) an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;
- (b) industry-wide or state-wide strikes or industrial action for a continuous period of 24 (twenty four) hours and exceeding an aggregate period of 7 (seven) days in an Accounting Year;
- (c) any civil commotion, boycott or political agitation which prevents operations by the Implementation Agency for an aggregate period exceeding 7 (seven) days in an Accounting Year;
- (d) any failure or delay of a Contractor to the extent caused by any Indirect Political Event and which does not result in any offsetting compensation being payable to the Implementation Agency by or on behalf of such Contractor;

- (e) any Indirect Political Event that causes a Non-Political Event;
- (f) any event or circumstance of a nature analogous to any of the foregoing; or
- (g) any political or economic upheaval, disturbance, movement, struggle or similar occurrence which could not have been anticipated or foreseen by a prudent person and which causes the construction or operation of the Project to be financially unviable or otherwise not feasible

#### **22.4 Political Event**

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

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

#### **22.5 Duty to report Force Majeure Events**

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

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

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

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

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

- 22.6.1 Upon the occurrence of any Force Majeure Event prior to the Appointed Date, the period set forth in Clause 3.1 for fulfilment of Conditions Precedent and in Clause 16.1.1 for achieving Financial Close shall be extended by a period equal in length to the duration of the Force Majeure Event.
- 22.6.2 At any time after the Appointed Date but prior to COD, if any Force Majeure Event occurs, the Scheduled Completion Date and the dates set forth in the Project Completion Schedule shall be extended by a period, equal in length to the duration for which such Force Majeure Events subsists

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

- 22.7.1 Upon occurrence of any Force Majeure Events prior to the Appointed Date, the Parties shall bear their respective costs and no Party shall be required to pay to the other Party any costs thereof.
- 22.7.2 Upon occurrence of a Force Majeure Event after the Appointed Date but prior to COD, the costs incurred and attributable to such event and directly relating to the Project (the “**Force Majeure Costs**”) shall be allocated and paid as follows;
- (a) upon occurrence of a Non-Political Event, the Parties shall bear their respective Force Majeure Costs and neither Party shall be required to pay to the other Party any costs thereof; and
  - (b) upon occurrence of an Indirect Political Event and Political Event, all Force Majeure Costs attributable to such Political Event shall be reimbursed by the Authority to the Implementation

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

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

## **22.8 Termination Notice for Force Majeure Event**

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

## **22.9 Termination Payment for Force Majeure Event**

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

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

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

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

#### **22.10 Dispute Resolution**

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

#### **22.11 Excuse from performance of obligations**

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

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

**(GG) ARTICLE 23 - TERMINATION**

**23.1 Termination for Implementation Agency' Default**

23.1.1 Save as otherwise provided in this Agreement, in the event that default by the Implementation Agency under this Agreement and as specified below, and the Implementation Agency fails to cure the default within the Cure Period set forth below, or where no Cure Period is specified, then within a Cure Period of 60 (sixty) days, the Implementation Agency shall be deemed to be in default of this Agreement (the “**Implementation Agency’s Default**”), unless the default has occurred solely as a result of any breach of this Agreement by the Authority or due to Force Majeure. The defaults referred to herein shall include but not limited to:

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

- (p) a resolution for winding up of the Implementation Agency is passed, or any petition for winding up of the Implementation Agency is admitted by a court of competent jurisdiction and a provisional liquidator or receiver is appointed and such order has not been set aside within 90 (ninety) days of the date thereof or the Implementation Agency is ordered to be wound up by a court except for the purpose of amalgamation or reconstruction; provided that, as part of such amalgamation or reconstruction, the entire property, assets and undertaking of the Implementation Agency are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Implementation Agency under this Agreement and the Project Agreements; and provided that:
- (i) the amalgamated or reconstructed entity has the capability and operating experience necessary for the performance of its obligations under this Agreement and the Project Agreements;
  - (ii) the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and the Project Agreements and has a credit worthiness at least as good as that of the Implementation Agency as at the Appointed Date; and
  - (iii) each of the Project Agreements remains in full force and effect;
- (q) any representation or warranty of the Implementation Agency herein contained which is, as of the date hereof, found to be materially false, incorrect or misleading or the Implementation Agency is at any time hereafter found to be in breach thereof;
- (r) the Implementation Agency submits to the Authority any statement, notice or other document, in written or electronic form, which has a material effect on the Authority's rights, obligations or interests and which is false in material particulars;
- (s) the Implementation Agency has failed to fulfil any obligation, for which failure Termination has been specified in this Agreement;
- (t) the Implementation Agency issues a Termination Notice in violation of the provisions of this Agreement;
- (u) the Implementation Agency commits a default in complying with any other provision of this Agreement if such default causes a Material Adverse Effect on the Authority.

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

### **23.2 Termination Payment during Construction Period**

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



### **23.3 Termination Payment during Operation Period**

- 23.3.1 Upon Termination on account of Implementation Agency's Default, the Implementation Agency shall be liable to return the amount of Grant already availed from the Authority.
- 23.3.2 Termination Payment shall become due and payable to the Authority within 30 (thirty) days of a demand being made by the Authority to the Implementation Agency with the necessary particulars, and in the event of any delay, the Implementation Agency shall pay interest at a rate equal to 3% (three per cent) above the Bank Rate on the amount of Termination Payment remaining unpaid; provided that such delay shall not exceed 90 (ninety) days. For the avoidance of doubt, it is expressly agreed that Termination Payment shall constitute full discharge by the Implementation Agency of its payment obligations in respect thereof hereunder.
- 23.3.3 The Parties expressly agrees that Termination Payment under this Article 23 shall constitute a full and final settlement of all claims of the Parties on account of Termination of this Agreement for any reason whatsoever and that the Parties thereof shall not have any further right or claim under any law, treaty, convention, contract or otherwise.

### **23.4 Survival of rights**

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

**(HH) ARTICLE 24 - ASSIGNMENT AND CHARGES**

**24.1 Restrictions on assignment and charges**

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

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

**24.2 Assignment by the Authority**

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

## (II) ARTICLE 25 - LIABILITY AND INDEMNITY

### 25.1 General indemnity

- 25.1.1 The Implementation Agency shall indemnify, defend, save and hold harmless the Authority and its officers, servants, agents, Government Instrumentalities, designated GOI Agencies and Authority owned and/or controlled entities/enterprises, (the “**Government Indemnified Persons**”) against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature, whether arising out of any breach by the Implementation Agency of any of its obligations under this Agreement or any related agreement or on account of any defect or deficiency in the provision of services by the Implementation Agency to the Authority or any User or from any negligence of the Implementation Agency under contract or tort or, on any other ground whatsoever, except to the extent that any such suits, proceedings, actions, demands and claims have arisen due to any negligent act or omission, or breach or default of this Agreement on the part of the Government Indemnified Persons.
- 25.1.2 The Authority shall indemnify, defend, save and hold harmless the Implementation Agency against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature arising out of breach by the Authority of any of its obligations under this Agreement or any related agreement, which materially and adversely affect the performance by the Implementation Agency of its obligations under this Agreement, save and except that where any such claim, suit, proceedings, action, and/or demand has arisen due to a negligent act or omission, or breach of any of its obligations under any provision of this Agreement or any related agreement and/or breach of its statutory duty on the part of the Implementation Agency, its subsidiaries, assigns, affiliates, contractors, servants or agents, the same shall be the liability of the Implementation Agency.

### 25.2 Indemnity by the Implementation Agency

- 25.2.1 Without limiting the generality of Clause 25.1, the Implementation Agency shall fully indemnify, hold harmless and defend the Authority and the Government Indemnified Persons from and against any and all loss and/or damages arising out of or with respect to:
- (a) failure of the Implementation Agency to comply with Applicable Laws and Applicable Permits;
  - (b) payment of taxes required to be made by the Implementation Agency, its subsidiaries, assigns or affiliates in respect of the income or other taxes of the Implementation Agency’s Contractors, suppliers and representatives; or
  - (c) non-payment of amounts due as a result of materials or services furnished to the Implementation Agency or any of its contractors which are payable by the Implementation Agency or any of its contractors.
- 25.2.2 Without limiting the generality of the provisions of this Article 25, the Implementation Agency shall fully indemnify, hold harmless and defend the Government Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which the Government Indemnified Persons may hereafter suffer, or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other intellectual property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the Implementation Agency or by the Implementation Agency’s Contractors in performing the Implementation Agency’s obligations or in any way incorporated in or related to the Project. If in any such suit, action, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the Implementation Agency shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the revocation

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

### **25.3 Notice and contest of claims**

In the event that either Party receives a claim or demand from a third party in respect of which it is entitled to the benefit of an indemnity under this Article 25 (the “**Indemnified Party**”) it shall notify the other Party (the “**Indemnifying Party**”) within 15 (fifteen) days of receipt of the claim or demand and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim or demand, it may conduct the proceedings in the name of the Indemnified Party, subject to the Indemnified Party being secured against any costs involved, to its reasonable satisfaction.

### **25.4 Defence of claims**

- 25.4.1 The Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and reasonable costs and expenses thereof shall be indemnified by the Indemnifying Party. If the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party in respect of loss to the full extent provided by this Article 27, the Indemnifying Party shall be entitled, at its option, to assume and control the defence of such claim, action, suit or proceeding, liabilities, payments and obligations at its expense and through the counsel of its choice; provided it gives prompt notice of its intension to do so to the Indemnified Party and reimburses the Indemnified Party for the reasonable cost and expenses incurred by the Indemnified Party prior to the assumption by the Indemnifying Party of such defence. The Indemnifying Party shall not be entitled to settle or compromise any claim, demand, action, suit or proceeding without the prior written consent of the Indemnified Party, unless the Indemnifying Party provides such security to the Indemnified Party as shall be reasonably required by the Indemnified Party to secure the loss to be indemnified hereunder to the extent so compromised or settled.
- 25.4.2 If the Indemnifying Party has exercised its rights under Clause 25.3, the Indemnified Party shall not be entitled to settle or compromise any claim, action, suit or proceeding without the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).
- 25.4.3 If the Indemnifying Party exercises its rights under Clause 25.3, the Indemnified Party shall nevertheless have the right to employ its own counsel, and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party, when and as incurred, unless:
- (a) the employment of counsel by such party has been authorized in writing by the Indemnifying Party; or
  - (b) the Indemnified Party shall have reasonably concluded that there may be a conflict of interest between the Indemnifying Party and the Indemnified Party in the conduct of the defence of such action; or

- (c) the Indemnifying Party shall not, in fact, have employed independent counsel reasonably satisfactory to the Indemnified Party, to assume the defence of such action and shall have been so notified by the Indemnified Party; or
- (d) the Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party either:
  - (i) that there may be specific defences available to it which are different from or additional to those available to the Indemnifying Party; or
  - (ii) that such claim, action, suit or proceeding involves or could have a material adverse effect upon it beyond the scope of this Agreement:

Provided that if Sub-clauses (b), (c) or (d) of this Clause 25.4.3 shall be applicable, the counsel for the Indemnified Party shall have the right to direct the defence of such claim, demand, action, suit or proceeding on behalf of the Indemnified Party, and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder.

**25.5 No consequential claims**

Notwithstanding anything to the contrary contained in this Article 25, the indemnities herein provided shall not include any claim or recovery in respect of any cost, expense, loss or damage of an indirect, incidental or consequential nature, including loss of profit, except as expressly provided in this Agreement.

**25.6 Survival on Termination**

The provisions of this Article 25 shall survive Termination.

## (JJ) ARTICLE 26 - DISPUTE RESOLUTION

### 26.1 Dispute resolution

- 26.1.1 Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the “**Dispute**”) shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 26.2.
- 26.1.2 The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.

### 26.2 Conciliation

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

### 26.3 Arbitration

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

**26.4 Adjudication by Regulatory Commission or Authority**

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

**(KK) ARTICLE 27 - REDRESSAL OF PUBLIC GRIEVANCES**

**27.1 Complaints Register**

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

**27.2 Redressal of complaints**

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



**(LL)ARTICLE 28 - MISCELLANEOUS**

**28.1 Governing law and jurisdiction**

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

**28.2 Waiver of immunity**

Each Party unconditionally and irrevocably:

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

**28.3 Delayed payments**

28.3.1 The Parties hereto agree that payments due from one Party to the other Party under the provisions of this Agreement shall be made within the period set forth therein, and if no such period is specified, within 30 (thirty) days of receiving a demand along with the necessary particulars. Unless otherwise specified in this Agreement, in the event of delay beyond such period, the defaulting Party shall pay interest for the period of delay calculated at a rate equal to 3% (three per cent) above the Bank Rate, and recovery thereof shall be without prejudice to the rights of the Parties under this Agreement including Termination thereof.

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

**28.4 Waiver**

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

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

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

**28.5 Exclusion of implied warranties etc.**

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

**28.6 Survival**

28.6.1 Termination shall:

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

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

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

**28.7 Debarment**

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

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

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

**28.8 Entire Agreement**

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

**28.9 Severability**

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

unenforceable provision. Failure to agree upon any such provisions shall not be subject to the Dispute Resolution Procedure set forth under this Agreement under Clause 27 or otherwise.

**28.10 No partnership**

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

**28.11 Third parties**

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

**28.12 Successors and assigns**

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

**28.13 Notices**

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

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

{ Attention:

Designation:

Address: Fax No: Email: }

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

{ Attention:

Designation:

Address: Fax No: Email: }; and

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

**28.14 Language**

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

**28.15 Counterparts**

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

(MM) **ARTICLE 29 – DEFINITIONS**

(NN) 29.1 **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 1<sup>st</sup> (first) day of April of any calendar year and ending on the 31<sup>st</sup> (thirty-first) day of March of the next calendar year;

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

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

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

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

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

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

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

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

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

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

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

“**Bid Security**” means the security provided by the Implementation Agency to the Authority along with the Bid in a sum of Rs. 60 lakh (Rupees sixty lakh), in accordance with the Request for Proposals, and which is to remain in force until substituted by the Performance Security;

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

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

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

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

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

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

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

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

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

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

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

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

- (a) commence from the date on which a notice is delivered by one Party to the other Party asking the latter to cure the breach or default specified in such notice;
- (b) not relieve any Party from liability to pay Damages or compensation under the provisions of this Agreement; and
- (c) not in any way be extended by any period of Suspension under this Agreement;

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

“**Defence Testing Infrastructure Screening Committee (DTISC)**” means the committee constituted by the Authority who shall be responsible for according final decision on the proposals

submitted by the Implementation Agency and disbursement of Grants in installments to the Implementation Agency;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“**Good Industry Practice**” means the practices, methods, techniques, designs, standards, skills, diligence, efficiency, reliability and prudence which are generally and reasonably expected from a reasonably skilled and experienced operator engaged in the same type of undertaking as envisaged under this Agreement and which would be expected to result in the performance of its obligations by the Implementation Agency in accordance with this Agreement, Applicable Laws and Applicable Permits in reliable, safe, economical and efficient manner and for providing safe, economical, reliable and efficient manner;

“**Government Instrumentality**” means any department, division or sub-division of the Government of India or the State Government and includes any commission, board, Authority, agency or municipal and other local Authority or statutory body, including Panchayat, under the control of the Government of India or the State Government, as the case may be, and having jurisdiction over all or any part of the Project or the performance of all or any of the services or obligations of the Implementation Agency under or pursuant to this Agreement;

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

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

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

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

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

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

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

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

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

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

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

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

“**Operation Period**” means the period commencing from COD;

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“**Applicable Standards**” means the standards relating to the quality, quantity, capacity and other requirements for the Project, as per Applicable Laws and Good Industry Practices, and any

modifications thereof, or additions thereto, as included in the engineering for the Project submitted by the Implementation Agency;

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

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

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

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

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

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

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

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

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

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

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

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

Signed for and on behalf of:

The AUTHORITY

Signed for and on behalf of:

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

....., Company Secretary/Authorised Officer  
who has countersigned the same in token thereof

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

(Email Address)

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

(Email Address)

Signature of the Witness:

(Name)

(Designation)

Signature of the Witness:

(Name)

(Designation)

## **SCHEDULES**

**(OO) SCHEDULE - A**  
**PROJECT FACILITIES**

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

**(PP) SCHEDULE - B**  
**DETAILED PROJECT REPORT**

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

**(QQ) SCHEDULE - C**  
**ESCROW AGREEMENT**

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

**AMONGST**

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

**WHEREAS:**

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

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

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

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

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

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

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

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

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

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

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

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

## **1.2 Interpretation**

1.2.1 The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the Contract Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Contract Agreement.

1.2.2 References to Clauses are, unless stated otherwise, references to Clauses of this Agreement.

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

## **2. ESCROW ACCOUNT**

### **2.1 Escrow Bank to act as trustee**

2.1.1 The Implementation Agency hereby appoints the Escrow Bank to act as trustee for the Authority and the Implementation Agency in connection herewith and authorises the Escrow Bank to exercise such rights, powers, authorities and discretion as are specifically delegated to the Escrow Bank by the terms hereof together with all such rights, powers, authorities and discretion as are reasonably incidental hereto, and the Escrow Bank accepts such appointment pursuant to the terms hereof.

2.1.2 The Implementation Agency hereby declares that all rights, title and interest in and to the Escrow Account shall be vested in the Escrow Bank and held in trust for the Authority and the Implementation Agency, and applied in accordance with the terms of this Agreement. No person other than the Authority and the Implementation Agency shall have any rights hereunder as the beneficiaries of, or as third-party beneficiaries under this Agreement.

### **2.2 Acceptance of Escrow Bank**

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

### **2.3 Establishment and operation of Escrow Account**

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

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



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

#### **2.4 Escrow Bank's fee**

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

#### **2.5 Rights of the parties**

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

### **3. DEPOSITS INTO ESCROW ACCOUNT**

#### **3.1 Deposits by the Implementation Agency**

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

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

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

#### **3.2 Deposits by the Authority**

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

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

#### **3.3 Interest on deposits**

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

### **4. WITHDRAWALS FROM ESCROW ACCOUNT**

#### **4.1 Withdrawals during Construction Period**

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

#### **4.2 Withdrawals upon Termination**

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

#### **4.3 Application of insufficient funds**

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

#### **4.4 Application of insurance proceeds**

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

### **5. OBLIGATIONS OF THE ESCROW BANK**

#### **5.1 Segregation of funds**

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

#### **5.2 Notification of balances**

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

### 5.3 Communications and notices

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

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

### 5.4 No set off

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

### 5.5 Regulatory approvals

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

## 6. ESCROW DEFAULT

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

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

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

## **7. TERMINATION OF ESCROW AGREEMENT**

### **7.1 Duration of the Escrow Agreement**

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

### **7.2 Substitution of Escrow Bank**

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

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

### **7.3 Closure of Escrow Account**

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

## **8. INDEMNITY**

### **8.1 General indemnity**

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

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

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

### **8.2 Notice and contest of claims**

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

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

## **9. DISPUTE RESOLUTION**

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

## **10. MISCELLANEOUS PROVISIONS**

### **10.1 Governing law and jurisdiction**

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

### **10.2 Priority of agreements**

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

### **10.3 Alteration of terms**

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

### **10.4 Waiver**

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

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

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

### **10.5 No third-party beneficiaries**

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

## **10.6 Survival**

### **10.6.1 Termination of this Agreement:**

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

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

## **10.7 Severability**

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

## **10.8 Successors and assigns**

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

## **10.9 Notices**

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

## **10.10 Language**

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

## **10.11 Authorised representatives**

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

**10.12 Original Document**

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

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

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

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

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

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

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

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

In presence of:

(1) .....

(2) .....



**(RR) SCHEDULE - D**  
**PERFORMANCE SECURITY**

To,

[Authority]

**WHEREAS:**

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

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

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

to time, any of the rights and powers exercisable by the Authority against the Implementation Agency, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement and/or the securities available to the Authority, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the Authority of the liberty with reference to the matters aforesaid or by reason of time being given to the Implementation Agency or any other forbearance, indulgence, act or omission on the part of the Authority or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.

6. This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the Authority in respect of or relating to the Agreement or for the fulfilment, compliance and/or performance of all or any of the obligations of the Implementation Agency under the Agreement.
7. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and this Guarantee will remain in force for the period specified in paragraph 8 below and unless a demand or claim in writing is made by the Authority on the Bank under this Guarantee, no later than 6 (six) months from the date of expiry of this Guarantee, all rights of the Authority under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.
8. The Performance Security shall cease to be in force and effect when the Commercial Operation Date under this Agreement has occurred. Upon request made by the Implementation Agency for release of the Performance Security along with the particulars required hereunder including that the Commercial Operation Date under the Agreement has occurred, duly certified by a statutory auditor of the Implementation Agency, the Authority shall release the Performance Security forthwith.
9. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the Authority in writing, and declares and warrants that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.
10. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred Branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the Authority that the envelope was so posted shall be conclusive.
11. This Guarantee shall come into force with immediate effect and shall remain in force and effect until the date which is 180 (one hundred eighty) days after the occurrence of Commercial Operation Date under the Contract Agreement as notified to the Bank by the Authority or until it is released earlier by the Authority pursuant to the provisions of the Agreement.

Signed and sealed this day \*\*\*\*\* of \*\*\*\*\*, 20\*\* at \*\*\*\*\*

SIGNED, SEALED AND DELIVERED

For and on behalf of the **BANK** by:

(Signature)

(Name)

(Designation)

(Code Number)

(Address)

**NOTES:**

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

**(SS) SCHEDULE - E**  
**PROJECT SITE**

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

**(TT)SCHEDULE - F**

**PROJECT COMPLETION SCHEDULE**

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

**(UU) SCHEDULE - G**  
**UTILISATION CERTIFICATE**  
**(To be duly certified by the Statutory Auditor)**

UTILIZATION CERTIFICATE FOR THE PERIOD FROM ..... TO .....

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

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

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

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

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

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

SIGNED, SEALED AND DELIVERED

SIGNED, SEALED AND DELIVERED

For and on behalf of the Implementation Agency  
by:

(Signature)

(Name)

(Designation)

(Address)

For and on behalf of the Statutory Auditor by:

(Signature)

(Name)

(Designation)

(Code Number)

(Address)

**(VV) SCHEDULE - H  
SERVICES**

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

<b>Mandatory tests</b>	<b>Additional tests</b>
Qualification and production tests 1) Precision test 2) Electronic Pressure velocity (EPVAT) test 3) Environmental test 4) Trace test 5) Bullet extraction test 6) Residual stress test 7) Penetration test 8) Waterproof test 9) Salt spray/ corrosion test 10) Primer sensitivity test 11) Temperature (High/ Low) test 12) Propellant & Primer analysis 13) Smoke & Flash test 14) Trajectory match 15) Tests for rocket motors & warheads 16) Thermal cycling test 17) Leak detection 18) Static firing 19) Arena test 20) Vibration and shock test 21) Static bed for ballistic evaluation Propellant testing facility 22) Bomb Calorimeter 23) Propellant rheological testing 24) Propellant condition testing 25) Crawford bomb 26) Universal Testing Machine 27) Propellant characterization 28) Stability test 29) Closed vessel testing 30) X-ray testing	37) Loitering ammunition testing facility 38) Army artillery ammunition battery testing 39) Proof Testing 40) Cook off testing 41) Projectile Characterization 42) Corrosive Primer testing 43) Electro -magnetic tests 44) In-sensitive munitions testing 45) Less than lethal testing 46) Testing for Fuze Spring 47) Lead Fuze Burning Test 48) Vacuum Stability Test 49) Intensified Standard Alternating Test (ISAT) 50) Bergman & Junk (B&J) Test for propellant.



<p>31) Primer sensitivity testing 32) Chemical testing 33) Performance evaluations for accuracy and dispersion 34) Shelf life tests and Shelf life extension test 35) Ballistics testing (for different ammunition with various distance/ranges) 36) Non-destructive testing (Radiographic Test/ Magnetic Particle inspection/ Dye Penetrate Test)</p>	
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**(WW) SCHEDULE - I**

**PANEL OF CHARTERED ACCOUNTANTS**

**1. Panel of Chartered Accountants**

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

**2. Invitation for empanelment**

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

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

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

**3. Evaluation and selection**

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

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

**4. Consultation with the Implementation Agency**

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

**5. Mutually agreed panel**

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

**(XX) SCHEDULE - J**  
**COMPLETION CERTIFICATE**

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

SIGNED, SEALED AND DELIVERED

For and on behalf of AUTHORITY by:

(Signature)

(Name)

(Designation)

(Address)

**Appendix – N**  
**LETTER COMPRISING THE FINANCIAL BID**

To,

.....  
DQA (WP)/ DDP DGQA  
Floor 6, “B” Block,  
MoD Complex, Africa Avenue,  
New Delhi-110023

**Sub:** Bid for Development, Operation and Management of Defence Testing Infrastructure (DTI) for Ammunition testing under the Defence Testing Infrastructure Scheme (DTIS)

Dear Sir,

1. With reference to your RFP document dated..... , I/We, having examined the Bidding Document and understand their contents, hereby submit our Bid for the aforesaid project. The bid is unconditional and unqualified.
2. I/ We acknowledge that the Authority will be relying on the information provided in the Bid and the document accompanying the BID for selection of the Contractor for the aforesaid Project, and we certify that all information provided in the Bid are true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying the BID are true copies of their respective originals.
3. The Bid price has been quoted by me/us after taking into consideration of all the terms and conditions stated in the RFP, Contract Agreement, all the documents provided in the tender document package, and all the conditions that may affect the project cost and implementation of the Project and we understand that no additional payments shall be allowed on the basis of change in site parameters at a later date.
4. I/We acknowledge the right of the Authority to reject our BID without assigning any reason or otherwise and hereby waive, to the fullest extent permitted by applicable law, our right to challenge the same on any account whatsoever.
5. In the event of my/ our being declared as the Selected Bidder, I/we agree to enter into an Agreement in accordance with the draft that has been provided to me/us prior to the BID Due Date. We agree not to seek any changes in the aforesaid draft and agree to abide by the same.
6. I/ We shall keep this offer valid for 180 (one hundred and Twenty) days from the BID Due Date specified in the RFP.
7. I/ We understand that the Authority is not bound to accept the lowest or any tender it may receive.
8. I/ We hereby submit our BID and offer a BID Price of Rs. ....  
(Rs. .... {in words}) as detailed in Price Bid for undertaking the aforesaid Project in accordance with the Bidding Documents and the Agreement.

Yours faithfully,

Date:

(Signature, name and designation of

Place:

Authorised Signatory)

Name & seal of Bidder/Lead Member:.....

**Appendix – O**  
**PRICE BID**

To,

.....  
DQA (WP)/ DDP DGQA  
Floor 6, “B” Block,  
MoD Complex, Africa Avenue,  
New Delhi-110023

**Sub:** Bid for Development, Operation and Management of Defence Testing Infrastructure (DTI) for Ammunition testing under the Defence Testing Infrastructure Scheme (DTIS)

Dear Sir,

Based on the RFP document, scope of work, and tender conditions, corrigendum (if any), and in reference to Appendix -N. Our lump sum amount for the Grant in Aid of INR ..... (India Rupees \_\_\_\_\_ {in words}) for undertaking the project.

The detailed break-up of amount for the Grant in Aid is presented below.

S.No	Description	Total Estimated Cost (INR)	Grant Amount (INR)	% Share
1	Building			
2	Test Equipment, Installation, Training			
	Total			

Yours faithfully,

Date:

(Signature, name and designation of

Place:

Authorised Signatory)

Name & seal of Bidder/Lead Member:.....

*Note: The bidder shall provide a detailed break-up of the amount quoted above to the extent possible to ascertain the cost.*

**Appendix – P**  
**LIST OF TESTS, TESTEQUIPMENT AND STANDARDS**

The tests proposed to be undertaken at the DTI facility of Ammunition testing are given in the table below. The tests are categorized as mandatory tests and additional tests. Mandatory tests comprise of tests which are required to be part of the DTIS facility proposed by the bidder and additional tests comprises of tests which are good to have as part of the proposed DTIS facility or proposed additionally to the mandatory tests.

<b>Mandatory tests</b>	<b>Additional tests</b>
Qualification and production tests	87) Loitering ammunition testing facility
51) Precision test	88) Army artillery ammunition battery testing
52) Electronic Pressure velocity (EPVAT) test	89) Proof Testing
53) Environmental test	90) Cook off testing
54) Trace test	91) Projectile Characterization
55) Bullet extraction test	92) Corrosive Primer testing
56) Residual stress test	93) Electro -magnetic tests
57) Penetration test	94) In-sensitive munitions testing
58) Waterproof test	95) Less than lethal testing
59) Salt spray/ corrosion test	96) Testing for Fuze Spring
60) Primer sensitivity test	97) Lead Fuze Burning Test
61) Temperature (High/ Low) test	98) Vacuum Stability Test
62) Propellant & Primer analysis	99) Intensified Standard Alternating Test (ISAT)
63) Smoke & Flash test	100) Bergman & Junk (B&J) Test for propellant.
64) Trajectory match	
65) Tests for rocket motors & warheads	
66) Thermal cycling test	
67) Leak detection	
68) Static firing	
69) Arena test	
70) Vibration and shock test	
71) Static bed for ballistic evaluation	
Propellant testing facility	
72) Bomb Calorimeter	
73) Propellant rheological testing	
74) Propellant condition testing	
75) Crawford bomb	
76) Universal Testing Machine	
77) Propellant characterization	
78) Stability test	
79) Closed vessel testing	
80) X-ray testing	
81) Primer sensitivity testing	

<p>82) Chemical testing 83) Performance evaluations for accuracy and dispersion 84) Shelf life tests and Shelf life extension test 85) Ballistics testing (for different ammunition with various distance/ranges) 86) Non-destructive testing (Radiographic Test/ Magnetic Particle inspection/ Dye Penetrate Test)</p>	
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All the mandatory and additional tests needs to be as per ASTM E 1019-2011, IS 971:1983, JSS 6810-127-199, JSS 1375-01-2012, JSS 1376-05-200, IS 1089-1986; JSS-1376-11:2008, JSS-6810-145-2013, IND/ME/960:2014, HEMRL/SRP/PS/272, IS:2595:1978, MIL STD – 810 G and 810 H and the proposed ammunition test facility should be NABL accredited as per ISO/IEC 17025. The standards should be as per the requirements of DRDO, OFB and DGQA. The bidders needs to ensure that testing requirements are compliant to JSS:55555 and the lab is scalable to provide test for international standards.

Indicative list of test equipment for the proposed testing facility is given below. Bidders need to specify what would be the capacity and range of the test equipment that they will be offering for the mandatory and additional tests. The equipment for each test must be of IS or equivalent standards.

<b>Test equipment</b>
<p>1) Propellant testing facility     1.1 Bomb Calorimeter     1.2 Universal Testing Machine     1.3 Ballistic Evaluation test facility (10 ton)</p> <p>2) Loitering ammunition testing facility 3) Army artillery ammunition battery testing</p> <p>Infrastructure will comprise</p> <p>4) Indoor tunnels and outdoor shooting range 5) Ballistic lab 6) Chemical analysis lab 7) Environmental test lab</p> <p>List of equipment are:</p> <p>8) Colour &amp; Monochrome high speed cameras 9) Thermal Activity Monitor (TAM) 10) Ballistic clay &amp; gel test equipment 11) Transducer calibration 12) Electronic targets 13) Transducer PCB 165B02 14) Chronograph 15) Transducer 6215 16) Cartridge dimension gauges 17) Weapon systems</p>



- 18) Intensified Standard Alternating Test (ISAT) Chamber
- 19) Proof barrels for pressure measurement
- 20) Proof barrels for velocity measurement
- 21) Universal ballistic breech
- 22) Bullet pull out device
- 23) Reference ammunition
- 24) Precision scales
- 25) Primer sensibility die
- 26) Primer sensibility measuring equipment
- 27) Reload equipment
- 28) Waterproof test equipment
- 29) Weapons maintenance equipment
- 30) Miscellaneous Gauges
- 31) Weapon mounts & firing rests
- 32) Ballistic measuring system
- 33) Doppler Radar system
- 34) Primer sensitivity tester
- 35) Bullet pull tester
- 36) Humidity cell, freezers and ovens for environmental tests
- 37) Linear Accelerator up to 2 MeV for radiography tests
- 38) Very high g Generation gun
- 39) Damper & Recovery mechanism for the fired projectile
- 40) Telemetry for very high velocity data gathering
- 41) Ballistics Data Analytics
- 42) FEMA for Ballistics
- 43) Very high RPM generator for projectile.
- 44) Doppler Reader
- 45) Chronometers
- 46) Pressure transducers
- 47) Weather parameters equipment
- 48) Conditioning chambers
- 49) Infra Aid Thermometers
- 50) High speed photography
- 51) CCTV system
- 52) Acoustic system
- 53) Accelerometers
- 54) Frequency & spectrum analysis
- 55) DGPS
- 56) Automatic weather station
- 57) Liquid chromatography
- 58) Mass spectroscopy

## APPENDIX Q - DTIS

### DEPARTMENT OF DEFENCE PRODUCTION DTIS CELL / DGQA

125/ARDGQA/DQAR/WP/DTIS Guidelines

14 May 20

#### DEFENCE TESTING INFRASTRUCTURE SCHEME (DTIS) - GUIDELINES

##### 1. Context

1.1 Under "Make in India", the Government has accorded high priority to development of manufacturing base of Defence and Aerospace sectors in the country to reduce dependence on imports. Towards this, Government has announced establishment of Defence Industrial Corridors (DICs) in Uttar Pradesh and Tamil Nadu.

1.2 One of the main impediments for domestic defence production is lack of easily accessible state of the art testing infrastructure. Defence Testing Infrastructure is often capital intensive requiring continuous upgradation and it is not economically viable for individual defence industrial units to set up in house testing facilities. The Scheme aims at setting up of Greenfield Defence Testing Infrastructure (required for defence and aerospace related production), as a common facility under private sector with Government assistance mainly in D Cs.

##### 2. Objective

2.1 The objective of the proposed Scheme is to promote Indigenous defence production, with special focus on participation of MSMEs and Start Ups by bridging gaps in defence testing infrastructure in the country. Setting up of Defence Testing Infrastructure will provide easy access and thus meet the testing needs of the domestic defence industry.

##### 3. Scope

3.1 The Scheme would provide financial assistance to private sector for setting up Testing and Certification facilities for manufacturers of defence equipment/systems. The financial assistance will be from Central Government in the form of Grant-in-Aid for setting up of Greenfield Defence Testing Infrastructure (DTIs) in the following verticals:-

- (a) Testing facilities for Drones / Unmanned Aerial Vehicles (UAVs)/Remotely Piloted Aircrafts (RPAs)
- (b) EM/PMC Testing for Radars, UAVs/RPAs and Electronic/Telecom equipment
- (c) Rubber Testing for Defence and Aerospace Sectors
- (d) Radiated Noise and Shock Testing
- (e) Electronic Warfare
- (f) Software Testing
- (g) Specialised Test Driving Tracks
- (h) Ship Motion Testing
- (i) Test Facilities for Aerospace Industry
- (j) Ballistic and Blast Testing Facilities
- (k) Environmental Test Facilities

- (i) Any other area in Defence manufacturing lacking testing infrastructure.

3.9 The DICs in LP and TK may be given preference for setting up of DTIs, being the focus areas. These corridors have been selected as they are expected to support large number of industries involved in defence and aerospace manufacturing in the future. However, the Scheme is not limited to setting up DTIs in the DICs only.

#### **4. Eligible Agencies**

4.1 Each DT will be set up through a Special Purpose Vehicle (SPV) hereinafter referred to as the Implementation Agency, which may be promoted/constituted by private entities (Industry, Industry association, R&D/academic institution) and State Government agencies.

4.2 The Implementation Agency under the Scheme shall be a Section 8 company registered under the Companies Act, 2013.

4.3 Only private entities registered in India and State Government agencies will qualify for forming the Implementation Agency.

4.4 The Central Govt assistance for setting up DTs will be in the form of Grant-in-Aid and will be limited to sum total of Rs. 100 Cr. Assistance for Individual DTI under the Scheme shall not exceed 40% of the project cost. The balance of the project cost will be borne by the Implementation Agency.

4.5 At least 5 private entities and state government agencies may constitute the Implementation Agency. However, contribution from any of the Implementation Agency constituents cannot exceed 40% of the share capital of the Implementation Agency.

4.6 All the constituents of SPV (Implementation Agency) shall have positive net worth. This condition is relaxed for companies registered with Startup India. Any company black listed by Central or State Government will not be eligible to be part of SPV.

4.7 At least three constituents of the SPV should be in existence for more than three years and no relaxation will be provided in this regard.

4.8 The SPV (Implementation Agency) shall be responsible for obtaining statutory clearances required for testing of weapons and ammunition.

#### **5. Role of the Implementation Agency**

5.1 The Implementation Agency shall be responsible for setting up of DT under the Scheme. The Implementation Agency shall be also responsible for operation and maintenance of assets created under the Scheme, in a self-sustainable manner, by way of collecting user charges plus applicable GST.

5.2 Cost of land is not proposed to be funded under the Scheme. Land for DTIs would be arranged by the Implementation Agency. In case the Implementation Agency is not owner of the land, they should have lease for the land for at least 30 years from the date of response to RFP. Land availability with Implementation Agency shall be essential condition for consideration of applicant's response.

5.3 The Implementation Agency will obtain all necessary statutory approvals/clearances including those for environmental compliance and quality standards as applicable.

5.4 The respondent shall indicate the manner and modalities for operation and maintenance of the testing facility after its creation in its proposals for consideration of assistance, as a part of the DPR submitted in response to RFP issued by MoD/DDP.

5.5 The Implementation Agency shall be responsible for ensuring that procurement of all items, equipment and services including works are through a transparent and competitive bidding process. Appropriate performance guarantees should be built in the agreement to ensure timely and good quality delivery of goods and services procured.

5.6 The Implementation Agency shall execute an undertaking for proper utilization of the grant and abide by the target dates, as may be specified in the conditions of the Grant. It shall not divert the Grant for any other purpose. In the event of failure to comply with the conditions or breach of the undertaking, it shall be liable to refund to President of India the entire amount of the Grant. The undertaking is to be submitted by the Implementation Agency in a format as specified in RFP.

5.7 The Implementation Agency shall also execute an undertaking that the said project is not being funded under any other scheme of the Government of India. The undertaking is to be submitted by the Implementation Agency in the prescribed format as may be specified in the RFP.

## 6. Extent of Financial Assistance

6.1 The DTI Screening Committee (DTISC) constituted as per Annexure 'A' for approval of the projects will be the final authority to take decision on the proposals submitted by the Implementation Agency.

6.2 The total Central Govt assistance for setting up 05 to 08 DTIs will be in the form of Grant-in-Aid not exceeding Rs 400 Cr. The extant GFR provisions will be followed for setting up the DTIs. The test facilities planned to be set up can be divided into three types, namely, Small, Medium and Large. The estimated cost of each type of facility is given in the table below:

Sl No	Type	Estimated Cost	Nos
(a)	Small	0-20 Cr	09
(b)	Medium	20-50 Cr	01
(c)	Large	>50 Cr	00

The number of test facilities under each type may be varied, if need arises.

6.3 Assistance for individual DTI under the Scheme shall not exceed 75% of the project cost. The remaining project cost will be borne by the Implementation Agency.

6.4 For the purpose of calculating the extent of contribution of the Implementation Agency under the Scheme, the cost of land or such other component as may be specified

in EoI or RFP shall not be included in the project cost. The broad norms for funding of DTIs shall be as follows:

(a)	Land	to be provided by SPV
(b)	Capex for building	≤ 20% of Project Cost
(c)	Test Equipment, Installation, Training	≤ 80% of Project Cost

6.5 No recurring expenditure or any establishment cost will be funded by Central Government under the Scheme.

6.6 Studies related to identification of defence testing infrastructure gaps and mapping of facilities, impact study etc may be done by engaging professional help after obtaining approval of D, ISC.

## 7. Submission of Proposal

7.1 Expression of Interest. Expression of Interest (EoI) may be issued by DDP/DGQA to seek preliminary response from private entities willing to set up defence testing infrastructure. The EoI shall clearly indicate the Preliminary Qualitative Requirements (PQRs) of the testing infrastructure intended to be set up.

7.2 Submission of Response to EOI. The proposal in response to EoI is to be meticulously formulated after conducting a detailed study based on the Preliminary Qualitative Requirements (PQRs). Measurable outcomes should be indicated in the proposal, e.g. expected reduction in testing costs and time if the testing infrastructure is set up. The Proposal in the prescribed format may be filed by a private entity intending to form an SPV. The format of the Preliminary Proposal will be as specified in the EoI.

7.3 Request For Proposal. The Staff Qualitative Requirements (SQRs) may be refined after receipt of responses to EoI. For selection of Implementation Agency for execution of each DTI project, Request For Proposal (RFP) may be issued to the shortlisted participants of the EoI who meet the specified criteria.

7.4 Submission of Response to RFP. The Final Proposal, in the prescribed format, alongwith Detailed Project Report (DPR) and associated documents shall be submitted by the respondents in response to the RFP. The format of the Final Proposal will be specified in the RFP. The respondents will prepare the DPR (as prescribed in RFP), covering the technical, financial and implementation aspects, timelines for completion of the project including those for achieving financial closure, and the financing mechanism proposed to be put in place. He shall also submit details of his associate with whom he intends to form SPV. Respondents would be required to form an SPV within a time specified in RFP only in case he is selected under the scheme for setting Defence Testing Infrastructure. The format for DPR shall be such as may be prescribed in the RFP.

7.5 The proposal shall clearly indicate details related to the mode of Operation and Maintenance of the asset after its creation. It should also suggest the mechanism for operation and maintenance of the infrastructure proposed to be created on sustained basis by levying user charges/fees, etc.

7.6 The project proposal must be complete in all respects including the documents to be submitted as may be prescribed in RFP.

#### **8. Process of Scrutiny, Selection Criteria and Approval**

8.1 The project proposals alongwith DFR submitted by the respondent in response to RFP shall be technically and financially evaluated by an independent agency as per evaluation criteria given in RFP. The evaluation will include confirming compliance to technical criteria, availability of land and financial viability etc. The Respondent requesting least Grant-in-Aid etc. will be selected.

8.2 The proposals of the respondents alongwith Project Monitoring Committee (PMC) evaluation report will be considered by the DTISC. While appraising the project, the PMC would look into justification, including the intended benefit in terms of addressing the specific bottleneck in defence testing infrastructure, and make recommendation to DTISC. The respondent shall provide details of the financing tie-ups for the projects which will be considered before approval of the project.

8.3 Immediately after registration of SPV (Implementing Agency), the respondent shall inform DDP/DGQA about names of SPV constituents share holding pattern of the SPV and whether they qualify the eligibility criteria. Hereafter, all correspondence shall be made by Government with SPV (Implementing Agency).

8.4 Respondent will be liable to forfeiture of earnest money deposit in case of non formation of SPV.

#### **9. Release of Funds**

9.1 Disbursement shall be subject to the Implementation Agency achieving financial closure.

9.2 The funds shall ordinarily be released to the Implementation Agency for an approved project in installments as approved by the DTISC. However, the number of installments may be limited to 5 installments for each project.

9.3 The Implementation Agency shall submit a bond to be executed regarding utilisation of funds in the format as may be specified in RFP.

9.4 The Implementation Agency will submit a pre receipt bill for the funds to be disbursed to it alongwith certificate that it has not indulged in corrupt practices in the format as may be specified in the RFP.

9.5 The funds will be kept in a separate Escrow Account of the Implementation Agency.

9.6 The first instalment will be released against Bank Guarantee after approval for the project is accorded by the DTISC. The Implementation Agency shall submit the Utilisation Certificate (UC) for the amounts utilised as per format as may be specified in the RFP.

9.7 Release of further installments shall be subject to furnishing of complete Utilisation Certificate, Project Consultant (PC) report and the proof of matching contribution of the funds having been received by the Implementation Agency from its own or other sources on pari-passu basis as per the approved cost sharing. Disbursing Advance Payment of subsequent installments may be done after recommendation of the DTISC and against submission of matching Bank Guarantee by the Implementation Agency.

9.8 Certification of the physical and financial progress by the PC would be a prerequisite for release of further installments.

#### 10. Evaluation and Monitoring

10.1 The DTISC shall periodically review progress of the approved projects in the Scheme and will take necessary steps to ensure achievement of objectives of the Scheme.

10.2 Project Monitoring Committee: A Project Monitoring Committee (PMC) shall be constituted by MoD/DPH and it shall be responsible for timely and proper implementation of each DTI Project without time and cost overruns. The composition of the PMC is given at Annexure 'A'.

10.3 The PMC shall meet once in every quarter to review the progress report submitted by the Project Consultant in a format as may be prescribed.

10.4 Project Consultant (PC): Project monitoring shall be done by DDP/DGQA. A suitable Project Consultant (PC) may be engaged to assist DDP/DGQA in technical and financial appraisal of all projects under the Scheme. The PC will appraise the DPR submitted by the Implementation Agency with respect to technical feasibility, financial viability and optimal utilization of resources. The PC will undertake periodic monitoring of the projects including their physical progress, quality of execution of work, procurement of items/equipment and adherence to timelines, and submit reports to the Project Monitoring Committee (PMC).

10.5 The Implementation Agency would be required to maintain subsidiary accounts of the Government Grant and furnish to the PC a set of audited statement of accounts as per Companies Act. These audited statement of accounts shall be furnished after utilization of the Grant-in-Aid or whenever called for. The requirement for submission of the audited accounts/ statements shall be as specified in the RFP.

#### 11. Administrative Expenses

11.1 The administrative expenses of DDP/DGQA connected with the implementation of each DTI project including hiring of PC are not to exceed 3% of the funds available under the Scheme.

## **12. Assets**

12.1 The assets created by the Implementation Agency shall be owned by it after completion of the DFI project.

12.2 The assets acquired/created by the Implementation Agency out of government assistance under the Scheme shall not be disposed, encumbered or utilized for purposes other than those for which funds have been released.

12.3 A register of permanent and semi-permanent assets acquired wholly or partly out of the funds provided by the Central Govt under the Scheme should be maintained in the Form GFR 21.

12.4 In case of cancellation of any DFI project at any point of time, all assets and any unutilized grant shall vest with the Government of India.

## **13. Accreditation**

13.1 The Implementation Agency will mandatorily obtain certification/accreditation from appropriate National/International Agencies.

## **14. Operation and Maintenance of Assets**

14.1 The Implementation Agency shall be responsible for Operation & Maintenance of assets created under the Scheme by way of collecting user charges.

14.2 The Implementation Agency shall ensure that the services at the facilities created under the Scheme are extended to the users on pay and use basis without discrimination.

## **15. Recall of the Central Grant**

15.1 In case of unsatisfactory use of the Grant by the SPV including non-compliance with the quality of work envisaged, or partial/non-compliance implementation of the project, the Central Govt shall cancel the project and for the purpose of recovery of Grant in All retains the rights to the following, but not limited to:-

- (a) disposing of all assets acquired by the SPV for the DFI project and vesting with the Central Govt.
- (b) recall unspent amount of grant lying in the escrow account and
- (c) encashment of Bank Guarantee.



16. **Debarment**

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

(a) It has been convicted of an offence under the Prevention of Corruption Act, 1988

(b) It has been convicted for an offence under the Indian Penal Code or any other law for the time being in force, for causing any loss of life or property or causing a threat to public health as part of execution of a public procurement contract.

(c) Proceedings against any of its constituents are running under Insolvency and Bankruptcy code (IBC).

(d) The constituents of SPV (Implementation Agency) are black listed by Government of India/ State Government.

16.2 The Implementation Agency or any of its constituents debarred under any of the sub-sections mentioned above or any successor of the Implementation Agency/its constituents shall not be eligible to participate in a procurement process of any procuring entity for a period not exceeding three years commencing from the date of debarment.

17. The Department of Defence Production may issue directions/clarification from time to time for smooth implementation of the Scheme.



(Nagesh Jain)  
Captain (N) QA - DTIS  
for ADGQA(WP)

**Copy to :-**

All Concerned Ministries / Departments of Government of India.  
All Concerned State Governments.  
Niti Aayog.  
All Concerned Industry Associations.  
Internal Circulation  
MoD DDP website  
DGQA website

Annexure 'A'

Composition of Monitoring Committees/Agencies

Defence Testing Infrastructure Screening Committee(DTISC)

- |  |             |
|--|-------------|
| 1. Secretary, DP, MoD                                | Chairman    |
| 2. Secretary (Def Fin)                               | Member      |
| 3. Addl Secy (DF)                                    | Member      |
| 4. Rep State Gov (TN & JP)                           | Member      |
| 5. Joint Secretary (NS)                              | Member      |
| 6. Joint Secretary (DIP)                             | Member      |
| 7. DGQA  | Member      |
| 8. DG&QA   | Member      |
| 9. ADGQA(WP)   | Member      |
| 10. Rep Nilii Aayog                                  | Member      |
| 11. Capt. QA   | Member Secy |
| 12. Any other member Co-opted by the Chairman, DTISC |             |

Project Monitoring Committee (PMC)

- |   |             |
|---|-------------|
| 1. Addl DGQA (WP)                                 | Chairman    |
| 2. Director DIP, DDP                              | Member      |
| 3. Director from Min of MSME                      | Member      |
| 4. Director DG&QA                                 | Member      |
| 5. Rep Nilii Aayog                                | Member      |
| 6. Rep SIDM                                       | Member      |
| 7. Rep Project Consultant (PC)                    | Member      |
| 8. Capt. QA                                       | Member Secy |
| 9. Any other member Co-opted by the Chairman, PMC |             |

Project Consultant (PC)

Independent Project Consultant (PC) hired by DDP/DGQA for appraisal of proposals submitted by Implementation Agency and progress monitoring.

**DEPARTMENT OF DEFENCE PRODUCTION**  
**DTIS CELL / DGQA**

12575/DGQA/DQA(WP)/DTIS Guidelines

24 Jul 20

**AMENDMENT 1 TO GUIDELINES OF**  
**DEFENCE TESTING INFRASTRUCTURE SCHEME (DTIS)**

1. Refer to Defence Testing Infrastructure Scheme (DTIS) guidelines issued vide DQA(WP) letter no 12575/DGQA/DQA(WP)/DTIS Guidelines dated 14 May 20.
2. In order to make Central Government agencies also eligible to form SPVs for setting up Test Facilities under the Scheme, the following amendments are incorporated into the DTIS guidelines.
3. Para 4.1, 4.3, 4.5 of the DTIS guidelines giving the Eligible Agencies are amended to read 'State Government / Central Government agencies' in lieu of 'State Government agencies'.
4. These amendments come into force with immediate effect.



(Nagesh Jain)  
Captain (IN) QA - DTIS  
for ADGQA(WP)

**Copy to :-**

All Concerned Ministries / Departments of Government of India.  
All Concerned State Governments.  
Niti Aayog.  
All Concerned Industry Associations.  
Internal Circulation  
MoD DDP website  
DGQA website

**Appendix R**  
List of Mandatory Test (proposed to be undertaken)

To,

.....  
DQA (WP)/DDP DGQA  
Floor 6, “B” Block,  
MoD Complex, Africa Avenue,  
New Delhi-110023

**Sub:** Bid for Development, Operation and Management of Defence Testing Infrastructure (DTI) for Ammunition testing under the Defence Testing Infrastructure Scheme (DTIS)

Dear Sir,

We.....(name of the bidder) propose to undertake the following mandatory tests for the proposed DTI facility. The key information of the tests along with the technical details are being submitted in the DPR.

S.No	Name of test	Capacity	Range	Capability (Max. dimension of equipment being tested)

Yours Faithfully,

Date:

(signature, name and designation of the Authorised signatory)

Place:

Name and seal of the Bidder/ Lead Member

**Appendix S**  
List of Additional Test (proposed to be undertaken)

To,

.....  
DQA (WP)/ DDP DGQA  
Floor 6, “B” Block,  
MoD Complex, Africa Avenue,  
New Delhi-110023

**Sub:** Bid for Development, Operation and Management of Defence Testing Infrastructure (DTI) for Ammunition testing under the Defence Testing Infrastructure Scheme (DTIS)

Dear Sir,

We..... (name of the bidder) propose to undertake the following additional tests for the proposed DTI facility. The key information of the tests along with the technical details are being submitted in the DPR.

S.No	Name of test	Capacity	Range	Capability (Max. dimension of equipment being tested)

Yours Faithfully,

Date: (signature, name and designation of the Authorised signatory)

Place: Name and seal of the Bidder/ Lead Member

**Appendix T**  
Bid Securing Declaration

We hereby submit a declaration that the bid submitted by the undersigned, on behalf of the JV/ consortium, {Name of the bidder}, either sole or in JV, shall not be withdrawn or modified during the period of validity i.e. not less than 180 (one hundred eighty) days from the bid due date.

I, on behalf of the bidder, {Name of the bidder}, also accept the fact that in case the bid is withdrawn or modified during the period of its validity or if we fail to sign the contract in case the work is awarded to us or we fail to submit a performance security before the deadline defined in the Letter of Invitation (LOI), then all the members of the JV/ consortium will be blacklisted for participation in the tendering process for the works of DDP-DGQA and works under other Centrally Sponsored Schemes, for a period of two years from the bid due date of this work.

(Signature of the Authorised Signatory)

(Official – Seal)

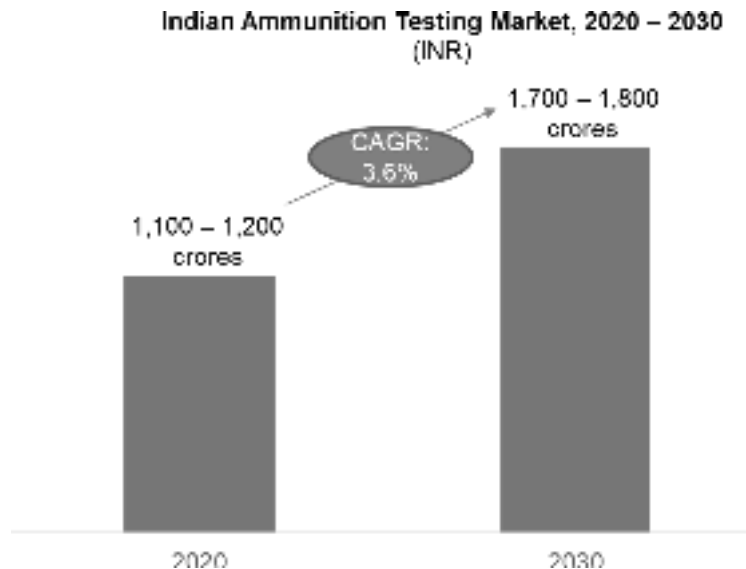
**Appendix U**  
Ammunition testing – Gap assessment

In broad terms, Ammunitions comprise of materials that are fired, scattered, dropped or detonated from any weapon, that includes both expendable weapons (e.g., bombs, missiles, grenades, land mines) and parts of other weapons (e.g., bullets and warheads). Ammunitions are classified into four types as shown below:

- a. Small / personal arms: Less than 12.5mm
- b. Medium caliber: 12.5mm to 40mm
- c. High / large caliber: 40mm to 155mm
- d. Miscellaneous: (1) Guided Ammunitions; (2) Propellants; and (3) Drop bombs, etc.

A demand gap assessment study on Ammunitions testing requirements was carried out.

As per the gap assessment study, the market size of the ammunition testing demand is estimated to be INR 1,100 – 1,200 Crores in 2020 and is projected to reach INR 1,700 – 1,800 Crores by 2030 at a CAGR of 3.6%. This growth in demand for these testing requirements, is expected to be primarily driven by increasing indigenisation in defence manufacturing.



However, the total the total supply for ammunition testing in the country currently stands at INR 900-1,000 crore. For ammunition tests, the majority of the testing of Ammunition are taken care by OFBs, DRDO, DGQA and by the Indian Army. As per them, the existing supply is almost 90% of the total Ammunition testing demand.

Estimated annual supply for ammunition testing in India is **INR 900 – 1,000 Cr** annually

Comparing the demand and supply, the gap in the communications testing is estimated as INR 200 – 300 crores.

Ammunition testing demand (2020)	INR 1,100 – 1,200 crores
Ammunition testing supply (2020)	INR 980 – 1,000 crores
Ammunition testing gap (2020)	INR 200 – 320 crores

The following certifications and standards would be required to be adhered to by the envisioned DTI test facility for Ammunitions:

- a. Firing standards
- b. Safety standards
- c. OFB standards
- d. DRDO standards

The proposed integrated testing facility for Ammunition tests will provide the necessary testing infrastructure required for undertaking these tests. It should have the necessary certification/ accreditations to be able to provide certification and calibration of the component/ system/ equipment as per applicable standard and codes.

The DTI facility under the DTIS can be developed at any location pan India, as preferred by the Bidder subject to land being arranged by the Bidder. However, a location assessment was also carried out as part of the gap assessment study and preferred clusters were identified for setting up the Ammunition test facility (1) Uttar Pradesh (Kanpur- Amethi region) (2) Maharashtra (Mumbai-Pune-Nashik and Nagpur region) (3) Madhya Pradesh (Jabalpur Region) (4) Tamil Nadu (Salem-Coimbatore-Nilgris region) (5) Telangana (Hyderabad) (6) West Bengal (Kolkata) states were identified as suitable locations for setting up integrated Ammunition testing facility. This assessment takes into consideration existing manufacturing unit, ancillary industries, testing facilities and future demand for the same. Based on the key clusters, assessment of the A&D or other applicable policies in the states and available infrastructure for establishment of the DTI facility was also undertaken.

Preferred State	Manufacturing units	Testing facilities gap	Stakeholder response	Other Enablers	Priority ranking
<b>Uttar Pradesh</b>					<b>I</b>
<b>Maharashtra</b>					<b>II</b>
<b>Madhya Pradesh</b>					<b>II</b>
<b>Tamil Nadu</b>					<b>II</b>
<b>Telangana</b>					<b>III</b>
<b>West Bengal</b>					<b>IV</b>

*\*Presence of A&D promoted parks, defence industrial corridors and dedicated A&D policy*

Uttar Pradesh (Kanpur-Amethi region), Maharashtra (Mumbai-Pune-Nasik and Nagpur region), Madhya Pradesh (Jabalpur region) and Tamil Nadu (Salem – Coimbatore - Nilgiris) emerged as most preferred nodes for Ammunition DTI facility.