



**Government of West Bengal
Irrigation & Waterways Department
Jalasampad Bhavan, 3rd Floor, Western Block
Bidhannagar, Salt Lake City, Kolkata 700 091**

No. 32-(W)/2016-17

Dated: 16th November, 2016

MEMORANDUM

Promulgation of standardised e-Request for Proposal(e-RFP) guidelines for implementation of Specialised High Value Engineering Projects by 'Engineering Procurement & Construction' (EPC) contract through the e-Procurement Portal of the State ----guidelines of e-RFP: reg

The Finance Department, Government of West Bengal has introduced a switch over to e-Procurement (e-Tender) since 01.07.2012, and promulgated it for all State Government works contract including purchase and procurement of values above Rs. 5.00 lakh in their Order No.5400- F(Y) dated 25.06.2012.

Finance Department vide their Order No.8385-F(Y) dated 22.11.2013 has further issued a general guideline for engagement of '**Consultants**' through invitation of "*Expression of Interest*" to be followed by "*Request for Proposal*" to deliver professional services. The said procedure is not applicable for execution of works contract.

At times, this Department is required to execute certain specialised categories of 'Engineering Procurement and Construction' Projects where '*Schedule of Rates*' (**SoR**) and in-house expertise is not adequately available, nor is the latest technology.

Experience has revealed that '**Item Rate**' high value works contract is prone to excessive time and cost overruns. The reason for their poor performance includes inadequate project preparation and estimation coupled with allocation of construction risks largely to the Government. For these reasons, the '**Item Rate**' mode of contracting has been set aside in many high value projects and **EPC** mode is being adopted.

Thus, a need has arisen to frame a standard guideline for switching over to '**Engineering Procurement & Construction**' (**EPC**) system of works contract; comprising survey, investigation, design, planning & construction of civil, electro-mechanical & special-category sub-components in a project; and the bidder is selected through '**electronic-Request for Proposal**' (**e-RFP**) in a transparent and internationally established procedure of project implementation, considering economy, technicality, and time bound commissioning requirements, predominantly being adopted in major projects throughout India, by MOR&TH, Railways, CPWD etc.

The detailed guideline of '**RFP-EPC**' contact system for the executing authorities and engineers of Irrigation & Waterways Department are contained herein below and detailed at Annexure-I, II & III and Schedules A to P, Appendices-I to VII, and Forms 1 to 4.

A. STANDARD OPERATING PROCEDURE FOR RFP (SoP):

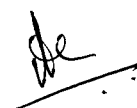
- a. To start with, at the first stage, the engaging authority shall identify the likely sources for preparation of a '**Feasibility Report**' on the basis of formal and informal enquiries, by inviting '**Expression of Interest**' (Eol) to be published in the Departmental website Tender link www.wbiwd.gov.in/tenders. An abridged version of the same advertisement may be published in leading National daily print media. In order to maximise participation of interested bidders in the Eol, no Bid Security or earnest money would be taken initially from the applicants. The very purpose of inviting the Eol is to seek information from potential providers that demonstrate their ability to meet the Project specific requirements, identify, decide and accept the specialized technology required for implementation of the project and preparation of a Departmental '**Feasibility Report**' containing assessed tentative project cost, project specific terms of references for framing of bid documents for subsequent elaborate '**e-Request for Proposal**' (e-RFP). On the basis of responses and feedbacks on Eol received, the '**Feasibility Report**' is to be firmed up by a '**Quotation-cum-Bid Evaluation Committee**' (QBEC) set up in the Department by an Order prior to proceeding with subsequent steps of '**e-RFP**'.
- b. In the second stage, the bidders having participated in the Eol along with all other interested eligible bidders not having originally participated in the earlier Eol may now bid in the e-Request for Proposal (e-RFP). The e-RFP would comprise selection of L1 bidder for award of Project construction in a two tier bidding techno-commercial e-bid system, technical qualification for consideration in the financial bid stage herein after identified as the '**e-RFQ (e-Request for Qualification)**'. The Superintending Engineer or the Executive Engineer shall prepare and publish an online notice inviting e-RFQ based on the approved format at **Annexure-I** in the e-Procurement module of the State at <https://wbtenders.gov.in>
- c. The bidder is required to possess the technical qualifications desired in the '**RFQ**' for being evaluated and short listed, and determined as eligible amongst the bids in the e-RFQ, for the next stage of financial bid by the 'Departmental Quotation-cum-Bid Evaluation Committee' (QBEC). Requirements of minimum eligibility or credential criteria etc for qualifying in the Request for Qualification (e-RFQ) are to be clearly explained in the e-RFQ. The bidders would be also asked to submit a sum @2% of Assessed Project Estimated Cost as '**Bid Security**'. (To be refunded to all others except L1 after uploading of financial bid result in the e-Procurement system) Once the L1 bidder after completion of formalities is awarded the contract for execution of the Project, a further sum amounting to 5.50% of the '**Bid Price**' would be deducted from progressive Works bills due upon completion of every Physical Project Milestones, on a pro-rata basis, finally aggregating to **7.50% of the Bid Price**" or the actual gross billed value as the '**Performance Security**'.
- d. The Departmental QBEC shall comprise at least three members out of which minimum two would be Senior Engineers depending on assessed estimated cost, and one representative from FA Wing in the Department to be constituted to carry out the various selection procedure. 'QBEC' shall be scrutinise and advice and recommend for all aspects and stages of the bidder selection i.e. short-listing of bidders after technical bid opening, evaluation of technical and financial bids, recommending L1 bidder for acceptance, undertaking further negotiations and recommending final Lowest L1 bid price to the 'Government Appointed Departmental Tender Committee and the Department. The final L1 bidder shall be selected for execution of work and awarded the EPC contract (after obtaining Administrative Approval) based on the L1 bid (on an overall basis) provided it is **within (+-) 5%** of the assessed

estimated cost contained in the Departmental Feasibility Report. Thus, it is more of a Lump sum contract.

- e. If the bid price of L1 bidder so obtained in the 2nd or 3rd call of e-RFP is still beyond 5% of the assessed project cost, the bidder would be asked to lower down the bid price through reverse e-auction cum tender. Even if after such negotiation with L1 bidder the bid price is higher than 5%, the bid may be accepted; provided the appropriate authority obtains 'Rate Analysis' from the L1 bidder and after its evaluation and recommendation by the QBEC and the Government Appointed Departmental Tender Committee (DTC), it has been accorded Administrative Approval with the concurrence of State Finance Department.
- f. '**Administrative approval**' and financial sanction from the competent authority in the Irrigation & Waterways Department as stipulated in the West Bengal Financial Rules shall always be required after finalization of 'Bid Price' obtained through this 'Request for Proposal' upon adding 3% contingency charge.

B. GENERAL RULES:

1. It is mandatory to publish all e-RFQ/e-RFP-EPC in the centralised e-Procurement portal having URL <https://wbtenders.gov.in> and also in Departmental website www.wbiwd.gov.in. Open e-bids for execution of EPC works shall be invited by wide publicity also through the notice boards in key offices of the region, and a brief referral advertisement in three daily newspapers, one each in Bengali (in case of hill areas of Darjeeling District in Nepali newspaper) in English and Hindi to be published on the same day. Works having assessed **estimated costs below Rs. 10.00 lakh** shall be executed in a single bid system of item rate procurements by e-Quotation, have been excluded from the purview of EPC contracts.
2. The EoI/RFQ inviting authority is allowed to advertise directly in the dailies having sufficiently wide circulation, wherever necessary at the rates approved by the Information & Cultural Affairs Department, Government of West Bengal.
3. e-RFP shall follow the existing two tier techno-commercial e-bidding module of e-Procurement system where **financial offers are in lump sum** against the **BOQ**.
4. Selection of (L1) bidder should be made on the basis of at least three valid bidders, which shall be decrypted on pre-assigned dates. The lowest (L1) financial bid price on overall Project BOQ quoted in Lump sum is accepted and selected as a rule.
5. The minimum time period from date of inviting e-RFQ to the last date of e-bid submission should be **21** (Twenty one) days.
6. Selection of L1 contractor/bidder should be made on the basis of at least three valid financial bids in the e-RFP, which shall be decrypted in presence of their willing agents. If the number of e-bids received is less than three, e-RFP should be invited afresh. The 2nd and subsequent 3rd e-RFQ may be invited with **14** days and **10** days notices respectively.
7. Such 2nd RFQ and 3rd RFQ shall be published in widely circulated dailies for conventional Notice Inviting Bids and also through e-tender portal. Prior to invitation of fresh 2nd and 3rd RFQ, the eligibility



criteria and other terms of conditions as contained in the 1st and 2nd 'RFP' shall have to be reviewed by the Authority to ascertain whether (i) it was much too restrictive, say, specifications and qualifications were fixed at higher standard than required, (ii) advertisements in the widely circulated Newspapers were properly published and (iii) other related procedural matters were observed in its entirety.

8. Even after taking appropriate steps, the response to the 3rd RFP is found less than three; it is to be referred by the Project Chief Engineer to the QBEC and then the Govt. Approved Tender Committee if the Bid Price is within Assessed Project Cost. If the 'Bid Price' is **beyond 5%**, DTC would certify that the e-Procurement procedure was in order and recommend the proposal with justifications on price quoted by (L1) bidder [to be obtained in writing from L1 bidder and compared with the Assessed Project cost in the Departmental Feasibility Report and furnish justifications] for obtaining concurrence of Finance Department for Administrative Approval. LOA is to be issued to the L1 bidder on all cases only after obtaining formal **Administrative Approval** from the Department.
9. Open bid is normally discarded to ensure confidentiality and transparency. However in extraordinary situations, if in the opinion of the QBEC, the Bid Price of L1 bidder is high and there is apparently a scope for lowering, only L1 bidder may be requested to attend open bid only to further lower down the Bid Price on predetermined time and date.
10. **'Bid Security' @ 2%** of the assessed project cost contained in the 'Feasibility Report' shall be collected from the bidders by Net Banking or RTGS/NEFT using the ICICI payment Gateway only.
11. L1 Bid Value within (+-) 5% of the Assessed Estimated Project Cost as contained in the Feasibility Report is required to be sent by the Chief Engineer of the Project to QBEC for scrutiny, and further recommended to the **Government Appointed Departmental Tender Committee (DTC)** for onward transmission to Finance Department for their concurrence. Once their concurrence is obtained, the Administrative Approval would be issued by the Department and the LOA & LOI / AOC is to be issued to the selected L1 bidder.
12. Exemption from submission of 'Bid Security' is not permitted if otherwise not relaxed by State Finance Department.
13. The RFP inviting authority shall use the **annexed standard RFP-EPC documents** with minimal changes to address only project-specific issues. **No deviation in any form or manner is permissible without prior and written approval of the Department.**
14. Agreement is to be signed in the EPC Agreement format attached with the RFP in lieu of West Bengal Form No. 2911/2911(i)/2911(ii) which are for item rate % contracts.

The 'standardized format of e-RFP-EPC contract document' has been examined by the PP Expert Cell and Financial Experts in the Finance Department and the views of Public Works Department were also taken in the affirmative by the Finance (Audit) Department, Group-T. Guidelines for inviting e-RFQ (Request for Qualification) containing RFP document under EPC Agreement have been thoroughly examined and subsequently concurred and vetted by the **Finance (Audit) Department, Group-T** vide their **U.O No. Group-T/2016-2017/0570 dated 15.11.2016.**

The more commonly adopted works contract / agreement contained in West Bengal Form No. 2911/2911(i)/2911(ii) shall continue as usual.



For adopting the e-RFP-EPC contract system in any engineering procurement & construction work, or works of specialised in nature, prior approval of the Irrigation & Waterways Department has to be obtained by the project implementing authorities in the Irrigation & Waterways Directorate.

All concerned are being informed.

Enclo: **Annexure-I:** Standardised e-RFQ or e-Notice of RFP
Annexure-II: Standardized e-RFP
Annexure-III: Standardized EPC-Agreement Document
& Schedules, Appendices, Forms.


(Amitava Ghosh)
Deputy Secretary to the
Government of West Bengal

Memo No. 270/1(8)-IB
IW/O/IB-Misc-38/2011 (Pt.II)

Dated: 16th November, 2016

Copy with copy of Annexure forwarded for information to:

1. P.S to Hon'ble Minister-in-Charge
Irrigation & Waterways Department
2. P.A to Additional Chief Secretary
Public Health Engineering Department, Government of West Bengal
New Secretariat Building, 1, K.S Roy Road, Kolkata 700 001
3. P.A to Principal Secretary
Irrigation & Waterways Department
4. P.A to Principal Secretary
Public Works Department, Government of West Bengal
NABANNA, 8th Floor
325, Sarat Chatterjee Road, Howrah 711 102
5. P.A to Principal Secretary
Water Resources Investigation & Development Department
Government of West Bengal
11A, Mirza Ghalib Street, Kolkata 700 087
6. P.A to Principal Secretary
Housing Department, Government of West Bengal
78, CIT Road, Kolkata 700 014
7. P.A to Principal Secretary
Sundarban Affairs Department, Government of West Bengal
Mayukh Bhavan, Ground Floor
Salt Lake, Kolkata 700 091
8. Ld. Legal Remembrancer, West Bengal
Bankshall Street, BBD Bag, Kolkata 700 001

Enclo: As stated


(Amitava Ghosh)
Deputy Secretary to the
Government of West Bengal

Copy with copy of **Annexure** forwarded for information to:

1. Principal Accountant General (Accounts & Entitlement), West Bengal
Treasury Buildings, 2, Government Place (West), Kolkata 700 001
2. Principal Accountant General (General & Social Sector Audit), West Bengal
Treasury Buildings, 2, Government Place (West), Kolkata 700 001
3. Principal Accountant General (Economic & Revenue Sector Audit), West Bengal,
5th Floor, 3rd MSO Building, CGO Complex, DF Block, Salt Lake, Kolkata- 700064
4. Secretary
Finance (Audit) Department, Group-T
NABANNA, 12th Floor
325, Sarat Chatterjee Road, Howrah 711 102
5. Secretary
Finance (Budget) Department, Group-N
NABANNA, 11th Floor
325, Sarat Chatterjee Road, Howrah 711 102

Encl: As stated


(Amitava Ghosh)
Deputy Secretary to the
Government of West Bengal

Copy with copy of **Annexure** forwarded for information and necessary action to:

1. Engineer-in-Chief, Public Works Department
NABANNA, 8th Floor
325, Sarat Chatterjee Road, Howrah 711 102
2. Financial Advisor
Irrigation & Waterways Department
- 3-20. District Magistrate.....
.....District
21. Chief Engineer (North)
Irrigation & Waterways Directorate
22. Chief Engineer (South)
Irrigation & Waterways Directorate
23. Chief Engineer (West)
Irrigation & Waterways Directorate
24. Chief Engineer
Teesta Barrage Project
Irrigation & Waterways Directorate
25. Chief Engineer (North East)
Irrigation & Waterways Directorate



26. Chief Engineer (South West)
Irrigation & Waterways Directorate

27. Chief Engineer (Design & Research)
Irrigation & Waterways Directorate

28. Director of Personnel & Ex- officio Chief Engineer
Irrigation & Waterways Directorate

29-70. Superintending Engineer

Irrigation & Waterways Directorate

71-191. Executive Engineer

Irrigation & Waterways Directorate


192. Executive Engineer
DVC Study Cell & Nodal Officer e-Governance
Irrigation & Waterways Directorate

193. Officer-in-Charge
NIC Help Desk
Jalasampad Bhavan, Salt Lake

✓ 194. Shri Sujoy Saha
Executive Engineer
Irrigation & Waterways Department

He is requested to upload the instant order with enclosures in the Notification link of the Departmental website www.wbiwd.gov.in under the heading "**standardised e-Request for Proposal (e-RFP) guideline for implementation of Engineering Procurement & Construction (EPC) works contract through the e-Procurement Portal of the State**".

Encl: As stated


16.11.2016.
(Amitava Ghosh)
Deputy Secretary to the
Government of West Bengal

Annexure-I

(Enclosure to I&WD Notification No. 32-(W)/2016-17 dated 16.11.2016)

RFQ (Request for Qualification)

(NATIONAL COMPETITIVE e-BIDDING)

Government of West Bengal
Irrigation & Waterways Directorate
Office of the Superintending Engineer
..... Circle

....., Phone No
Fax No, E-mail

NOTICE INVITING e-RFP (e-Request for Qualification)

e- RFP No - WBIW/SE/...../RFP-01(e)/2016-17

e-Request for Proposal (e-RFP) through on-line bidding process is being invited by the **Superintending Engineer,** Circle, Irrigation & Waterways Directorate, on behalf of the Governor of West Bengal in the e-Procurement portal of the State Government for the work mentioned in next page from eligible and resourceful bonafide Contractors/Agencies having desired previous credential and financial capabilities for execution of works of similar nature.

Intending contractors/bidders interested for participating in the e-Request for Proposal (e-RFP) are to login the website www.wbiwd.gov.in (the official website of Irrigation & Waterways Department, Government of West Bengal) and click the “e-Procurement” link provided therein. They may also visit the designated Government of West Bengal e-Tender website having URL <https://wbtenders.gov.in> for the same e-RFP. The e-RFP can be searched by typing **WBIW/SE** in the search engine provided in the website/s, by logging-in the designated link of concerned Superintending Engineer. Contractors/Agencies willing to take part in the of e-Request for Proposal (e-RFP) are required to obtain valid Digital Signature Certificate (DSC) from any of the authorized ‘Certifying Authorities’ (CA) under Controller of Certifying Authorities (CCA), The Department of Electronics & Information Technology (DEIT), Govt. of India. (viz. NIC, n-Code Solution, Safescrypt, e-Mudhra Consumer Services Ltd, TCS, MTNL, IDRBT) or as notified by the CA /Finance Department, Government of West Bengal from time to time. DSC is given as a USB e-Token. After obtaining the Class 2 or Class 3 Digital Signature Certificate (DSC) from any of the above CA, they are required to register the fact of possessing the DSC through the registration system available in the above mentioned e-Procurement webpage. A list of such licensed CAs’ is also available in the CCA website cca.gov.in. The prospective contractors / bidders may contact the e-Tender State Level Help desk located at 7th Floor, Jalasampad Bhavan, Bidhannagar(Salt Lake), Sector-II, Kolkata through e-mail ID :irrigationhelpdesk@gmail.com or ID: dvcsc6816@gmail.com and Telephone No. 033-23346098 on any working week day between 11.00 AM-5.00 PM for any query on e-Procurement, obtaining DSC, training on e-bid procedure free of cost.

Intending contractors/bidders are required to download the e-RFP documents directly from either of the websites stated above. The interested bidders eligible for the e-RFP may submit their bids through the e-Procurement system using their valid DSC e-Token with assigned PIN and using login ID and password. **This is the only mode of submission of bids.** Detailed procedure of submission procedure has been explained in the ‘Bidders Manual’ for participating in e-tender of the State Government, which is available in the Departmental website www.wbiwd.gov.in . Minimum period of time to be given to the contractors/Bidders for submission of e-RFP is counted from the date on which the notice inviting e-RFQ containing e-RFP-EPC is actually published in the newspaper(s). In case of publication of the e-RFQ notice in more than one newspaper, all the advertisements should appear simultaneously on the same day in all newspapers. Also, uploading of the notice including e-RFP-EPC documents in the State Government e-Procurement portal shall be such the e-RFP documents are to be visible in the website <https://wbtenders.gov.in> as soon as the brief referral advertisement appears in the newspaper(s).

Last date & time of submission of on-line bid in the e-RFP is on till hours.

The interested bidders/contractors must read the ‘Terms & Conditions’ contained in the Notice Inviting e-bid (e-RFQ) carefully. He/she should particularly go through the eligibility criteria, and satisfy himself/herself of the mandatory requirements. Contractors/bidders desirous of participating in the e-RFP are eligible to e-bids for the Project only if they fulfill the minimum eligibility criteria and are in possession of all the required credential and documents in original.

All information posted in the website consisting of e-RFQ notice, e-RFP-EPC Agreement with Schedule A to P, Appendix-1 to VII, Forms-1 to 4, Bill of Quantities (BOQ), Bidder details, Specifications, corrigenda and drawings, Project Specific details, if any, shall form a part of the e-RFP document.

LIST OF WORK

e-RFP No - WBIW/SE/...../EPC-RFP-01(e)/2016-17

Sl. No.	Name of Work	Designated Executive Engineer with Headquarter	Assessed Estimated Value of work* (Rs)	Bid Security to be Deposited as EMD (Rs)	Total time allowed for complete on (In days)	Source of Fund	Financial requirements to match the credential in terms of execution of similar items in previous project (**)	'Physical Milestones' for completion of each work within stipulated time (Refer to Clause 19 of the General Terms & Conditions)
1	2	3	4	5	6	7	8	9
01		Executive Engineer, Division Lakh Lakhdays	State Plan/CS/EAP/Deposit Work	<p>Bonafide contractors/bidders having following criteria:</p> <p>I. BOQ/Gross Bill Value (without contractual rate in both the cases) of 100% completed works within preceding five years relating to(Project) of Rs.....Lakh, as, fixed by the Departmental QBEC (clause 7 iii).</p> <p>II Eligibility:</p> <p>A. Previous Work Credential desired in e- RFQ: Net notional amount of single work within last 5(five) financial years:</p> <p>a) Individuals Firms, Partnership Firms, Limited Company and other bonafide organizations except Consortiums and Joint Ventures having successfully completed single work 100% of BOQ/Gross Bill Value (without contractual rate in both the cases) for Rs..... (Inclusive of Rs..... Lakh exclusively for the Major items or cluster of items of a sub-component of the instant Project)</p> <p>b) For Consortium & JV is Rs.....Lakh out of which Rs Lakh should be exclusively in(cluster of Major items or a cluster of items of major subcomponent of the Project).</p> <p>B Annual turnover credential for RFQ:</p> <p>a) Annual Turnover of the bidder except for Consortium or JV for a particular FY within preceding five FY as stated in clause 7 iii c, and in Form-2 should be at least RsLakh.</p> <p>b) The same for a Consortium or any JV should be at least RsLakh. (Both A. & B stated above should be fulfilled for qualifying in Technical bid stage in the e-RFQ and all claims for above credentials are to be substantiated with valid documents converted in PDF during submission of online bids as stated in this RFQ later)</p>	Physical Project Milestones determined to complete the implementation of 100% Project work within the scheduled date of completion have been stated at Appendix-III of RFP and in terms of Schedule-I & Schedule-J of the EPC-Agreement.

() For Consortium & JV, additional criteria may be referred under Clause 1, Cl.4.2, Cl.7 & Cl. 8 of General Terms & Conditions.**

General Terms & Conditions for the e-RFP

1. Eligibility for participation

All Bonafide contractors/Agencies/Organizations, viz Registered Companies/ Firms and Registered Partnership Firms, Proprietorship Firms, Registered Consortium & valid 'Joint Venture Firms' and contractors/bidders of equivalent grade or class having credential with the State Government of West Bengal, Union Government Departments/ Other State Government Departments/ Engineering Wings of GoI /IRCON/RVNL and other similar organizations of GoI and State Governments/PSU of Government of India and other States relating to execution of works are eligible to participate depending on the criteria as laid down in the subsequent Para.

Note: *In case of consortiums, maximum number of constituents shall be restricted to 5 (five) and each of the constituent must have at least 10% work credential as well as at least 10% annual turnover from business in preceding 3 years within zone of consideration. Individual Constituents of a Consortium cannot form another Consortium.*

2. Participation in more than one serial of work in e-RFP

Any contractor/bidder may submit bids for a maximum of 50% of the total number of works (rounded up to next higher integer) published in any particular e-RFQ notice depending on his/her previous work credential and financial capability, details of which have been stated later.

3. A 'Pre-Bid' meeting will be held in the office chamber of the Superintending Engineer, Circle on Day 5 & 21st from the date of publication of RFQ, in order to acclimatize the prospective contractors/bidders through an interactive open session, replying to their queries, and clear doubts in connection with the work/s, if any.

4. Submission of bid

4.1 General procedure for submission of e-RFP

Bids are to be submitted on-line through the website/s as stated earlier. **All the documents uploaded in the e-RFQ/e-RFP by the Superintending Engineer, Circle, Irrigation & Waterways Directorate forms an integral part of the contract/ agreement. Contractors/bidders are required to upload the entire set of bid documents along with other related documents as asked for in the e-RFP through the above website/s within the stipulated date and time as given in the e-RFQ notice.** Bids are to be submitted in two folders at a time for each work, one being 'Technical Proposal' and the other 'Financial Proposal'. The contractor/bidder shall carefully go through all the documents of the e-RFP and prepare to upload the scanned documents in Portable Document Formats (PDF) files in the designated link in the web portal as their Technical Bid. He/she needs to quote his / her offered rates of items/amounts in Rupees in the BOQ downloaded for the work in the designated cell of Excel sheet only and upload the same again in the designated link in the portal as their Financial Bid. Documents uploaded are virus scanned and digitally signed using the Digital Signature Certificate (DSC). Contractors/bidders should especially take note of all the addenda and corrigenda related to the e-RFP and upload all of these documents also as a part of their bid document.

Documents & data once finally submitted on-line by the bidders comprising his/her/their Technical bid (under Technical/Pre Qual. Cover) together with Financial bid (in Financial Cover) cannot be changed or withdrawn after last/end date & time of electronic bid submission in the e-RFP.

4.2 Technical Proposal

The Technical Proposal should contain scanned copies and/or declarations in the following standardized formats in two covers (folders).

A. Technical Cover containing:-

- i. e-Notice of RFP (RFQ) (to be submitted in "e-NOTICE" folder)
- ii. Addenda/Corrigenda: If published; (to be submitted in the 'e-NOTICE' folder merged with 'e- NOTICE' already uploaded as pdf file)
- iii. RFP & EPC Agreement with all Schedules (to be submitted in "EPC-RFP" folder)
- iv. Project specific detailed Scope of Work including Specifications & standards (to be downloaded digitally signed and uploaded in pdf format in "SPECIFICATIONS" Folder)
- v. Project specific requirements of the RFP to be uploaded in the 'APPENDIX' folder (vide **Appendix I, II, III, IV and VII**)
- vi. Application for e-RFP (vide **Form-1**) (to be submitted in "FORMS" folder)
- vii. Annual Turn-over from business: Profit and loss accounts statement in the prescribed form with annual turnover of last three financial years or during the period since formation of the Company/Firm, if it was set up in less than three year period. (vide **Form-2** to be submitted in "FORMS" folder)

- viii. Credential Certificate (vide **Form- 3** to be submitted in “**FORMS**” folder)
- ix. Declaration of not having common interest in the same serial (vide **Form-4** to be submitted in “**FORMS**” folder)
- x. Drawings. (To be submitted in “**DRAWINGS**” folder)

NOTE: i. Contractors/bidders are to keep track in the stated website for all Addenda and Corrigenda published for a particular e-RFP and upload all the above digitally signed by him/her along with his/her bid, e-bids submitted without addendum/corrigendum are liable to be treated as informal and thereby rejected.

ii. e-bid will be summarily rejected if any of the aforesaid items are found to be missing in the on-line e-bid submitted and cannot be incorporated at the latest stage.

iii. Only pdf document to be uploaded of maximum size **2 MB** for each Technical / Pre-Qual folder.

B. My Document [OID* Cover] containing:

Note: Maximum permissible size of total OID document in pdf (from Sl. A to G) is 25 MB.

Sl. No.	Folder Name	File Description	Details	Remarks if any
A	Certificates	certificates.pdf 1	<ol style="list-style-type: none"> Professional Tax Payment Certificate (PTPC) PAN Card Value Added Tax (VAT) Registration Certificate in West Bengal (TIN)/CST Registration for other States Latest I.T Return Receipt 	Details under Clause 4.2.C
B	Company Details	companydetails.pdf 1 companydetails.pdf 2	<ol style="list-style-type: none"> Proprietorship Firms (Trade License) Partnership Firms (Partnership Deed, Trade License, Form-VIII (optional) or Memorandum of Registration) Companies (Incorporation Certificate, Trade License, Memorandum of Articles of ROC, List of owners/ Directors/Board Members) Consortiums and Joint Venture (JV). Trade License, Certified copy of Form-VIII, Deed of Consortium/JV. 	-do-
C	Credential	Credential pdf 1 Credential pdf 2	<ol style="list-style-type: none"> BOQ duly authenticated by issuing authority as per Cl.6&7, and work order/LOA containing cluster of items of major sub component. Completion Certificates of 100% completed work containing PLC-SCADA work of value desired in the RFQ, or, Gross bill of 100% completed work including excess and supplementary items beyond the scope of original BOQ mandatorily authenticated by appropriate authority. 	-do-
D	Declarations	Declaration.pdf1 Declaration.pdf2 Declaration.pdf3	i. Certificates on Warranty related services, software licenses, Design, Installation and commissioning & calibration services. Manufacturers' certificates of equipments and spares.	
E	Financial credential	P/L Audited Balance-sheet for year -1.pdf P/L Audited Balance-sheet for year -2.pdf P/L Audited Balance-sheet for year- 3.pdf	Profit & Loss account audited by Licensed Firm balance sheets with annexure containing the appropriate designated Forms 3CA/ 3CD/3CB, as applicable for at least preceding 3 financial years.	-do-
F	Machinery	Machinery.pdf.1 Machinery.pdf.2	List of major machineries and equipments owned and hired to be deployed for the project, (Authenticated copies of Invoice/Challans/Waybills are desirable). (vide Appendix-VI)	

G	Manpower	Technical-Manpower-details.pdf1 Organizational-Structure.pdf2 O&M, Training personnel-details.pdf.3	i. Technical-manpower for implementation of the project on pay role of the bidder/ company or on contract, ii. For extended warranty period defect liability, iii. Training experts, security, organizational setup and iv. Hierarchy of the Company Management, (vide Appendix-V)	
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* OID denotes Other Important Documents.

C. i. Certificate/s: (name of the file should be “certificates.pdf”)

- a. Professional Tax Payment Certificate (PTPC) valid for the current financial year/latest as per rules and PAN Card. Application for PAN addressed to the competent authority may also be considered.
- b. Value Added Tax (VAT) /CST Registration Certificate for outside State bidders;
- c. Latest Income Tax Return receipt.

ii. Company Details: (name of file should be “companydetails.pdf”)

A. Details for Consortiums formed out of Proprietorship Firms / Partnership Firms

Deed of Consortiums formed with Partnership Firm etc, and documents of their registration in the form of certified copy of ‘Form No. VIII,’ issued under the Indian Partnership Act, 1932 (Act-IX of 1932) by the Registrar of Firms.

Any change in the constituent of the Consortium/Partnership Firm should also be intimated to the office of the Registrar of Firms prior to submission of application in the e-RFP and a certified copy of the revised Form No. VIII showing changes in its constituents are required to be submitted. If the Consortium is yet to receive a certified copy of the revised Form No. VIII, it would be required to submit the aforesaid undertaking on-line along with his/her bid.

Note: An affidavit regarding authorized user of DSC for Consortium and a declaration regarding such authorization for Limited Companies is required to be submitted on-line with the e-RFP. Scanned copies in pdf file of competent authority are to be submitted, if the power is delegated for signing of bid/s to persons other than the applicant contractor/bidder.

B. Registered Companies (“companydetails.pdf”)

- a. Trade License for Proprietorship Firms/ Partnership Firms/Companies.
 - b. ‘Memorandum of Articles’, for Companies registered by the Registrar of Companies (ROC) under Indian Companies Act,1956.
 - c. Any other document, showing name with signature of all latest Owners/Directors/Board Members.
- iii. Credential: Scanned copy of previous work credential within last 5 years issued in favour of the contractor/bidder as detailed under clause 6 of RFQ (e-Notice).
Bill of Quantities (BOQ) along with Work Order/LOA, duly authenticated by the competent authority as supporting document against Form-3 to be submitted under OID cover in the credential folder (name of file should be “credential.pdf 1”).**

In case of execution of supplementary/substitute supplementary items having value more than 30% of BOQ, final gross value of bill (without contractual rates) including such supplementary / substitute supplementary items may be considered to ascertain similarity in nature of work and authenticated copy of such bills may be uploaded with the on-line bid submitted, if made available and desired by the bidder (name of file should be “credential pdf 2”).

iv. Financial Information:

- a. Balance Sheet: Audited Balance Sheets including Profit & Loss Accounts of the preceding three financial years with licensed auditor's certificate regarding Annual Turnover from business in Forms 3CA/3CB/3CD as applicable in a financial year. The audited Balance Sheet shall contain Annexure Form 3CA/3CB/3CD as applicable u/s 44AB of IT Act 1961. **Auditor’s certificate must contain his/her Membership No./ Registration No. of Registered- Audit Firm/CA Firm with valid licenses.**

The Annual Turn Over for last 3 financial years to be submitted under Technical/Pre-Qual. cover in ‘**FORMS**’ folder, vide Form- 2.

Profit & Loss Accounts of the preceding three financial years to be submitted under OID cover in the ‘**Financial-Credential**’ folder.

Note: The QBEC would verify the documents from the source of issue and fully satisfy them before technically qualifying the bidder for going ahead with the next stage of financial bid opening in the e-RFP.

If the company was set up less than three years ago, audited balance sheet for the number of years since inception is to be submitted.

- v. **Others:** Major Machinery both owned and to be hired and Technical Manpower details both under Pay Roll and to be hired for the project is to be furnished as per **Appendix VI** and **Appendix-V** to be furnished under separate 'APPENDIX' folder under Technical cover.

Note: Failure to submit of any of the above mentioned documents in the e-RFP may render the e-bid liable to summarily rejection.

4.3 Financial proposal / bid under Financial cover:-

The financial bid should contain the following documents in one cover (folder).

Bill of Quantities (BOQ): The contractor/bidder is required to quote the rate in Rupees (INR) both in numeric as well as in words in English against each item of the on-line BOQ in the space marked for quoting offered bid in the BOQ. **However the L1 bid (Lowest bid price) would be determined only on the basis of overall bid price in respect of the total BOQ of the RFP and not on the rates of individual items or subcomponent works of BOQ.**

NOTE:

- a. *BOQ without a valid offered bid at the designated space provided in the BOQ will be rejected.*
- b. *In cases where BOQ has been changed by the Superintending Engineer, Circle by way of on-line issuance/uploading of addendum/ corrigendum, contractors/bidders are required to upload the revised BOQ within this offer. If bids are submitted prior to the date of publication /uploading of addendum/corrigendum, the contractor/bidder is required to resubmit the bids on-line along with the revised BOQ. If the revised BOQ is not found subsequently during financial evaluation, the bid will be rejected.*
- c. *Only downloaded copies from e-RFP of the above document in excel sheet is to be uploaded by the contractor/bidder during on-line bid submission).*

5. Bid Security Deposit also identified as EMD

- i. **RFP document Fees:** Entire set of e-RFP documents are made available free of cost through the State Government e-procurement portal having URL <https://wbenders.gov.in> and also the 'The Departmental website www.wbiwd.gov.in. No cost for e-RFP document shall be charged even during execution of the formal contract / agreement. However, the contractors/bidders may wherever necessary be charged suitably for asking for additional/multiple copies of maps, specifications, Schedule of Rates booklet (SoR) etc. and such fee may be suitably determined by the Superintending Engineer, Circle as per norms.
- ii. **Bid Security or Earnest Money Deposit (EMD):**

Payment of 'BID SECURITY' is compulsory for being considered as eligible and valid bid except if specially exempted by the Finance 'The Authority', Govt. of West Bengal. Traditional procedure of depositing 'BID SECURITY' through off-line instruments like Bank Draft, Pay order, Bank Guarantee, Bankers Cheque etc. has been completely dispensed with for all e-RFPs/e-procurements of the State Government, w.e.f 1st September, 2016. Intending bidders desiring to make payment of Earnest Money ('BID SECURITY') have to transaction in the on-line system of e-RFP and should beforehand read the instructions carefully, particularly in the challan generated in the system of e-procurement, if opted for 'BID SECURITY' payment through RTGS/NEFT.

A. Login by bidder:

- a. A bidder desirous of taking part in an e-RFP shall login to the e-Procurement portal of the Government of West Bengal using his/her login ID and password by a valid DSC.
- b. He/she will select the e-tender /RFP to bid and initiate payment of pre-defined 'BID SECURITY' for that e-RFP by selecting from either of the following payments modes:
 - i. Net-Banking (any of the banks listed in the ICICI Bank Payment Gateway) in case of payment through ICICI Bank Payment Gateway;
 - ii. RTGS/NEFT in case of off-line payment through bank accounts in any Bank approved by RBI in India.

B. Bid Security or EMD payment procedure:

- a. **Payment by Net Banking (any of the listed banks) through ICICI Bank Payment Gateway:**
 - i. On selection of Net banking as the payment mode, the bidder will be directed to ICICI Bank Payment Gateway web Bid page (along with a string containing a Unique ID) where he/she will select the Bank through which he/she wants to do the on-line 'BID SECURITY' transaction.
 - ii. Bidders will make the payment after entering his/her Unique ID and password of the bank to process the e-transaction.
 - iii. Bidders will receive a confirmation message regarding success/failure of the transaction.

- iv. If the transaction is successful, the amount paid by the bidder will get credited in the respective Pooling account of the State Government maintained with the Focal Point Branch of ICICI Bank at R.N Mukherjee Road, Kolkata for collection of Bid Security (EMD) against unique codes for identification of the e-RFP Inviting Authority.
- v. If the transaction is failure, the bidder will again try for payment by going back to the first step.
- b. Payment through RTGS/NEFT:
 - i. On selection of RTGS/NEFT as the payment mode, the e-procurement portal will show a pre-filled challan having the details to process RTGS/NEFT transaction.
 - ii. The bidder will print the challan and use the pre-filled information to make RTGS/NEFT payment using his/her own Bank account.
 - iii. Once payment is made, the bank would provide an “**UTR remittance number**” for successful transaction with which the bidder will come back to the e-Procurement portal after expiry of 2 to 3 bank working days to enable the NEFT/RTGS process to complete, in order to verify the payment made and continue with his/her bidding process.
 - iv. If verification is successful, the fund get credited to the respective Pooling account of the State Government maintained with the Focal Point Branch of ICICI Bank at R.N Mukherjee Road, Kolkata for collection of ‘**BID SECURITY**’.
 - v. Hereafter, the bidder will go to e-Procurement portal for final e-submission of his/her bid within pre-assigned last date of submission of e-RFP.
 - vi. If the payment verification is unsuccessful, the amount will be returned automatically by the system to the bidder’s bank account.

Note: Bid Security or EMD payment made through RTGS/NEFT would require additional 2 to 3 bank working days after date of physical transaction in the bank before the procedure is completed for enabling the bidder to continue with the bidding process in the on-line e-RFP final bid submission. Thus, the bidder is to take precaution in case of RTGS/NEFT transfers so that the entire process of submission of e-RFP is completed within last date of on-line submission of his/her e-bid. However, Net-banking transaction through ICICI bank by their Net Banking payment Gateway would be on real time basis.

C. Refund/Settlement Process for Bid Security or EMD:

- i. After opening of his/her bids and technical evaluation of the same by the Authority through electronic processing in the e-Procurement portal of the State Government, the e-bid inviting authority will declare the status of the bid as successful or unsuccessful which will be made available along with the details of the unsuccessful bidders to ICICI Bank by the e-Procurement portal through web services.
- ii. On receipt of the information from the e-Procurement portal, the Bank will refund through an automated process the ‘**BID SECURITY**’ of the bidders disqualified at the technical evaluation to the respective bidders’ bank accounts from which they made the ‘**BID SECURITY**’ on-line transaction. Such refund will take place within T+2 Bank working days where T will mean the date on which information on rejection of bid is uploaded to the e-Procurement portal by the E-bid Inviting Authority.
- iii. Once the financial bid evaluation is electronically processed in the e-Procurement portal, ‘**BID SECURITY**’ of the technically qualified bidders other than that of the L1 and L2 bidders will be refunded, through an automated process, to the respective bidders’ bank accounts from which they made the payment transaction. Such refund will take place within T+2 Bank working days where T will mean the date on which information on rejection of financial bid is uploaded to the e-Procurement portal by the authority. However, the L2 bidder should not be rejected till the LOI process is successful.
- iv. If the L1 bidder accepts the LOI and the same is processed electronically in the e-Procurement portal, ‘**BID SECURITY**’ of the L2 bidder will be refunded through an automated process, to his/her bank account from which he/she had made the payment transaction. Such refund will take place within T+2 Bank working days where T will mean the date on which information on Award of Contract (AOC) to the L1 bidder is uploaded to the e-Procurement portal by the E-bid Inviting Authority.
- v. As soon as the L1 bidder is awarded the contract (AOC), the same is processed electronically in the e-Procurement portal for transfer to Government Receipt under Public Accounts through GRIPS (Government Receipt Portal System) where under the security deposit will also be collected in connection with the work.
- vi. All refunds will be made mandatorily to the Bank account from which the payment of ‘**Bid Security**’ (EMD) and Bid Fees (if any) were initiated.
- vii. If the e-RFP is cancelled, then the ‘**Bid Security**’ would be reverted to the original bidders account automatically after such cancellation order is affected online by the e-Request for Proposal (e-RFP) Inviting Authority.
- viii. Once the Bid Security (EMD) of L1 bid gets transferred to the GRIPS of the State Government, the Superintending Engineer,Circle using his/her e-token and valid DSC shall enter the GRIPS portal to identify the ‘**Bid Security**’ credited against the particular e-RFP by taking out a hard copy of the credit confirmation containing the GRN No. and forward to the Treasury concerned, the designated Executive Engineer for future raising of refund back after completion of defect liability period (Security Period).

6. Credential Certificates

- i. Completion Certificates (CC) for 100% completed works during the current year and within last five financial years will only be accepted as valid credential.
- ii. CC should clearly show the name, postal address, (contact Tel. No. and FAX or e-mail ID if issued outside the jurisdiction of the State) of the office and designation of the officer/ authority issuing the CC for the work along with the name of work and bid value/Tender value. Illegible certificates and those having incomplete information are liable to be rejected.
- iii. CC of works executed directly under any Department of Government of West Bengal will be considered as valid credential. CC of works executed under Union Government Ministries, Departments, other State Government Departments, PPP Authorities having more than 50% holdings of Government having JV with Union or State Government, State & Union Govt. Corporations, Engineering Units of Government of India and State, Port Trust, Dam or Barrage Project Authorities, Public Sector Undertakings (PSU) owned or managed by Government of India or other State Governments may also be considered. **(Outside India CC invalid)**
All above CC are required to be issued by an officer/authorized engineer not below the rank of Executive Engineer/Divisional Engineer/District Engineer/Project Manager of the State/Union Government/ Authority/ Organization, authorized signatories of CC for PSU, other State Government Organizations. **It is desirable to provide in writing contacts, telephone and FAX or e-mail address of the signatory of the CC for all offices outside the State of West Bengal for verification purpose.**

Such CC is desired to be further countersigned by the immediate superior authority of the issuing authority for all cases outside the State of West Bengal other than those executed directly under Union & State Government Departments. Also, such certificate when issued in other States other than those directly by Union/State Government Departments/Ministries, should contain a declaration that the work has been executed to the satisfaction of the concerned Organization/PSU/Company and has been declared 100% complete in all respect by the competent authority in the concerned Organization/PSU/Company.

7. Eligibility criteria

- i. Eligibility of a contractor / bidder based on his/her work credential will be determined as per norms stated below:
- ii. Monetary value of work value without considering contractual rate of the work executed or its final gross final bill value excluding contractual rate, inclusive of supplementary /substitute supplementary items (to be considered if BOQ is increased by at least 30%) as the case may be, if submitted, will be further multiplied by the following factors to take care of the inflationary effect to arrive at the net national amount.

Year	Description	Multiplying factor to arrive at net notional amount
Current	-	1.00
1 st	1 year preceding the current financial year	1.08
2 nd	2 years preceding the current financial year	1.16
3 rd	3 years preceding the current financial year	1.26
4 th	4 years preceding the current financial year	1.36
5 th	5 years preceding the current financial year	1.47

Note: For cases where two contractors/bidders are participating in a e-RFP for the particular work are such that one happens to have worked as a sub-contractor of the other, and both the contractors/bidders submit work credential of having completed the same job either wholly or partly, then in such case the credential of the principal contractor will be considered while that of the sub-contractor will not be taken into consideration for determining the eligibility criteria of the contractor/bidder towards the e-RFP. If the credentials submitted by hitherto contractors/bidders are for different works, then both the work credentials will be considered towards determining the eligibility criteria of the individual contractors/bidders.

- iii. Financial proposal of any contractor/bidder will come under consideration only when both the criteria mentioned below are satisfied and fulfilled.
 - a. **Net notional amount calculated from the Completion Certificate (CC) of a single work within last 5(FIVE) financial years issued in favour of the contractor/bidder/agency/Firm/Company/ Consortium/ JV, having specifically executed in the field of Major works sub component as referred in List of Works should be of value at least of Rs Lakh(as determined by the QBEC based on approved Feasibility Report of the Project) and that the Gross value of single completed project work including major sub component and inclusive of all items of the sub component works for which the CC should be Rs Lakh in each case, for a single Project/EPC contract.**

- b. However, for Consortiums and JV where CC of individual entities of the Consortium/JV are to be considered and shall add up, the sum total of net notional Gross Work Values in the CC of 100% completed work of individual entities of Consortium or JV, a maximum one for each entity, the aggregate value should be at least Rs Lakh, containing at least one entity having specifically executed a single project in the field of projects (as referred to in List of Works) of value at least of Rs Lakh.

And,

c. Annual Average Turnover from business as stated in clause 4.2 A (v) and in Form-2 for the contractor/bidder/agency/Firm /Company/Consortium who intends to participate should be at least Rs Lakh. However, for Consortiums & Joint Ventures where Annual Turnover of individual entities is to be considered, sum of Annual Turnover from business of such individual entities should be at least Rs Lakh, who intends to bid.

iv. *Additional guidelines for ascertaining eligibility credential of works*

- A. The intending bidder desirous of participating in this e-RFP for being selected in the Technical bid should have previous relevant experiences as credential and expertise of successfully 100% completing successfully similar projects elsewhere, in a single project relating to Major works sub component cluster of Items of notional gross value of Rs Lakh.
- B. Monetary values of each of the items is to be multiplied by **Multiplying factor to arrive at net notional amount** stated in the table under clause 7 (ii) to take care of the inflationary factors as the financial requirement to match work credential in terms of execution of similar items and to be integrated with column 8 of list of works.

C. Experience and Technical Capacity

The Bidder will have to substantiate that they have capacity to design, manufacture and supply the for the purpose of qualifying this requirement, the Bidder will have to submit clear certificates/documents as under:

- C1. They should have a minimum experience of five years of design, manufacture and supply ofetc. offered by them.
- C2. The bidder must have experience in design, engineering, supply, installation & commissioning of (major items or the major sub component of cluster of items).
- C3. Thesystem commissioned by him/her should have been in satisfactory operation for at least two years period in at least one location.
- C4. Firm should also have required license and certificates.
- C5. The bidder must have all necessary testing facilities at their works for carrying out such routine and acceptance tests as prescribed in the relevant Indian Standards/BIS/CPWD or MORTH/PWD Standard Books/CBIP/ISO/International Standards/IEEE specifications. Documentary evidence of existence of such facilities must be submitted.
- C6. The supplied equipments must have been fully type tested as per relevant BIS and/or any other specified national international standards and matching the desired Project Specifications under Technical Cover executed during last 5 years from date of bid opening. Scanned PDF of such type test reports/certificates must be submitted with the bid.
- C7. Bids of Bidders quoting as authorized representative of an equipment manufacturer, meeting w the above requirement in full, can also be considered provided:
The manufacturer furnishes authorization in the prescribed format assuring full guarantee and warranty obligations as per Agreement, and
The Bidder, as authorized representative of their manufacturer has supplied, installed and commissioned satisfactorily at least 1/2/3 similar systems in the last three years from the date of bid opening.
- C8. The bidder shall guarantee that adequate specialized maintenance capability and expertise will be made available.
- C9. The Bidder shall provide evidence to the satisfaction of the Purchaser to the effect of having in house or externally engaged expertise to:
1. Conduct the operations and trained manpower.
 2. Develop the conversion the special category works.

- C10. The Bidder shall provide the CVs of the experts, field operators and the list of Machinery & equipments and Technical Manpower. The CV of these personnel should demonstrate the successful operation of at least one such assignment.
- i. The Bidder shall furnish documentary evidence to demonstrate that the Goods it offers meet the following Purchaser requirement in general and also the Purchaser requirements specified in detail in Technical Specifications of this bidding document. In case the Bidder is not the manufacturer or producer of the goods it offers to supply and has submitted the bid in accordance with the Specifications desired, the bid shall include the above information about the manufacturer whose equipments are being offered.
 - ii. The Bidder should furnish the information on all past supplies and satisfactory performance for Cl.7C above, in Performa under Appendix 1 to 7.
 - iii. All the Bids submitted shall also include the following information along with formats under Appendices I to VIII.
 - iv. Copies of original documents defining the constitution or legal status place of registration and principle place of business of the Company or Firm or Partnership etc.
 - v. The Bidder should furnish a brief write up backed with adequate data explaining his available capacity and experience (both technical and commercial) for the manufacture and supply of the manufacturer and supply of the required systems and equipment within the specified time of completion after meeting all their current commitments.
 - vi. The Bidder should clearly confirm that all the facilities exist in his factory for inspection and testing and these will be made available to the Purchaser or his representative for inspection. The Purchaser shall decide and propose necessary tests as it may deem fit for the purpose of evaluation.
 - vii. Details of Service Centers and information on service support facilities that would be provided after the warranty/extended warranty period.

8. Eligibility criteria for participating in more than one serial of work in an e-RFQ notice

Annual Turnover should be more than or equal to **25%** of assessed project cost in which the bidder/contractor/Firm/Consortium/Company intends to participate. However for Consortiums and JV, where Annual Turnover of individual entities of the Consortiums or JV are to be considered, the sum of the Annual Turnover of individual entities should be at least **75%** of the aggregate assessed project cost of the e-RFP in which the Consortium or JV intends to participate.

General Note:-

- a. If the items of work contained in RFP are such that even after combination and addition of those into categories of major items defined as illustrated in clause 7(iv) , due to aggregate amount being less than 25% of the assessed value of work as per the Feasibility Report contained in the e-RFQ notice, the Departmental Quotation-cum-Bid Evaluation Committee (OBEC) may decide on appropriate major items, one or two from amongst the list of important items and further fix up the financial requirement (monetary value of such items) in terms of execution of similar items in previous works in column No. 8 of the list of works against that particular work.
- b. In case authenticated copy of item wise gross completed bill value is not uploaded for any reason whatsoever, eligibility for similar nature of work will be judged on the basis of items of works in the BOQ.

9. Penalty for suppression / distortion of facts and withdrawal of L1 bidder before acceptance of LOI

If any contractor/bidder fails to produce the original documents (especially Completion Certificates and Audited balance sheets), or any other document on demand by the Superintending Engineer,Circle within a specified time frame or if any deviation is detected in the hard copies from the corresponding uploaded soft copies or if there is any suppression / distortion / falsification noticed/detected/pointed out at any stage of e-RFP process prior to the issue of work order, the Superintending Engineer, Circle will immediately bring the matter to the notice of the Quotation-cum-Bid Evaluation Committee (QBEC) who upon recommending suitable punitive actions against the bidder will place the matter before the concerned Chief Engineer within 15 days of receipt of the complaint from the Superintending Engineer, Circle and the contractor/bidder may be suspended from participating in all future bids on the e-tender platform of Government of West Bengal as per approval of the Chief Engineer for a maximum period of 3 (Three) years. In addition, his/her 'BID SECURITY' will stand forfeited by the Government.

The concerned Chief Engineer then will issue the necessary suspension order in writing with intimation to the defaulting contractor/bidder, other Chief Engineers, Central e-Tendering Cell and also the Department. Copy of such suspension order should invariably be communicated to the Nodal Officer, e-Governance Cell of the Department with a request to upload the order in the 'Departmental website. Besides, the Irrigation &

Waterways Department, Government of West Bengal may also take appropriate legal actions including blacklisting of the defaulting contractor/bidder and debarring him/her from participating in any Government e-tenders/e-Procurement for a period up to three years, and the e-Procurement Cell of this Department may be advised to block the incumbents DSC in order to debar him/her from participating in any 'Departmental e-Procurement work during such suspension period. For e-bids where such suppression / distortion / falsification is detected at an advanced stage of e-RFP processing, the concerned Chief Engineer will be the deciding authority as to what further necessary actions are to be taken regarding the fate of the e-RFP.

10. Taxes & duties to be borne by the Contractor/bidder

Income Tax, VAT/CST, Sales Tax, Royalty, Construction Workers' Welfare Cess, Service Tax/Krishi Kalyan Cess and similar other statutory levies / Cess will have to be borne by the contractor/bidder and his/her quoted rate should be quoted accordingly after considering all these charges.

11. Site inspection prior to submission of e-bid

Before submitting a e-RFP, the intending contractor/bidder should make themselves acquainted thoroughly with the local conditions prevailing at site of implementation of the work by undertaking rigorous field inspections and taking into consideration all probable likely factors and difficulties to be involved in execution of the work as per specification in all respects including transportation of materials, communication facilities, climate conditions, nature of soil, availability of local laborers and market rates prevailing in the locality etc. and no claim whatsoever will be entertained on those accounts afterwards. In this connection intending contractors/bidders are advised to attend the 'Pre-Bid' meeting with the Authority (Superintending Engineer, Circle) on the prefixed dates to get his/her doubts cleared if he/she desires. He/She may also contact the office of the Superintending Engineer,Circle in between 11.30 hours to 16.30 hours on any working day, prior to the date of actual submission of bid relating to the e-RFP.

12. Conditional and incomplete bids

Conditional and incomplete bids submitted on-line are liable to be summary rejected.

13. Opening and evaluation of e-bids

13.1 Opening/decrypting of a Technical Proposal

- i. Technical proposal will be opened by the Superintending Engineer, Circle or his/her authorized representative/s electronically in the official website stated earlier using their authorized valid Digital Signature Certificate/s (DSC).
- ii. Participating contractors/bidders may remain present if they so desire.
- iii. Technical cover documents (vide Clause 4.2.A) will be opened /decrypted first and if found in order, Cover (Folder) for OID (vide Clause 4.2.B) will be opened/decrypted. If there is any deficiency in either of the Technical cover documents, the offered bid of the bidder will summarily be rejected.
- iv. Decrypted (transformed into readable format) documents of the OID (Other Important Document) Cover will be decrypted/downloaded and handed over to the 'The Departmental Quotation-cum-Bid Evaluation Committee (QBEC).
- v. Procedure to be followed for opening/decrypting of a financial bid is explained later under clause 13.5

13.2 'e-Quotation-cum-Bid Evaluation Committee' (QBEC)

Committee constituted by the Government in the Irrigation & Waterways Department for evaluation of bids and entire selection process in the RFP will function as the QBEC.

13.3 Uploading of list of technically qualified contractors / bidders in the web portal/s

- i. Pursuant to scrutiny and decision of the QBEC, the list of eligible bidders/ contractors for a particular serial of work whose Technical proposal will be considered and uploaded in the web portal/s.
- ii. While evaluating, the QBEC, may, if they so desire summon the contractors/bidders and seek further clarification/information or additional documents or seek verifications of original hard copy of any of/all the documents already submitted on-line and if these cannot be produced within a reasonably stipulated timeframe, their bids will be liable for rejection.

13.4 Opening and evaluation of Financial Proposal

- i. Financial proposals of the bidders/contractors declared technically eligible by the QBEC will be opened electronically by the Superintending Engineer, Circle in the web portal stated above on the pre-notified date and time.
- ii. The encrypted copies will be decrypted and the rates will be read out to the contractors/ bidders remaining

present at that time, else they may login their respective e-tender accounts to see the (CS) comparative statement in the web portal.

- iii. After opening/decrypting the financial proposal, the preliminary summary result containing inter-alia the names of contractors/bidders and the rates and amount quoted by them will be evaluated and the result will however not be made available in the e-tender web portal platform . The same would only be uploaded after obtaining recommendation from Quotation-cum-Bid Evaluation Committee (QBEC) and the Government Appointed Departmental Tender Committee (DTC) and Administrative Approval..
- iv. If the QBEC and the Government Appointed Tender Committee (DTC) of the Irrigation & Waterways Department is satisfied that the L1 bid price obtained is fair and reasonable and there is no scope of further lowering down of rate, after having the comparative statement test checked by the Divisional Accountant / Divisional Accounts Officer of the Office attached to Executive Engineer, Division, Irrigation & Waterways Directorate and after going through the recommendations of the QBEC and obtaining recommendation of the Government Appointed Departmental Tender Committee(DTC) instruct the Superintending Engineer, Circle to upload the final summary result containing the name of contractors/bidders and the financial bids offered by them against BOQ in the RFP.
- v. If there is any scope for lowering down of bid price in the opinion of the QBEC or the ‘Government Appointed Departmental Tender Committee (DTC), all the bidders qualified in technical bid may be notified through system generated e-mail and mobile phone sms to attend e-bid-cum-auction on a predetermined date and time to be held in the office of the Superintending Engineer, Circle. Off-line negotiations are not permitted from the point of view of confidentiality and transparency. However, in exceptional cases with prior recommendation and advice of Government ‘The Departmental Tender Committee (DTC) open off-line bid negotiations with **only the L1 bidder** to lower down the offered bid may be held by the Superintending Engineer, Circle in presence of QBEC members for reasons to be recorded in writing.
- vi. If there is no contractor/bidder or the number of contractors / bidders in the 1st e-RFP is less than three, the e-RFP has to be cancelled. In case of participation of more than three bidders, if the number of technically qualified bidder falls below three, the e-RFP is to be cancelled as well and fresh e-RFP (i.e 2nd e-RFQ/3rd e-RFQ) may be invited by suitably lowering down the minimum eligibility criteria for all bidders.
- vii. After uploading of Financial bid result upon obtaining recommendation of the QBEC and the Government Appointed Departmental Tender Committee (DTC) as regards to the L1 bid, the financial Comparative Statement of the e-RFP or the FBE sheet so prepared of L1 bid, with Approved Feasibility Report, recommendations and Rate analysis justifications with comments of CE, QBEC, DTC is to be referred to the Government for administrative approval. Letter of Invitation (LOI) and the Award of Contract (AOC) would however not be sent or given to the L1 bidder before receipt of Administrative Approval from the Government in the Irrigation & Waterways Department.
- viii. The QBEC may ask any of the bidders/contractors to submit analysis of rates to justify the rate quoted by that bidder/or the L1 bidder.
- ix. If the L1 bidder/contractor backs out there should be fresh e-RFP floated on-line once again in a transparent and fair manner. In such a situation the QBEC may opt for Short Notice e-RFP with time periods stipulated for e-RFP, if so necessitated in the interest of public works and take decision on the basis of L1 bid in the 2nd e-RFP or subsequent 3rd e-RFP with 14 days and 10 days minimum bid submission/notice period. Penal action for premature withdrawal by bidder has been stated under clause 9 earlier.

13.5 Procedure to be followed for acceptance of bid for selection of contractor to implement the work.

- i. Selection of contractor/bidder should be **made on the basis of at least three valid bids both in technical proposal as well as financial proposal/bid**, which shall be opened preferably in presence of their willing agents. If the number of bids received is less than three, e-RFP would be cancelled and invited afresh with relaxed eligibility criteria to be determined by the QBEC.
- ii. If the number of contractors /bidders qualified in the technical bid is less than three, e-RFP would be invited afresh.
- iii. The lowest bid for the work is accepted as a rule. If for any reason the L1 bid is not accepted, reference is to be made to the appropriate Government for orders as to which of the contractor /bidder the work should be awarded.
- iv. L1 bid received in the e-RFP in all cases prior to issuance of LOI /LOA is to be recommended and placed before the Government Appointed Departmental Tender Committee (DTC) subject to the conditions that valid e-bids should not be less than three and L1 is recommended for acceptance formal administrative approval would be accorded by the Government in the Irrigation & Waterways Department after recommendation of the Government Appointed Departmental Tender Committee (DTC) as mentioned earlier, after which the Letter of Invitation (LOI)/Award of Contract (AOC) is to be uploaded in the e-Procurement.

- v. If the response to an e-RFP is less than three, then e-RFP should be invited afresh. Such e-RFQ notice shall be published in widely circulated dailies as per guidelines and also through e-RFP e-Tender web portals. Prior to invitation of 2nd or 3rd e-RFP, the eligibility criteria and other terms & conditions as contained in the first 'Notice Inviting e-RFP' (e-RFQ notice) shall have to be reviewed by the Quotation-cum-Bid Evaluation Committee (QBEC), to ascertain whether (i) it was too much restrictive, say, specifications and qualifications were fixed at higher standards than required, (ii) advertisements in the widely circulated Newspapers were properly published and (iii) other related procedural matters were observed in its entirety.
- vi. Even if, after taking appropriate steps in regard to relaxation of criteria to the extent as decided by the QBEC and also wider publicity of 2nd e-RFP or 3rd subsequent e-RFP in widely circulated dailies and through web-site/s, the response to the subsequent e-RFP is still less than three, that case may be forward by the Quotation-cum-Bid Evaluation Committee (QBEC) with recommendation by the 'The Departmental Tender Committee (DTC) to the Government in the Irrigation & Waterways Departmental for consideration.

14. Determination of Lowest bid and acceptance of Bid.

Bidders are required to quote the financial rates/bids/offers in Lump Sum against each and every item of the e-BOQ as already stated under clause 4.3. **It is being clarified that selection of the lowest bidder (L1) would be made on the basis of total bid price against the BOQ as a whole and not on individual items or any subcomponent of the project.** L1 bid on an overall basis should normally be accepted as a rule. However, the Accepting Authority does not bind himself/herself to do so and reserves the right to reject any or all the bids without assigning reasons subject to fulfillment of clause 13.5 (iii) and further reserves the right to distribute the work amongst more than one contractor/bidder.

15. Bid Accepting Authority

Chief Engineer, of the Project is the final bid accepting & LOI/LOA issuing authority who will however only act on the recommendations of the QBEC, DTC and the Government.. But the L1 bid received in the e-RFP would be recommended by the Superintending Engineer to the Chief Engineer who would firstly obtain clearance of the Quotation-cum-Bid Evaluation Committee (QBEC) and then place it before the 'Government Appointed Departmental Tender Committee (DTC) for recommendation. However formal acceptance and issuance of LOI and LOA would only be undertaken by him after obtaining Administrative Approval from the Government.

16. Execution of formal contract/ agreement after acceptance of lowest valid bid

The contractor/bidder, whose bid is approved for acceptance, shall within 15 days of the receipt of Letter of Invitation (LOI) or Letter of Acceptance (LOA) in his / her favour by the Chief Engineer will have to execute a 'Formal Agreement' in the EPC Agreement at Annexure-III with the Engineer-in-Charge i.e. Executive Engineer, Division acting on behalf of the State in quadruplicate hard copies containing all e-RFP document, e-RFQ notice, drawings, credential certificates, eligibility certificates, corrigendum and all other documents. Entire sets may be obtained free of cost from the office of the Executive Engineer, Division designated with implementation of the work. Award of Contract (AOC) order is to be issued by the Engineer-in-charge and also uploaded in the e-PFR portal link.

17. Payment against bills raised by the contractor

The payment of Running Account as well as final bill for any work based on achieving Specific Project Milestones and performance as per Schedules of EPC-Agreement and approved Work Programme according to availability of fund and no claim due to delay in payment will be entertained.

18. Bid validity

The Bid will be normally valid for **120 days** from the date of opening of the financial proposal. However, extension of bid validity may be suitably considered by the Chief Engineer,, if required, subject to written confirmation of the contractor/bidder (s) to that effect.

19. Definition of Physical Milestones:

The time allowed for carrying out the work as entered in the e-bid shall be strictly observed by the contractor, and which shall be reckoned from the date on which the order to commence work is given to the contractor. The work shall throughout the stipulated period of the contract be proceeded with all due diligence. Time being deemed to be the essence of contract on the part of the contractor; the contractor shall be bound in all cases, to achieve the 'Project Specific Milestones' as specified in this e-RFQ notice into various 'Identifiable and quantifiable construction related stages' pertaining to the work as per Schedules and Work Programme. In the event of the contractor failing to comply with any of the conditions related to achieving the 'Milestones' within the specified time period prescribed for such 'Milestone' plus one month, he/she shall be liable to pay compensation.

If the contractor fails to commence and/or maintain required progress viz. Milestones defined in the e-Notice inviting e-RFQ over the total time allotted for its full completion and fails to complete the work and clear the

site on or before the end of contract period or extended date of completion, he/she shall, without prejudice to any other rights or remedy available under the law on account of such breach, pay as agreed compensation to the implementing Authority. This will also apply to items or group of items for which a separate period of completion has been specified.

20. Withdrawal of e-bid

Withdrawal of e-RFP once the bid has been submitted online and after passing of end date for submission and has been accepted for further processing, is not allowed. ‘BID SECURITY’ will be forfeited by the Government and the bidder/contractor penalized in terms of clause 9 referred earlier would be applicable.

21. Schedule of dates of the e-RFP

Sl. No	Activity	Date & Time	Remarks
1.	e-RFP Publishing Date	Day 1 at 17.30 Hrs	To be made available with the e-RFP notice in the website
2.	On-line RFP Document Download start date	Day 1 or 2 to be decided by the TIA	
3.	Two Pre-bid Meetings to be held at the office of Superintending Engineer,Circle at	Any working day on Day 5 & Day 21 preferably at 14.30 hours or as per decision of QBEC.	
4.	e-Bid submission start date	-do-	
5.	Document Download end date & bid submission end date	(same as bid submission end time & date below)	
6.	e-Bid submission end date	< = Day 22 at 17.30 Hrs, 2 nd or subsequent e-bids <=10 days	
7.	Technical Bid opening date	To be decided by TIA. Bid submission end date and technical bid opening date should preferably have at least 48 hours difference in order to facilitate extension of bid submission date by some more days in case of participation of bidders is less than three.	
8.	Uploading of list of Technically qualified bidders	To be decided by TIA	To be notified to all bidders through e-mail & SMS through auto-generation in the on-line system.
9.	Financial Bid on-line opening date	-do-	
10.	Uploading of Financial Bid evaluation sheet	To be decided by TAA	
11.	Uploading of the Letter of Invitation / Acceptance (LOI/LOA)	After administrative approval is obtained	
12.	Uploading of Award of Contract (AOC) (Work Order)	-do-	

*TIA: Superintending Engineer, Circle

*TAA: Chief Engineer,, Irrigation & Waterways Directorate, Govt. of West Bengal

Sd/-
Superintending Engineer
..... Circle
Irrigation & Waterways Directorate

FORM 1

APPLICATION FOR e-RFP

To
The Superintending Engineer

..... Circle, I&W Directorate

e-RFP No:- WBIW/SE/...../ RFP01(e) /2016-17

Serial No. of Works applied for :-

Assessed value of work as per Feasibility Report of the e-RFP :

Dear Sir,

Having examined the Technical cover, OID cover & other e-RFQ notice documents, I/we hereby would like to state that I/we willfully accept all your conditions and offer to execute the works as per e-RFP no and Serial no stated above. I/We also agree to remedy the defects after/during execution of the above work in conformity with the conditions of contract, specifications, drawings, bill of quantities and addenda.

Dated this _____ day of _____ 201__

Full name of Bidder / Contractor: _____

Signature: _____

In the capacity of: _____

Duly authorized to sign bids
for & on behalf of (Name of Firm): _____
(In block Capital letters or typed)

Office address with seal if any :

Telephone no(s) (office): _____

Mobile No: _____

Fax No: _____

E mail ID: _____

(Note: To be uploaded on-line during bid submission in the 'FORMS' folder under Technical / Pre-Qual cover)

FORM 2

Certificate regarding Summary Statement of Annual Turn Over

This is to certify that the following statement is the summary of the audited Balance Sheet arrived in favour of of addresses..... for the three consecutive financial years or for such period since inception of the Firm, if it was set in less than such three year's period.

Sl. No.	Financial		Remarks
	Year	Annual Turn Over rounded up to in Rupees lakh (two digits after decimal)	
1.			
2.			
3.			
Total			

Average Annual Turnover (in Lakh of Rupees):

Note:

1. Year preceding the current financial year is to be considered as Year-1.
2. Average annual turnover is to be expressed in lakh of Rupees rounded off to two digits after decimal.
3. Average annual turnover for 3 years is to be obtained by dividing the total turnover by 3.0. If the Firm was set up in less than 3 year's period, consider the turnover for the period from inception to the Year-1. It may be either 1.0 or 2.0. Average turnover is to be obtained by dividing the total turnover by 1.0 or 2.0, as the case may be.
4. In case, the firm was set up in less than 3 year's period, mention the year of inception in the 'Remarks' column.

Signature of the bidder/contractor
with date & seal if any
Date & Place:

Verification of Licensed Auditor Firm/ CA Firm
with full corresponding address, Phone No.
& Membership No. and official seal

(Note: To be uploaded on-line during bid submission in the 'FINANCIAL CREDENTIAL' folder under OID cover)

FORM – 3

Completion Certificate (100% Physical Completion)

1. Name of the work :
2. Name of client :
3. Assessed estimate of Project :
4. Contractual bid (Bid Price Accepted & awarded) :
5. Whether the work was divided between / among more than one contractor, (write Y / N) :
If yes, mention the percentage of such division (i.e 50% or 33.33% or 25%) :
6. Date of commencement :
7. Date of completion as per work order :
8. Actual date of 100% completion of Project :
9. Final gross 100% value of the bill (if the final bill is prepared, otherwise mention N.A) :
10. Attach in PDF, copy of work order(AOC) & BOQ :

Write 'attached'

11. Attach in PDF, Gross 100% final accepted billed value (containing all stage payments and milestone-wise) if supplementary and / or due to change in Scope of more than 30% of the amount of BOQ crops up during execution and those supplementary / substitute supplementary items [If intended to be cited by the bidder to establish similar nature of work credential] : Write 'attached or N.A'

Signature of the contractor/bidder
with date and seal if any
with Contact No., Postal address
and e-mail address

Signature of the issuing authority
with date and seal

(Note: To be uploaded on-line during bid submission in the 'CREDENTIAL' folder under OID cover)

FORM – 4

Declaration against Common Interest

(To be typed in company / organization letter head scanned and uploaded as PDF)

Ref: e-Notice No. Agreement ID No.
Sl. No:-.....

Sir,

I/We, Sri/Smt. _____, the authorized signatory on behalf of _____ do hereby affirm that I/We/any of the member of _____ bidding against e-RFQ Notice No. _____ do not have any common interest either as a partner or any Partnership Firm / Consortium as a Proprietor / Owner of any other Firm in the same serial for the work I / we want to participate.

Date & Place:

Signature of contractor/bidder
with official seal if any

(Note: To be uploaded on-line during bid submission in the 'FORMS' folder under Technical / Pre-Qual cover)

Annexure-II

(Enclosure to I&WD Notification No. 32-(W)/2016-17 dated 16.11.2016)

Standardized Model Request for Proposal (RFP) For Engineering, Procurement & Construction Contracts

**Irrigation & Waterways Department
Government of West Bengal**

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DISCLAIMER

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

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

The 'Authority', its employees and advisors make no representation or warranty and shall have no liability to any person, including any Applicant or 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 for participation in this Bid Stage.

The 'Authority' 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.

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

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

The Bidder shall bear all its costs associated with or relating to the preparation and submission of their Bid including but not limited to preparation, documentation, scanning uploading, expenses associated with any demonstrations or presentations which may be required by the 'Authority' or any other costs incurred in connection with or relating to its Bid. All such costs and expenses will remain with the Bidder and the 'Authority' 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 e-Bid, regardless of the conduct or outcome of the e-Bidding Process.

GLOSSARY

Agreement	As defined in Clause 1.1.2
Associate	As defined in Clause 2.1.13
'The Authority'	As defined in Clause 1.1.1
Bid Security or EMD	As defined in Clause 2.20.1
On-line e-Bid(s)	As defined in Clause 1.2.2
Bidders	As defined in Clause 1.2.2
Bidding Documents	As defined in Clause 1.1.7
Bid Due Date	As defined in Clause 1.1.7
Bid Price	As defined in Clause 1.2.6
Bidding Process	As defined in Clause 1.2.1
Performance Security	As defined in Clause 1.2.4
Bid Stage	As defined in Clause 1.2.1
Conflict of Interest	As defined in Clause 2.1.13
Contract Price	As defined in Agreement
Contractor	As defined in Clause 1.1.2
Instruments of Bid Security or EMD	As defined in Clause 2.20.2
Estimated Project Cost	As defined in Clause 1.1.4
Feasibility Report	As defined in Clause 1.2.3
LOA	As defined in Clause 3.3.5
Project	As defined in Clause 1.1.1
Re. or Rs. or INR	Indian Rupee
e-RFP or on-line Request for Proposals	As defined in Clause 1.1.7
RFQ or Request for Qualification/	As defined in Clause 2.1.2
Selected Bidder	As defined in Clause 3.3.1

The words and expressions beginning with capital letters and defined in this document shall, unless the context otherwise requires, have the meaning ascribed thereto herein. The words and expressions beginning with capital letters and not defined herein, but defined in the RFQ, shall, unless the context otherwise requires, have the meaning ascribed thereto therein.

Government of West Bengal
Office of the Superintending Engineer, Circle
Irrigation & Waterways Directorate,
Postal Address, Phone No. FAX- e-mail ID-

1. INTRODUCTION

1.1 Background

1.1.1 The Governor of the State represented by the Irrigation & Waterways Department, Government of West Bengal (**'The Department'**) having its Head Quarters/ principal office at Jalasampad Bhavan, Salt Lake, Kolkata has decided to implement the (**"Project"**) through an Engineering, Procurement and Construction the (**"EPC"**) Agreement, and has decided to carry out the on-line bidding process through e-Procurement system of the State through the under this Department represented by the Superintending Engineer, Circle, (**'The- Authority'**), for selection of the Bidder to whom the Project may be awarded. Brief particulars of the Project are as follows:

..... is situated at..... in P.O,Block/Municipality, P.S under Dist. in West Bengal (Latitude:.....'N; Longitude:.....'E).

<u>Name of the Project/Work</u>	<u>Assessed Project Cost*</u>

*Assessed project cost is only an indicative cost of Schedule of Work/BoQ as per Feasibility Report prepared by 'The Authority' by enquiry and by floating a separate EOI for the purpose.

Scope of work for which the e-procurement process is to be initiated in connection with the work "(Name of the Project) of Irrigation & Waterways Department comprising the following sub-components:-

- 1
- 2
- 3

General Procedure to be followed for e-Procurement in the instant case:

It has been decided by **'the Authority'** that since the scope of work enumerated above are mostly inter-related to each other, and the project needs to be implemented holistically in a time bound manner for its effective operation, Engineering Procurement Contract (EPC) is to be adopted in the instant case which required invitation of on-line Expression of Interest (EOI) for framing of 'Feasibility Report' cum assessed rough cost estimate to be followed by on-line invitation of Request for Proposal (RFP) where under Technical Evaluation and Financial Evaluation of bids in the RFP would be finalized by a 'Departmental Quotation-cum-Bid Evaluation Committee (QBEC).

1.1.2 The Selected Bidder (the **"Contractor"**) through this RFP, shall be responsible for Engineering, Procurement and Construction (EPC) of the Project under and in accordance with the provisions of an engineering procurement and construction agreement (the **"Agreement"**) to be entered into between the Selected Bidder and 'The Authority' in the form provided by the Department as part of this Bidding Document pursuant hereto also referred to as EPC-Aggrement.

This amount of estimated project cost or the estimated works cost, comprises the assessed estimated cost obtained by invitation of Expression of Interests (Eoi) and other available sources includes the likely supply & construction costs plus costs of survey, investigation and design as a percentage of the construction cost defined as contingency charges. [Assessed project cost excludes contingency charges of estimated project cost]

1.1.3 The scope of work will broadly include (Scope of work in brief) including [Defect Liability Period].

- 1.1.4 The estimated cost of the Project ("**Estimated Project Cost**") assessed by the 'Authority' on the basis of Feasibility study report has been specified in Clause 1.1.1 above comprising Assessed Project Cost plus contingency charges. The assessment of actual costs, however, will have to be made by the Bidders.
- 1.1.5 The "**Agreement**" sets forth the detailed terms & conditions for award of the Project to the Contractor, including the scope of the Contractor's services and obligations.
- 1.1.6 The statements and explanations contained in this RFP are intended to provide a better understanding to the Bidders about the subject matter of this RFP and should not be construed or interpreted as limiting in any way or manner the scope of services and obligations of the Contractor set forth in the Agreement or the Authority's rights to amend, alter, change, supplement or clarify the scope of work, the Project to be awarded pursuant to this RFP or the terms thereof or herein contained. Consequently, any omissions, conflicts or contradictions in the Bidding Documents, notice inviting RFP including this RFP document are to be noted, interpreted and applied appropriately to give effect to this intent, and no claims on that account shall be entertained by the 'Authority'.
- 1.1.7 The RFQ inviting authority shall receive Bids in the on-line e-Procurement Portal of the State Government pursuant to the RFQ in accordance with the terms set forth in this RFP and other documents to be provided by the 'Authority' pursuant to this RFP, as modified, altered, amended and clarified from time to time by the 'Authority' (collectively the "**Bidding Documents**"), and all Bids shall be prepared and submitted in accordance with such terms on or before the bid due date specified in Clause 1.3 for submission of Bids on-line (within "**Bid Due Date**").

1.2 Brief description of the e-bidding process

- 1.2.1 Superintending Engineer,.....Circle, Irrigation & Waterways Directorate hereinafter to be identified as "The Authority" has adopted a two-stage techno-commercial e-Procurement system of the Government of West Bengal (collectively referred to as the "**Bidding Process**") for selection of the Bidder for award of the Project. The first stage (the "**Qualification Stage or Technical proposal**") of the process involves pre-qualification of interested agencies in accordance with the provisions of the Request for Qualification (RFQ). At the end of this stage, the authority would short list suitable pre-qualified applicants who are found eligible by the Departmental Quotation-cum-Bid Evaluation Committee (QBEC) for participation in the second stage of the on-line Bidding Process (the "**Bid Stage or the financial proposal**") comprising e-Request for Proposal.
- 1.2.2 In the Bid Stage, the aforesaid short listed Applicants, including their successors; (the "**Bidders**") would be called upon during decrypting (online opening) of their financial offers (the "**e-Bids**") in accordance with the terms specified in the Bidding Documents. The Bid shall be valid for a period of not less than **120 days** from Bid Due Date.
- 1.2.3 The Bidding Documents includes the e-Notice of RFP or the RFQ, Draft Agreement for the Project. The assessed cost of the project as per Feasibility Report prepared by the Chief Engineer, verified by the Departmental Quotation-cum-Bid Evaluation Committee (the "**Feasibility Report**"). Subject to the provisions of Clause 2.1.3, the aforesaid documents and any addenda/corrigenda issued subsequent to this RFP Document will be deemed to form part of the Bidding Documents.
- 1.2.4 A Bidder is required to deposit, along with its Bid, Earnest Money (EMD) of **Rs. lakh (Rupees)** INR being (the "**Bid Security**") equivalent to 2% of the Assessed Project cost determined in the Departmental Feasibility Report, refundable not later than 45 (forty five) days from the Bid Due Date, except in the case of the Selected Bidder (L1) whose Bid Security shall be retained till it has provided a Performance Security under the **Agreement**. Payment of Bid Security (also known as EMD) is compulsory for being considered as eligible and valid bid except if specially exempted by the Finance Department, Govt. of West Bengal. **Traditional procedure of depositing EMD through off-line instruments like Bank Draft, Pay order, Bank Guarantee, Bankers Cheque etc. has been completely dispensed with for all e-procurements under State Government, w.e.f 1st September, 2016.** Intending bidders desiring to participate in the bidding process is required to make payment of Bid Security (Earnest Money- EMD) through transaction in the on-line system of e-procurement/e-tender and should beforehand read the instructions therein carefully, particularly in the challan generated in the system of e-procurement, if opted for EMD payment through RTGS/NEFT. Bids shall be summarily rejected if it is not accompanied by the Bid-Security (EMD).

- 1.2.5 During the Bid Stage, 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 and implementation of the Project, and requested to participate in the “**Pre-Bid Conferences**” on Day 5 and again on Day 21 from the Date of Notice of e-RFP or any other date fixed by the Authority.
- 1.2.6 Bids in the RFP are invited to select the contractors for implementation of the Project on the basis of lowest financial bid (L1) offered on-line by a Bidder the “**Bid Price**”. (Such selected L1 bid price is to be determined on the basis of bids received as a whole and not on the basis of item rates of individual items and subcomponents of the BOQ). The total time allowed for completion of construction under the Agreement (the “**Construction Period**”) and the period during which the Contractor shall be liable for rectification of any defect or deficiency for furnishing successively guarantee and warranty with equipments in the Project, after completion of the Construction Period (the “**Defect Liability Period**”) or the Security Period shall be pre-determined, and are specified in **the Agreement** forming part of the Bidding Documents.
- In this e-RFP, the term “**Lowest Bidder**” (L1) shall mean the Bidder who is offering the lowest e-Bid-Price.
- 1.2.7 Generally, the Lowest Bidder shall be the selected Bidder to execute the project as a Rule.
- 1.2.8 Further and other details of the process to be followed at the Bid Stage and the terms thereof are spelt out in this RFP and EPC-Agreement.
- 1.2.9 Any queries or request for additional information concerning this RFP shall be submitted in writing or by Fax and e-mail to Superintending Engineer,.....Circle within the period stipulated at SI 3 of 1.3.1 below. The communications shall clearly bear the following identification/ title:

"Queries/Request for Additional Information: e-RFQ Noof, ID No. of Superintending Engineer,.....Circle, Irrigation & Waterways Directorate, Government of West Bengal"
This may further be discussed in the pre-bid conferences.

1.3 Schedule of e-Bidding Process in the RFP

- 1.3.1 The Authority shall endeavor to adhere to the following schedule:

Sl. No	Activity	Date & Time	Remarks
1.	On –line RFP Publishing Date	Day 1 at 17.30 Hrs	To be made available with the e-RFP notice in the website
2.	On-line RFP Document Download start date	Day 1 or 2 to be decided by the TIA	
3.	Pre-bid Meeting/Conference to be held at the office of e-RFP Inviting Authority(The Authority’) or BIA	On Day 5 and again on Day 21 at 14.30 hours	
4.	e-Bid submission start date	Day 2	
5.	Document Download end date & bid submission end date	(same as bid submission end time & date below under SI 6)	
6.	On-line Bid submission end date	<= Day 31 at 17.30 Hrs, 2 nd or subsequent e-bids <=10 days	
7.	Technical Bid opening date	To be decided by BIA. Bid submission end date and technical bid opening date should preferably have at least 48 hours difference in order to facilitate extension of bid submission date by some more days in case of participation of bidders is less than three.	
8.	Uploading of list of Technically qualified bidders	To be decided by BIA	To be notified to all bidders through e-mail & SMS through auto-generation in the on-line system.
9.	On-line Financial Bid opening date and Time	-do-	
10.	Uploading of Financial Bid evaluation sheet	To be decided by BIA	
11.	Uploading of the Letter of Invitation / Acceptance (LOI)/(LOA)	After administrative approval is obtained from the ‘Department’	
12.	Uploading of Award of Contract (AOC) (Work Order)	-do-	

*BIA: Superintending Engineer,Circle, Irrigation & Waterways Directorate, Government of West Bengal

*BAA: Chief Engineer, Irrigation & Waterways Directorate after obtaining recommendation of QBEC and DTC.

2. INSTRUCTIONS TO BIDDERS

A. GENERAL

2.1. General terms of e-Bidding

- 2.1.1 An agency/contractor bidding individually or as a member of a Consortium or any Joint Venture Company shall not be entitled to submit more than one bid against the RFP either individually or as a member of any Consortium or a JV as the case may be.
- 2.1.2 Unless in the context required otherwise, the terms not defined in this RFP, but defined in the e - **Notice of the RFP** (the “RFQ”) or the **Agreement document** for the Project shall have the meaning assigned thereto in the RFP.
- 2.1.3 “Assessed Estimated Cost” for the Project is being provided only as a preliminary reference document for Authority’s use. All the Bidders are expected to carry out their own survey, investigations and other detailed examinations before submitting their e-Bids. Nothing contained in the Feasibility Report shall be binding on ‘the Authority’ nor confer any right on the Bidders and ‘The Authority’ shall have no liability whatsoever in relation to it or arising out of any or all contents of the Feasibility Report.
- 2.1.4 Notwithstanding anything to the contrary contained in this RFP, the detailed terms specified in the **Agreement** shall have overriding effect; provided, however, that any condition or obligations imposed on the Bidder hereunder shall continue to have effect in addition to its obligations under **the Agreement**.
- 2.1.5 The Bid should be furnished on-line through the e-procurement portal of the State Government referred earlier, clearly indicating the bid amount in both figures and words, in Indian Rupees, digitally signed by the Bidder’s authorized signatory. In the event of any difference between figure and words, the amount indicated in words shall be taken into account.
- 2.1.6 The Bidder shall deposit on-line ‘**Bid Security**’ also **identified as Earnest Money Deposit of Rs. lakhs (Rupees only) in accordance with** the provisions of this e-RFP. The Bidder has to submit the Earnest Money Deposit (EMD) during submission of online bid only through on-line system in the e-procurement portal as explained in the e-RFP notice.
- 2.1.7 **Performance Security**
The amount of performance security of the above work is amounting to 7.5% of the contract price or the final value of work actually executed on completion whichever is higher. At the bidding stage, the bidder will deposit approx 2% of estimated cost (defined earlier) through online system of e-procurement/e-tender (RTGS/NEFT) option as their Bid Security or the EMD. The rest of the amount to make up for overall 7.5% which is more or less 5.5% or the actual amount to achieve 7.5% of bid price will be progressively deducted from the running account/ interim bills of the bidder in the progressive bills up to the completion of work with reference to the contract price of the bid.
After successful completion of first ... year (Guarantee period) defect liability period, which is defined as initial ... year guarantee period, security deposit will be released in such a way for which lump sum amount of Rs. Lakh would be retained by ‘The Authority’ for next years of Extended Warranty Period. Each year balance security release will be on a pro-rata basis from the Performance Guaranteed sum of Lakh i.e. Lakh to be released per year till it becomes Nil at the end of years of extended warranty period, if bidder performs satisfactorily as per Agreement.
- 2.1.8 The Bidder should submit a Power of Attorney as per the format authorizing the signatory of the Bidder.
- 2.1.9 In case the Bidder is a Consortium, the Members thereof should furnish a Power of Attorney in favour of the Lead Member in the prescribed format.
- 2.1.10 Any condition or qualifications or any other stipulations contained in the RFP shall render the Bid liable to rejection as a non-responsive Bid.
- 2.1.11 The Bid and all communications in relation to or concerning the Bidding Documents and the Bid shall be in [English] language.
- 2.1.12 The documents including this RFQ and all attached documents, provided by the Authority shall remain or become the property of the Authority and are transmitted to the Bidders solely for the purpose of

preparation and the submission of a Bid in accordance herewith. Bidders are to treat all information as strictly confidential and shall not use it for any purpose other than for preparation and submission of their Bid. The provisions of this Clause 2.1.12 shall also apply mutatis mutandis to Bids and all other documents submitted on-line by the Bidders, and the 'Authority' will not return to the Bidders any offered Bid, bid documents or any information provided along therewith.

2.1.13 A Bidder shall not have a conflict of interest (the "**Conflict of Interest**") that affects the on-line e-Bidding Process. Any Bidder found to have a 'Conflict of Interest' shall be disqualified. In the event of disqualification, 'The Authority' shall be entitled to forfeit the Bid Security (or EMD), as the case may be, as mutually agreed genuine pre-estimated loss and damage likely to have been suffered and incurred by 'The Authority' and not by way of penalty for, inter-alia, the time, cost and effort of 'The Authority', including consideration of such Bidder's proposal (the "**Damages**"), without prejudice to any other right or remedy that may be available to 'The Authority' under the Bidding Documents and/ or the Agreement or otherwise. Without limiting the generality of the above, a Bidder shall be deemed to have a "Conflict of Interest" affecting the Bidding Process, if;

- (i) the Bidder, its Member or Associate (or any constituent thereof) and any other Bidder, its Member or any Associate thereof (or any constituent thereof) have common controlling shareholders or other ownership interest; provided that this disqualification shall not apply in cases where the direct or indirect shareholding of a Bidder, its Member or an Associate thereof (or any shareholder thereof having a shareholding of more than 5% (five per cent) of the paid up and subscribed share capital of such Bidder, Member or Associate, as the case may be) in the other Bidder, its Member or Associate, is less than 5% (five per cent) of the subscribed and paid up equity share capital thereof; provided further that this disqualification shall not apply to any ownership by a bank, insurance company, pension fund or a public financial institution referred to in section 4A of the Indian Companies' Act, 1956. For the purposes of this Clause 2.1.12, indirect shareholding held through one or more intermediate persons shall be computed as follows:
 - (aa) where any intermediary is controlled by a person through management control or otherwise, the entire shareholding held by such controlled intermediary in any other person (the "**Subject Person**") shall be taken into account for computing the shareholding of such controlling person in the Subject Person; and
 - (bb) subject always to sub-clause (aa) above, where a person does not exercise control over an intermediary, which has shareholding in the Subject Person, the computation of indirect shareholding of such person in the Subject Person shall be undertaken on a proportionate basis; provided, however, that no such shareholding shall be reckoned under this sub-clause (bb) if the shareholding of such person in the intermediary is less than 26% of the subscribed and paid up equity shareholding of such intermediary; or
- (ii) Constituent of such Bidder is also a constituent of another Bidder; or
- (iii) such Bidder, its Member or any Associate thereof receives or has received any direct or indirect subsidy, grant, concessional loan or subordinated debt from any other Bidder, its Member or Associate, or has provided any such subsidy, grant, concessional loan or subordinated debt to any other Bidder, its Member or any Associate thereof; or
- (iv) Such Bidder has the same legal representative for purposes of this Bid as any other Bidder; or
- (v) Such Bidder, or any Associate thereof, has a relationship with another Bidder, or any Associate thereof, directly or through common third party/ parties, that puts either or both of them in a position to have access to each others' information about, or to influence the Bid of either or each other; or
- (vi) Such Bidder or any Associate thereof has participated as a consultant to 'The Authority' in the preparation of any documents, design or technical specifications of the Project.

Explanation:

For purposes of this RFP, Associate means, in relation to the Bidder/ Consortium Member, a person who controls, is controlled by, or is under the common control with such Bidder/ Consortium Member (the "**Associate**"). As used in this definition, the expression "control" means, with respect to a person which is a

company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the 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, by operation of law.

2.1.14 A Bidder shall be liable for disqualification and forfeiture of Bid Security(Earnest Money) if any legal, financial or technical adviser of the Irrigation & Waterways Department in relation to the Project is engaged by the Bidder, its Members or any Associate thereof, as the case may be, in any manner for matters related to or incidental to such Project during the Bidding Process or subsequent to the (i) issue of the LOA or (ii) execution of the Agreement. In the event any such adviser is engaged by the Selected Bidder or Contractor, as the case may be, after issue of the LOA or execution of the Agreement for matters related or incidental to the Project, then notwithstanding anything to the contrary contained herein or in the LOA or the Agreement and without prejudice to any other right or remedy of the Authority, including the forfeiture and appropriation of the Bid Security or Performance Security, as the case may be, which 'The Authority' may have there under or otherwise, the LOA or the Agreement, as the case may be, shall be liable to be terminated without 'The Authority' being liable in any manner whatsoever to the Selected Bidder or Contractor for the same. For the avoidance of doubt, this disqualification shall not apply where such adviser was engaged by the Bidder, its Member or Associate in the past but its assignment expired or was terminated 6 (six) months prior to the date of issue of **RFQ** for the Project. Nor will this disqualification apply where such adviser is engaged after a period of 3 (three) years from the date of commercial operation of the Project.

2.1.15 This RFP is not transferable.

2.1.16 Any award of the Project work pursuant to this RFP shall be subject to the terms of the Bid Documents.

2.1.17 All other Bid conditions shall include what has been stated in the notice inviting e-RFP.

2.2 Change in composition of a Consortium or JV

2.2.1 Where the Bidder is a Consortium or a JV, **change in composition of the Consortium or JV is not permitted** at any stage after submission of online e-bids.

2.3 Changes in Ownership

2.3.1 By submitting the Bid, the Bidder shall be deemed to have acknowledged and agreed that in the event of a change in control of a Consortium Member or an

Associate whose Technical Capacity and/ or Financial Capacity was taken into consideration for the purposes of short-listing and pre-qualification under and in accordance with the RFP, the Bidder shall be deemed to have knowledge of the same and shall be required to inform 'The Authority' forthwith along with all relevant particulars about the same and 'The Authority' may, in its sole discretion, disqualify the Bidder or withdraw the LOA from the selected bidder as the case may be. In the event such change in control occurs after signing of the "Agreement", it would, notwithstanding anything to the contrary contained in the "Agreement", be deemed to be a breach of the Agreement, and the same shall be liable to be terminated without 'The Authority' being liable in any manner whatsoever to the Contractor. In such an event, notwithstanding anything to the contrary contained in the Agreement, '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 Agreement or otherwise.

2.4 Cost of Bidding

The Bidders shall be responsible for all of costs associated with the investigations as a preparation for their Bids and their participation in the e-Bid Process. The 'Authority' will not be responsible or in any way liable for such costs, regardless of the conduct or outcome of the Bidding Process. However all Bid documents are made available free of cost in the e-Procurement Portal of State Government www.wbtenders.gov.in.

2.5 Site visit and verification of information

2.5.1 Bidders are encouraged to submit their respective e-Bids after visiting the work site and ascertain for themselves the site conditions, assess difficulties at location, surroundings, climate, availability of power, water and other utilities for construction, access to site, flood discharge records of river and its efforts on handling and storage of materials, weather reports, applicable laws and regulations, and any other matter considered relevant by them.

- 2.5.2 It shall be deemed that by submitting a Bid, the Bidder has:
- (a) Made a complete and careful examination of the entire Bidding Documents;
 - (b) Received all relevant information requested from the RFP Inviting Authority;
 - (c) accepted the risk of inadequacy, error or mistake in the information provided in the Bidding Documents or furnished by or on behalf of 'The Authority' relating to any of the matter referred to in Clause 2.5.1 above;
 - (d) satisfied itself about all matters, things and information including matters referred to in Clause 2.5.1 hereinabove necessary and required for submitting an informed Bid, execution of the Project in accordance with the Bidding Documents and performance of all of its obligations there under;
 - (e) acknowledged and agreed that inadequacy, lack of completeness or incorrectness of information provided in the Bidding Documents or ignorance of any of the matters referred to in Clause 2.5.1 hereinabove shall not be a basis for any claim for compensation, damages, extension of time for performance of its obligations, loss of profits etc. from 'The Authority', or a ground for termination of the Agreement by the Contractor;
 - (f) Acknowledged that it does not have a Conflict of Interest; and
 - (g) Agreed to be bound by the undertakings provided by it under and in terms hereof.
- 2.5.3 The 'Authority' shall not be made liable for any omission, mistake or error in respect of any of the above or on account of any matter or thing arising out of or concerning or relating to RFP, RFQ, the Bidding Documents or the Bidding Process, including any error or mistake therein or in any information or data given by 'The Authority'.

2.6 Verification and disqualification

- 2.6.1 The 'Authority' reserves the right to verify all statements, information and documents submitted by the Bidder in response to the RFQ, 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' there under.
- 2.6.2 'The Authority' reserves the right to reject any Bid and forfeit 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 supplementary information sought by 'the Authority' or the QBEC for Technical evaluation of the Bid.

Such misrepresentation/ improper response shall lead to the disqualification of the Bidder. If the Bidder is a Consortium or JV, then the entire Consortium or the JV and each Member may be disqualified/ rejected. If such disqualification / rejection occur after the Bids have been opened and the Lowest Bidder gets disqualified / rejected, then 'The Authority' reserves the right to:

- (i) Take action in accordance with Clauses 3.3.3 and 3.3.4; or (Special express permission of appropriate Government is mandatory)
 - (ii) take any such measure as may be deemed fit in the sole discretion of 'The Authority', including annulment of the Bidding Process and black listing of the erring bidder.
- 2.6.3 In case it is found during the evaluation or at any time before signing of **the Agreement** or after its execution and during the period of subsistence thereof that one or more of the pre-qualification conditions have not been met by the Bidder or the Bidder has made material misrepresentation or has given any materially incorrect or false information, the Bidder shall be disqualified forthwith if not yet appointed as the Contractor either by issue of the LOA or entering into of the Agreement, and if the Selected Bidder has already been issued the LOA or has entered into the 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 Contractor, as the case may be, without the 'Authority' being liable in any manner whatsoever to the Selected Bidder or Contractor. 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 Agreement, or otherwise.

B. DOCUMENTS

2.7 Contents of the e-RFP

2.7.1 This RFP comprises the Disclaimer set forth hereinabove, the contents as listed below, and will additionally include any Addenda issued in accordance with Clause 2.9.

Invitation for e-Bids

- Section 1. Introduction
- Section 2. Instructions to Bidders
- Section 3. Evaluation of Bids
- Section 4. Fraud and Corrupt Practices
- Section 5. Pre-Bid Conference
- Section 6. Miscellaneous

Appendices

Power of Attorney and other Formats to be filled up by the bidder duly authenticated and uploaded as pdf, with their e-bids as technical bid documents.

Technical Specifications & Standards

2.7.2 The **Agreement** and the **Technical Specifications & Standards with Schedules and Appendices** provided by 'The Authority' as part of the Bid Documents shall be deemed to be part of this RFP as contained in the subsequent para.

2.8 Clarifications

- 2.8.1 Bidders requiring any clarification on the RFP may notify 'the Authority' in writing or by Fax and e-mail in accordance with Clause 1.2.9. They should send in their queries before the date mentioned under Sl. 3 in the Schedule of Bidding Process specified in Clause 1.3. 'The Authority' shall endeavor to respond to the queries within 7 (seven) days prior to the Bid Due Date. The responses will be sent by Fax or e-mail. The Authority will forward all the queries and its responses thereto to all Bidders without identifying the source of query.
- 2.8.2 The Authority shall endeavor to respond to questions raised or clarifications sought by the Bidders. However, the Authority reserves the right not to respond to any question or provide any clarification, at its sole discretion, and nothing in this Clause shall be taken or read as compelling or requiring 'The Authority' to respond to any question or to provide any clarification.
- 2.8.3 The Authority may also on its own motion, if deemed necessary, issue interpretations and clarifications to all Bidders through "Corrigendum" to be uploaded in the e-procurement platform. All clarifications and interpretations issued by the Authority shall be deemed to be a part of the Bidding Document. 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.

2.9 Amendments of e-RFP

- 2.9.1 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 issuance of Addenda/Corrigenda.
- 2.9.2 Any Addendum/Corrigendum issued hereunder will be uploaded in the e-procurement platform in e-RFP Folder.
- 2.9.3 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\$.

\$ **While extending the Bid Due Date on account of an addendum, the Authority would have due regard for the time required by Bidders to address the amendments specified therein. In the case of significant amendments, at least 15 (fifteen) days shall be provided between the date of amendment**

and the Bid Due Date and in the case of minor amendments, at least 7(seven) days shall be provided.

C. PREPARATION AND SUBMISSION OF E-BIDS.

2.10 Submission of e-Bid

2.10.1 The Bidder shall provide all information sought under this e-RFP. The 'Authority' and the Departmental QBEC will evaluate only those Bids that are received on-line in the e-Procurement platform in the required formats completed in all respects.

2.10.2 Bids are to be submitted online through e-procurement website as stated in the(e-Notice or) RFQ. **All the documents uploaded by the Authority** is an integral part of the Agreement. Contractors /Bidders are required to upload the entire set of Bid documents along with other related documents as asked for in the RFQ [e-Notice, RFP, EPC Agreement, Corrigenda / Addenda, Drawings, Appendices, Schedules, BOQ etc.]

2.11 Encrypting and digitally signing of e-Bid

2.11.1 The Bidder shall submit their on-line Bids in the e-procurement system as defined in the e-notice of RFP (RFQ).

2.11.2 The technical documents accompanying the Bid shall be placed in pdf files in separate "**folder**" and marked as '**Forms**', '**RFP-EPC Agreement**', '**e-Notice**', '**Drawings**' in the on-line system of bid submission. The documents are to be uploaded on-line shall also include:

- (a) Power of Attorney for signing of Bid as applicable in the formats at **Appendix-I & II**;
- (b) Other **Appendices III to X, Forms 1 to 4**, duly authenticated scanned and uploaded as pdf files.
- (c) RFP and the EPC Agreement with all Appendices & Schedules with each page digitally signed by the bidder in the RFP-EPC folder.
- (d) e-Notice of RFP (RFQ), all Addenda or Corrigenda, if any, in the RFQ folder.

In addition to above, the Other Important documents(OID) have to be submitted on-line by the bidders in pre-defined technical pre-qual folders viz. '**Certificates**', '**Companydetails**', '**WorkCredentials**', '**FinancialCredentials**', '**Manpower&Machineries**', '**Drawings&Documents**' successively through the on-line e-procurement system by converting into PDF files as defined in the e-Notice (RFQ) under clause 4.2(A).

(*Every specified document is to be uploaded in above folders which are mandatory. Bid shall be treated as incomplete if any of the folders are unattended or left vacant)

2.11.3 If the e-bid submitted is erroneous and not as instructed above, the Authority assumes no responsibility for the misplacement or premature decrypting of the contents of the Bid submitted and consequent losses, if any, suffered by the Bidder.

2.11.4 Bids submitted by Fax, Telex, offline documents or e-mail shall not be entertained and shall be rejected. **No offline document other than those submitted with the online bid would be considered.**

2.11.5 Superintending Engineer, is designated as 'The Authority' having official e-mail address:may be used only answering queries.

2.12 Bid Due Date

2.12.1 Bids should be submitted on-line before the Bid Due Date through e-procurement system of Government of West Bengal in the manner and form as detailed in this notice of e-RFP.

2.12.2 The Authority may at his sole discretion extend the Bid Due Date or decide undertaking any other modifications by issuing an online Addendum/Corrigendum in accordance with Clause 2.9, uniformly applicable for all prospective Bidders through the e-Procurement platform.

2.13 Late submission of Bid

In the e-Procurement portal, bids cannot be submitted after the Bid Due date or the last date and time for Bid submission.

2.14 Contents of the e-Bid (Financial proposal)

2.14.1 The Bid shall be uploaded in the (**on-line**) **excel sheet** and shall consist of a Bid price to be quoted by the Bidder. The Bidder shall specify (in Indian Rupees) the Bid price offered by him/her to undertake the

Project **in accordance with this RFP and in terms of the provisions of the Agreement.** The overall value comprising all items and its sub-components are to be quoted by the bidder and bid offer is based on total amount in INR for total project BOQ.

- 2.14.2 Generally, the project work will be awarded to the Lowest Bidder (L1) in the financial offer.
- 2.14.3 The decrypting/opening of e-Bids and acceptance thereof shall be substantially in accordance with the terms of this e-RFP notice.
- 2.14.4 The uploaded '**EPC-Agreement**' shall be deemed to be part of the Bid document which is to be downloaded signed digitally and uploaded with the bid mandatorily.

2.15 Modification / Substitution / Withdrawal of e-Bid

- 2.15.1 A Bidder may modify, substitute or withdraw its e-Bid after submission, provided that such modification is re-submitted on-line in e-procurement portal prior to Bid Due Date. **No Bid shall be modified, substituted or withdrawn by the Bidder on or after the Bid Due Date.**
- 2.15.2 Any alteration/ modification in the Bid or additional information supplied prior to the Bid Due Date, unless the same has been expressly sought for by the Authority, shall be disregarded.

2.16 Rejection of e-Bid

- 2.16.1 Notwithstanding anything contained in this RFP, the Authority reserves the right to reject any Bid and to annul the Bidding Process and reject all Bids at any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reasons there for. In the event that the Authority rejects or annuls all the Bids, it may, in its discretion, invite all eligible Bidders to submit fresh on-line Bids (2nd or subsequent re-bids) with modified modalities, eligibility criteria etc.
- 2.16.2 'The Authority' reserves the right not to proceed with the Bidding Process at any time, without notice or liability, and to reject any Bid without assigning any reasons.

2.17 Validity of Bid

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

2.18 Confidentiality

Information relating to examination, clarification, evaluation and recommendation for the 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.

2.19 Correspondence with the Bidder

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

D. BID SECURITY

2.20 Bid Security

- 2.20.1 The Bidder shall furnish as part of its Bid, a Bid Security referred to in Clauses 2.1.6 hereinabove as Earnest Money Deposit only through on-line e-procurement portal through Net Banking or NEFT/RTGS transactions.
- 2.20.2 Payment of Bid Security also identified as EMD is compulsory for being considered as eligible and valid bid except if specially exempted by the Finance Department, Govt. of West Bengal. Traditional procedure of depositing EMD through off-line instruments like Bank Draft, Pay order, Bank Guarantee, Bankers Cheque etc. has been completely dispensed with for all e-RFP, e-procurements of the State Government, w.e.f 1st September, 2016. Intending bidders desiring to make payment of Earnest Money (EMD) have to transaction in

the on-line system of e-RFP and should beforehand read the instructions carefully, particularly in the challan generated in the system of e-procurement, if opted for EMD payment through RTGS/NEFT.

2.20.3. Login by bidder:

- a. A bidder desirous of taking part in a e-RFP shall login to the e-Procurement portal of the Government of West Bengal using his/her login ID and password by a valid DSC.
- b. He/she will select the e-tender /RFP to bid and initiate payment of pre-defined EMD for that e-RFP by selecting from either of the following payments modes:
 - i. Net-Banking (any of the banks listed in the ICICI Bank Payment Gateway) in case of payment through ICICI Bank Payment Gateway;
 - ii. RTGS/NEFT in case of off-line payment through bank accounts in any Bank approved by RBI in India.

2.20.4. Bid Security (EMD) submission procedure:

- a. Payment by Internet banking (any of the listed banks) only through ICICI Bank Payment Gateway:
 - i. On selection of Internet banking as the payment mode, the bidder will be directed to ICICI Bank Payment Gateway webpage (along with a string containing a Unique ID) where he/she will select the Bank through which he/she wants to do the on-line EMD transaction.
 - ii. Bidders will make the payment after entering his/her Unique ID and password of the bank to process the e-transaction.
 - iii. Bidders will receive a confirmation message regarding success/failure of the transaction.
 - iv. If the transaction is successful, the amount paid by the bidder will get credited in the respective Pooling account of the State Government maintained with the Focal Point Branch of ICICI Bank at R.N Mukherjee Road, Kolkata for collection of EMD against unique codes for identification of the e-RFP Inviting Authority or the 'Authority'.
 - v. If the transaction is failure, the bidder will again try for payment by going back to the first step.
- b. Payment through RTGS/NEFT:
 - i. On selection of RTGS/NEFT as the payment mode, the e-procurement portal will show a pre-filled challan having the details to process RTGS/NEFT transaction.
 - ii. The bidder will print the challan and use the pre-filled information to make RTGS/NEFT payment using his/her own Bank account.
 - iii. Once payment is made, the bank would provide an "**UTR remittance number**" for successful transaction with which the bidder will come back to the e-Procurement portal after expiry of 2 to 3 bank working days to enable the NEFT/RTGS process to complete, in order to verify the payment made and continue with his/her bidding process.
 - iv. If verification is successful, the fund get credited to the respective Pooling account of the State Government maintained with the Focal Point Branch of ICICI Bank at R.N Mukherjee Road, Kolkata for collection of Bid Security (EMD).
 - v. Hereafter, the bidder will go to e-Procurement portal for final e-submission of his/her bid within pre-assigned last date of submission of e-RFP.
 - vi. If the payment verification is unsuccessful, the amount will be returned automatically by the system to the bidder's bank account.

Note: Bid Security payment made through RTGS/NEFT would require additional 2 to 3 bank working days after date of physical transaction in the bank before the procedure is completed for enabling the bidder to continue with the bidding process in the on-line e-RFP final bid submission. Thus, the bidder is to take precaution in case of RTGS/NEFT transfers so that the entire process of submission of e-RFP is completed within last date of on-line submission of his/her e-bid. However, Net-banking transaction through ICICI bank by their Net Banking payment Gateway would be on real time basis.

2.20.5. Refund/Settlement Process for Bid Security (EMD):

- i. After opening of his/her bids and technical evaluation of the same by the QBEC through electronic processing in the e-Procurement portal of the State Government, the e-bid inviting authority will declare the status of the bid as successful or unsuccessful which will be made available along with the details of the unsuccessful bidders to ICICI Bank by the e-Procurement portal through web services.
 - ii. On receipt of the information from the e-Procurement portal, the Bank will refund through an automated process the Bid Security of the bidders disqualified at the technical evaluation to the respective bidders' bank accounts from which they made the Bid Security on-line transaction. Such refund will take place within T+2 Bank working days where T will mean the date on which information on rejection of bid is uploaded to the e-Procurement portal by the e-bid Inviting Authority.
 - iii. Once the financial bid evaluation is electronically processed in the e-Procurement portal, EMD of the technically qualified bidders other than that of the L1 and L2 bidders will be refunded, through an automated process, to the respective bidders' bank accounts from which they made the payment transaction. Such refund will take place within T+2 Bank working days where T will mean the date on which information on rejection of financial bid is uploaded to the e-Procurement portal by the e-bid inviting authority. However, the L2 bidder should not be rejected till the LOI process is successful.
 - iv. If the L1 bidder accepts the LOI and the same is processed electronically in the e-Procurement portal, Bid Security of the L2 bidder will be refunded through an automated process, to his/her bank account from which he/she had made the payment transaction. Such refund will take place within T+2 Bank working days where T will mean the date on which information on Award of Contract (AOC) to the L1 bidder is uploaded to the e-Procurement portal by the e-bid Inviting Authority.
 - v. As soon as the L1 bidder is awarded the contract (AOC), the same is processed electronically in the e-Procurement portal for transfer to Government Receipt under Public Accounts through IFMS in the GRIPS (Government Receipt Portal System) where under the performance security deposit will also be collected in connection with the work.
 - vi. All refunds will be made mandatorily to the Bank account from which the payment of Bid Security were initiated.
 - vii. If the RFP is cancelled, then the Bid Security would be reverted to the original bidders account automatically after such cancellation order is affected online by the e-Request for Proposal (e-RFP) Inviting Authority.
 - viii. Once the Bid Security of L1 bid gets transferred to the GRIPS of the State Government, the RFP Inviting Authority using his/her e-token and valid DSC shall enter the GRIPS portal to identify the EMD credited against the particular RFP by taking out a hard copy of the credit confirmation containing the GRN No. and forward to the Treasury concerned, the designated Executive Engineer (Engineer-in-Charge) for future raising of refund back after completion of defect liability period (Security Period) or the extended warranty period.
- 2.20.6 The 'Authority' shall be entitled to forfeit and appropriate the Bid Security as Damages inter alia in any of the events specified in Clause 2.20.7 herein below. The Bidder, by submitting its Bid pursuant to this RFP, shall be deemed to have acknowledged and confirmed that the 'Authority' will suffer loss and damage on account of withdrawal of its Bid or for any other default by the Bidder during the period of Bid validity as specified in this RFP. No relaxation of any kind on Bid Security (EMD) shall be given to any Bidder except what is already notified prior to RFQ.
- 2.20.7 The Bid Security shall be forfeited as Damages without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and/or under the Agreement, or otherwise, under the following conditions:
- (a) If a Bidder submits a non-responsive Bid;
 - (b) If a Bidder engages in a corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice as specified in Clause 4 of this RFP;
 - (c) If a Bidder withdraws its Bid during the period of Bid validity as specified in this RFP and as extended by mutual consent of the respective Bidder(s) and the Authority;
 - (d) In the case of Selected Bidder, if it fails within the specified time limit –
 - (i) to sign and return the duplicate copy of LOA;

- (ii) to sign the Agreement; or
 - (iii) to furnish the Performance Security within the period prescribed there for in the Agreement; or
- (e) In case the Selected Bidder, having signed the Agreement, commits any breach thereof prior to furnishing the Performance Security.

3. EVALUATION OF E-BIDS

3.1 Opening and Evaluation of e-Bids

- 3.1.1 The Authority shall decrypt the e-Bids on the Due Date, at the time specified in Clause 13.4 of RFQ and in the presence of the Bidders who choose to attend.
- 3.1.2 The Quotation cum Bid Evaluation Committee (QBEC) will subsequently examine and evaluate the Bids in accordance with the provisions set out in the clause 13.5 of RFQ.
- 3.1.3 To facilitate evaluation of Bids, the Quotation cum Bid Evaluation Committee (QBEC) may, at its sole discretion, seek clarifications in writing from any Bidder regarding its Bid.

3.2 Tests of responsiveness

- 3.2.1 Prior to evaluation of Bids, the Authority shall determine whether each Bid is responsive to the requirements of this RFP. A Bid shall be considered responsive only if:
- (a) it is received as per the format at Appendix & Annexure as defined in the RFQ;
 - (b) it is received by the Bid Due Date including any extension thereof pursuant to Clause 2.9.3;
 - (c) it contains all the information (complete in all respects) as requested in this RFP and/or Bidding Documents (in formats same as those specified);
 - (d) it does not contain any condition or qualification; and
 - (e) it is not non-responsive in terms hereof.
- 3.2.2 The Departmental Quotation-cum-Bid Evaluation Committee (QBEC) reserves the right to reject any Bid which is non-responsive and no request for alteration, modification, substitution or withdrawal shall be entertained by the Authority in respect of such Bid.

3.3 Selection of Bidder

- 3.3.1 Subject to the provisions of Clause 2.16.1, the Bidder whose Bid is adjudged as responsive in terms of Clause 3.2.1 and who quotes the lowest price shall be declared as the selected Bidder (the "**Selected Bidder**"). In the event that the QBEC rejects or annuls all the Bids, it may, in its discretion, invite all eligible Bidders to submit fresh on-line Bids hereunder.
- 3.3.2 In the event that two or more Bidders quote the same bid price (the "**Tie Bidders**"), 'The Authority' shall identify the Selected Bidder by online reverse e-auction-cum-Tender, which shall be conducted with prior notice through sms and e-mail to the bidders. No personal interaction and negotiation is permitted.
- 3.3.3 In the event of withdrawal of offer by the Lowest Bidder, or failing to break "Tie bids" even after undertaking reverse e-Auction-cum-Tender, the QBEC shall annul the Bidding Process and invite fresh e-RFP.
- 3.3.4 After selection and obtaining administrative approval of the appropriate Government, a Letter of Award (the "**LOI/LOA**") shall be issued, in duplicate, by the Chief Engineer,Irrigation & Waterways Directorate to the selected Bidder and the selected Bidder shall, within 15 (fifteen) days of the receipt of the LOA, sign and return the duplicate copy of the LOA in acknowledgement thereof. In the event the duplicate copy of the LOA duly signed by the Selected Bidder is not received by the stipulated date, 'The 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, and the invite fresh e-RFP (RFQ).
- 3.3.5 After acknowledgement of the LOA as aforesaid by the Selected Bidder, it shall cause the Contractor to execute the Agreement within the period prescribed in Clause 1.3. The Selected Bidder shall not be entitled to seek any deviation, modification or amendment in the Agreement (which was uploaded with the RFQ).

3.4 Contacts during Bid evaluation

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 consideration.

4. FRAUD AND CORRUPT PRACTICES

- 4.1 The Bidders and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Bidding Process and subsequent to the issue of the LOA and during the subsistence of the Agreement. Notwithstanding anything to the contrary contained herein, or in the LOA or the Agreement, the 'Authority' may reject a Bid, withdraw the LOA, or terminate the Agreement, as the case may be, without being liable in any manner whatsoever to the Bidder or Contractor, as the case may be, if it determines that the Bidder or Contractor, 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 Engineer-in-charge 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 Agreement, or otherwise.
- 4.2 Without prejudice to the rights of the Authority under Clause 4.1 hereinabove and the rights and remedies which the 'Authority' may have under the LOA or the Agreement, or otherwise if a Bidder or Contractor, 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 Agreement, such Bidder or Contractor shall not be eligible to participate in any tender or RFP issued by the 'Authority' during a period of 1(one) year from the date such Bidder or Contractor, 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.
- 4.3 For the purposes of this Clause 4, the following terms shall have the meaning hereinafter respectively assigned to them:
- (a) "corrupt practice" means
 - (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Bidding Process (for avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of the 'Authority' who is or has been associated in any manner, directly or indirectly, with the Bidding Process or the Bid Acceptance or has dealt with matters concerning the Agreement or arising there from, 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 the Clause 2.1.14 of this RFP, engaging in any manner whatsoever, whether during the Bidding Process or after the issue of the LOA or after the execution of the Agreement, as the case may be, any person in respect of any matter relating to the Project or the LOA or the Agreement, who at any time has been or is a legal, financial or technical adviser of 'the Authority' in relation to any matter concerning the Project;
 - (b) "Fraudulent practice" means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the Bidding Process;
 - (c) "coercive practice" means impairing or harming, or threatening to impair or harm, directly or indirectly, any person or property to influence any person's participation or action in the Bidding Process;
 - (d) "undesirable practice" means (i) establishing contact with any person connected with or employed or engaged by 'The 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

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

5. PRE-BID CONFERENCE

- 5.1 Pre-Bid conferences of the Bidders shall be convened at the designated date i.e. Day 5 and again on Day 21 from the date of publication of the notice of RFP, at 14.30 Hours (IST) and in the office of the RFP Inviting Authority. Only those authorized persons who have downloaded the online e-RFP documents shall be allowed to participate in the Pre-Bid Conferences. A maximum of four representatives of each Bidder shall be allowed to participate on production of authorization letter from the original Bidder.
- 5.2 During the course of Pre-Bid conference(s), the Bidders will be free to seek clarifications and make suggestions for consideration of the Authority. The Authority shall endeavor to provide clarifications and such further information as it may, in its sole discretion, consider appropriate for facilitating a fair, transparent and competitive electronic Bidding Process. **However the assessed item rates derived in the Departmental Feasibility Report would not be divulged or Rate Analysis shown at any stage to any bidder or his agent or representative.**

6. MISCELLANEOUS

- 6.1 The Bidding Process shall be governed by, and construed in accordance with, the laws of India within the jurisdiction of Courts at [Kolkata] shall have exclusive jurisdiction over all disputes arising under, pursuant to and/ or in connection with the Bidding Process. Any Dispute which is not resolved amicably by conciliation, as provided in Clause 26.2 of the Agreement, Settlement of Disputes:
Except where otherwise provided in the contract, all questions and disputes relating to the meaning of the specifications, designs, drawings and instructions hereinbefore mentioned and as to the quality of workmanship or materials used on the work or as to any other question, claim, right, matter or thing whatsoever, in any way arising out of relating to the contracts, designs, drawings, specifications, estimates, instructions, orders or these conditions or otherwise concerning the works, or the executions or failure to execute the same, whether arising during the progress of the work, or after the completion or abandonment thereof shall be dealt with as mentioned hereinafter:
If the contractor considers any work demanded of him/her to be outside the requirements of the Agreement, or disputes any drawing, record or decision given in writing by the Engineer-in-Charge or any matter in connection with or arising out of the Agreement or carrying out of the work to be unacceptable, he/she shall promptly within 15 days request the Chairman of the Departmental Dispute Redressal Committee formed by Government, in writing for written instruction or decision. Thereupon, the Dispute Redressal Committee shall give its written instructions or decision within a period of one month from the date of receipt of the contractor's letter.
Above provisions will be applicable irrespective of
- 6.2 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) Retain any information and/ or evidence submitted to the 'Authority' by, on behalf of, and/ or in relation to any Bidder; and/ or
 - (d) Independently verify, disqualify, reject and/ or accept any and all submissions or other information and / or evidence submitted by or on behalf of any Bidder.
- 6.3 It shall be deemed that by submitting the Bid, the Bidder agrees and releases the '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, pursuant hereto and/ or in connection with the Bidding Process and waives, to the fullest extent permitted by applicable laws, any and all rights and/ or claims it may have in this respect, whether actual or contingent, whether present or in future.
- 6.4 The Bidding Documents and RFP are to be taken as mutually explanatory and, unless otherwise expressly provided elsewhere in this RFP, in the event of any conflict between them, the priority shall be in the following order:
- (a) the Bidding Documents ;
 - (b) the RFP.
- i.e. the Bidding Documents at (a) above shall prevail over the RFP at (b) above.

Appendices

APPENDIX – I

Power of Attorney for signing of Bid

(Refer Clause 2.1.8 contained in the Instruction to Bidders)

Know all men by these presents, I/We, (name of the firm and address of the registered office) do hereby irrevocably constitute, nominate, appoint and authorise Mr./Ms (Name), son/daughter/wife of and presently residing at....., who is presently employed with us/ the Lead Member of our Consortium and holding the position of, as our true and lawful attorney (hereinafter referred to as the "Attorney") to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our bid for the ***** Project proposed or being developed by the Governor of the State of West Bengal represented by the Superintending Engineer,, Irrigation & Waterways Directorate, Government of West Bengal, ('The Authority') including but not limited to signing and submission of all applications, 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 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 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, date, designation and address of the bidder/(s) & Contact No. e-mail ID)

Witnesses: (Full Name with Address & Contact nos.)

1.

2.

Accepted

Notarized

(Signature, name with date, designation and address of the Attorney)

Notes:

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

(Note: To be uploaded on-line during bid submission in the 'APPENDIX' folder under Technical / Pre-Qual covers)

APPENDIX-II

Power of Attorney for Lead Member of Consortium

(Refer Clause 2.1.9 contained in the Instruction to Bidders)

Whereas the Governor of West Bengal represented by ***** (“The Authority”) having its Head Quarters & Principal office at *****; West Bengal (“The Authority”) has invited bids from pre-qualified and short-listed parties for the ***** Project (the “Project”).

Whereas,,, and (collectively the “Consortium”) being Members of the Consortium are interested in bidding for the Project in accordance with the terms and conditions of the Request for Proposal 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 ‘The 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, and M/s....., having our registered office at, (hereinafter collectively referred to as the “Principals”) do hereby irrevocably designate, nominate, constitute, appoint and authorize 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”) and hereby irrevocably authorize the Attorney (with power to sub-delegate) to conduct all business for and on behalf of the Consortium and any one of us during the bidding process and, in the event the Consortium is awarded the Contract, during the execution of the Project, and in this regard, to do on our behalf and on behalf of the Consortium, all or any of such acts, deeds or things as are necessary or required or incidental to the submission of its bid for the Project, including but not limited to signing and submission of all applications, 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 Agreement is entered into with the Authority.

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

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

For

(Signature, Name & Title)

For

(Signature, Name & Title)

For

(Signature, Name & Title)

(Executant/s)

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

Notes:

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

(Note: To be uploaded on-line during bid submission in the 'APPENDIX' folder under Technical / Pre-Qual covers)

APPENDIX-III

Brief description of the project specific Architecture, Plan & programme of implementation (including layout, along with diagram drawing in separate sheets in pdf)

“(Name of the Project.....).....”

- (a)
 - 1. The Project '**Construction Period**' as per RFP = days
 - 2. Defect Liability Guarantee Period post construction = days
 - 3. Extended Warranty defect liability Operation & Maintenance = days
- (b) Programme of implementation in a flow chart, either in bar chart or in CPM-PERT Networking method is proposed hereunder:

Executive Engineer,.....Division

Signature and seal of the Bidder

(Note: This Appendix is to be uploaded on-line during bid submission in the 'APPENDIX' folder under Technical / Pre-Qual covers)

APPENDIX-V

List of Technical Manpower

Bidders should provide the names of suitably qualified personnel to meet the requirements for proper execution of the works. The data on their experience should be supplied using the Form below for each personnel

Sl no	Name of personnel	Title of position	Experience in the particular field	Professional qualification
A	Project Construction – Technical Manpower			
B	Project Defect Liability Period Maintenance Period - Manpower			
C.	Technical Expert Trainers - Manpower			
D.	Organization / company profile, hierarchy, organization setup, Management of Company (Project Management & Finance)			

Signature of the bidder with seal

(Note: To be uploaded on-line during bid submission in the 'MANPOWER' folder under OID covers)

APPENDIX-VI**List of Machineries & equipments**

Sl. No.	Name of Machineries	Model No. / Make	Quantity	Ownership/ License
1.				
2.				
3.				

Signature of the bidder with seal

(Note: To be uploaded on-line during bid submission in the 'MACHINERY' folder under OID covers)

Annexure-III

(Enclosure to I&WD Notification No. 32-(W)/2016-17 dated 16.11.2016)

EPC

(ENGINEERING PROCUREMENT AND CONSTRUCTION)

AGREEMENT

OFFICE OF THE
GOVERNMENT OF WEST BENGAL
IRRIGATION & WATERWAYS DIRECTORATE

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Overview of the framework

Experience suggests that annuity based projects are comparatively expensive, while conventional contracts are prone to time and cost overruns. This Department is often required to execute certain special category of engineering procurement and construction works where rates and in-house expertise is not adequately available enough knowhow of or the latest modern Technology is unavailable. It has, therefore, been decided to adopt the Engineering, Procurement, Construction (EPC) mode of construction predominantly being used in major projects throughout the India in the MORTH, Railways, CPWD & PWD and in the developed countries.

Experience with item rate contract for complex projects has been adverse

Thus need has arisen in Irrigation & Waterways Department to frame a standard guideline for execution of EPC works through invitation of EOI to be followed by e-Request for Proposal by a transparent procedure for selection of bidders considering efficient delivery, technical precossness, and time bound requirement which are the need of the hour. The EOI Inviting authority (Superintending Engineer or the Executive Engineer) shall prepare notice inviting EOI based on the approved standard e-Notice Inviting Bid document (RFQ).

General guidelines for formulating selection procedure of contractors/agencies for implementation of Engineering Procurement & Construction (EPC) works contracts of *special nature* through the e-procurement system comprise two parts:

Firstly, by inviting Expression of Interests (EOI) to be followed by floating on-line '**Request for Proposals**' (RFP) to obtain bids from eligible & prospective interested bidders for execution of works financed out of State Government's resources.

The following four considerations would guide the need for inviting EOI:-

A modern EPC framework is a pre-requisite for efficient delivery mechanism

- (a) Absence of approved and verified rates of the work in any Schedule of Rates (SoR) of this Department, other Engineering / works Departments under Union Govt. as well as State Govt. bodies due to unavailability of in-house expertise to arrive at such rates;
- (b) The need for high quality specialist works with efficient delivery mechanism;
- (c) The need for economy and time bound implementation;
- (d) Importance of transparency in the selection process of bidders through the existing e-Procurement System of the State Government;

Need for EPC contracts

Experience shows that item rate contracts are prone to excessive time and cost overruns. The reasons for their poor performance include inadequate project preparation and estimation coupled with allocation of construction risks largely to the Government. For these reasons, the item rate mode of contracting has been abandoned in the developed world. The very purpose for inviting an EOI is to identify and accept the specialized technology required for implementation of the project through preparation of a '**Feasibility Report**' containing assessed tentative project cost, terms of reference for framing of document for subsequent Request for Proposal (RFP). On the basis of responses received

Item rate contracts are outdated

there from and evaluation done of the bids received, the requirement for preparation of **Feasibility Report** will be short listed for further consideration.

In the second stage, the short-listed agencies in the EoI along with all other interested bidders not having originally participated in the EoI may submit (**e-Request for Proposals or RFP comprising Technical and Financial Proposals**). The bidder is required to firstly possess the Technical qualification minimum criteria of the RFQ for being evaluated and determined as eligible for financial bid stage by the Departmental Quotation-cum-Bid Evaluation Committee (QBEC). Details of minimum eligibility and credential criteria for qualification in Request for Qualification (RFQ) are to be provided in the RFP document. The final L1 bidder/ agency shall be selected for execution of work and contract awarded based on financial bids if the L1 bid is within (+-) 5% of the assessed cost in the Feasibility Report..

Based on the EOI evaluation, the “*Feasibility Report*” document would be finalised by the Quotation cum Bid Evaluation Committee (QBEC) set up in the Department for the purpose before proceeding with subsequent step of going for RFP.

The RFP would comprise technical pre-qualification part herein identified as RFQ (Request for Qualification) after which the financial bid will be opened.

Administrative approval and financial sanction from the competent authority in the Irrigation & Waterways Department as stipulated in the West Bengal Financial Rules shall always be required after finalization of bid value obtained through the ‘Request for Proposal’ upon adding 3% contingency charges. If the L1 bid so obtained in the e-RFP is beyond 5% of the assessed project cost, the bidder would be asked to lower down the bid price through reserve e-auction cum tender. Even if after such negotiation with L1 bidder the bid price is higher than 5%, the bid may be accepted by appropriate authority only after obtaining rate analysis from the L1 bidder and subject to its acceptance by the QBEC and the Departmental Tender Committee.

Model EPC Agreement

The drawbacks of item rate contracting can be addressed by adopting the EPC approach that relies on assigning the responsibility for investigations, design and construction to the contractor for a lump sum price determined through competitive bidding. The objective is to ensure implementation of the project to specified standards with a fair degree of certainty relating to costs and time while transferring the construction risks to a private sector contractor.

With a view to enable a transparent, fair and competitive roll out of engineering projects, a model EPC Agreement has been evolved. This Model EPC Agreement incorporates international best practices and provides a sound contractual framework that specifies the allocation of risks and rewards, equity of obligations between Government and the Contractor, precision and predictability of costs, force majeure, termination and dispute resolution, apart from transparent and fair procedures.

The Model EPC Agreement incorporates best practices

The Model EPC Agreement specifies the required design and performance standards and allows the Contractor to plan, programme design and construct the project using best

practices and innovation to optimise on efficiency and economy as compared to the rigidity of the item rate contract that relies on a single design provided by the Government. The Contractor also has full freedom to plan the construction schedule for efficient use of its manpower, equipment and other resources while payments are linked to specified stages of construction as compared to payment for individual items/ units under the item rate contracts. Awarding contract for a lump sum price ensures predictability and financial discipline, both for the contractor and the Government. Moreover, clearly stated obligations and risks of the respective parties help in achieving timely completion of the project while minimizing disputes.

Technical parameters

Unlike the normal practice of focusing on construction specifications, the technical parameters proposed in the Agreement are based mainly on output specifications. Only the core requirements of design, construction, operation and maintenance of the Project that have a bearing on the quality and safety of assets are to be specified and enough room would be left for the contractor to innovate and add value.

Technical Parameters based on output specifications

In sum, the framework focuses on the ‘what’ rather than the ‘how’ in relation to the asset to be delivered by the contractor. This would provide the requisite flexibility to the contractor in evolving and adopting innovative designs without compromising on the quality of service for users.

Contract Price

The Contract Price is a fixed lump sum amount for construction of the Project. For maintenance during defect liability period of five years, the contractor will bid in his offer of the Contract Price for the second, third, fourth and fifth year of maintenance contract to be L1 during RFP in the financial bid in the e-procurement.

Contract price to be lump sum

Contract period

The contract period is normally determined on a project-specific basis depending on the volume of construction work involved. However, the Agreement provides the flexibility of including the maintenance of the Project in the scope of the project. **A five-year defect liability maintenance period is considered appropriate for only specific project sub-components.** The Contractor shall carry out routine operation and maintenance, warranty for all types of sub components of the Project, safety & security including prompt repairs during the entire maintenance period. The Agreement lays down quantifiable maintenance requirements and performance standards. A mechanism for dealing with the non-performance of maintenance obligations by the Contractor has been provided in the Agreement

Contract period to include Maintenance and Defect liability period after project completion

Selection of contractor

Selection of the contractor will be based on open competitive bidding through e-Procurement System of the State Government. All project parameters such as the contract period, price adjustments and technical parameters are to be clearly stated upfront, and

Comparative bidding on single parameter will be the norm

short-listed bidders will be required to specify only the lump sum price for the Project. The bidder who seeks the lowest payment should win the contract.

Risk allocation

As an underlying principle, risks have been allocated to the parties that are best suited to manage them. Project risks have, therefore, been assigned to the private sector to the extent it is capable of managing them. The transfer of such risks and responsibilities to the private sector would increase the scope of innovation leading to efficiencies in costs and services.

Risk alleviation and mitigation is critical to engagement with private sector

Projects risks such as effective defect free functioning of the system for long periods and technical risks relating to design, construction and maintenance have been assigned to the Contractor. The Government accepts its liability to suitable compensate the Contractor for any long undue delays in handing over the RoW, other statutory clearances and shifting of utilities.

Design and Construction /commissioning

The EPC agreement specifies the dates on which different sections of the Project land/Rights of Way will be handed over to the Contractor. It defines the scope of the Project with precision and predictability to enable the Contractor to determine its costs and obligations. It also lays down a ceiling of 5% of contract price to cater for any changes in the scope of project, the cost of which the Government will bear, with prior permissive of Finance Department, Government of West Bengal, the appropriate Government.

Incentives and penalties to ensure timely completion and maintenance

The Contractor shall carry out survey and investigations and also develop designs of software and drawings in conformity with the specifications and standards laid down in the Agreement. Departmental engineers shall review the design and drawings to ensure that these conform to the scope of the project, design standards and specifications. The EPC agreement also stipulates provisions for quality control and assurance and implementation of the project in a time bound manner with precise planning through Networking.

A provision has been made for damages which the Contractor shall pay to Government for not achieving the prescribed physical milestones, which being the essence of the agreement.

Maintenance during Defect liability Defect Liability Period

The Agreement provides performance based standards for the maintenance of the project. The Contract Price is a fixed lump sum amount for construction of the Project. For maintenance, the contractor will get from the end of first year for the second, third, fourth, fifth and sixth years for which the rates would be included in Bid Price separately in the e-procurement. **A five-year defect liability maintenance period is considered appropriate for only specific project sub-component.** The Contractor shall carry out routine operation and maintenance, warranty for all types of sub components of the Project, safety & security against theft and pilferage including prompt repairs during the entire maintenance period.

Maintenance standards will be strictly enforced

Maintenance work during defect liability period performance is to be inspected for evaluation by the Engineer-in-charge once every month, and deductions made for failure or defects in operation, security and maintenance.

Force majeure

The EPC agreement contains the requisite provisions for dealing with force majeure events. In particular, it provides protection to the Contractor against political actions that may have adverse effect on timely completion of the project.

Contractors will be protected against arbitrary actions

Termination

Termination payments have been quantified precisely. Political force majeure and defaults by the Authority are proposed to qualify for adequate compensatory payments to the contractor and thus guard against any discriminatory or arbitrary action by the Government. In the event the Government terminates the agreement on account of any of the specified default of the Contractor, the Agreement allows the Government to forfeit the performance security and retention money of the Contractor.

Pre-determined termination payments should provide predictability

Monitoring and supervision

Day-to-day interaction between the Authority and the contractor has been kept to the bare minimum following a 'hands-off' approach. Checks and balances have, however, been provided to ensure full accountability of the Contractor.

A credible and fair arrangement for supervision is essential

Monitoring and supervision of construction and maintenance of the project is proposed to be undertaken by the Executive Engineer, Assistant Engineer, and Junior Engineer engaged by the the Department.

Milestone based payments

A simple and rational method for estimating interim running account payment to the Contractor has been provided in the Agreement. It ensures that R/A payments are made for works conforming to the Agreement and commensurate with the stages of completion of works. Works have been divided into sub-components and maintenance contract after one year Defects Liability period. Each item of work has been further sub-divided into stages and payment will be made for each completed stage of work certified by the Engineer-in-Charge.

Defect liability period

Though initially after completion of work a defects liability period of one year (12 months) is specified in the Agreement, an extended Defect liability Defects Liability Period of years has been specified in the Agreement in order to provide additional comfort to the Government.

Miscellaneous

The Agreement also addresses issues relating to Dispute Resolution, suspension of rights, and Change in Law, Insurance and Indemnity.

An effective dispute resolution mechanism is critical

Conclusion

Together with the Schedule, the proposed framework of the Model EPC Agreement incorporates international best practices and embodies an enabling contractual framework in an efficient, economical and competitive environment. It will minimize, if not eliminate, the time and cost over-runs, characteristic of the extant item rate contract. Further, this will enable a faster roll-out of the project with least cost and greater efficiency while minimizing the potential for unguided discretion that is synonymous with malpractices.

Part I
Preliminary

ENGINEERING, PROCUREMENT AND CONSTRUCTION AGREEMENT

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

BETWEEN The Governor of the State of West Bengal
acting through the,

OFFICE OF THE SUPERINTENDING ENGINEER,.....CIRCLE,
IRRIGATION & WATERWAYS DIRECTORATE

Having his office at
Phone & Fax No-
e-mail ID-

(hereinafter referred to as the “**Authority**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) **of One Part;**

AND

{.....,} means the selected bidder having its registered office
at.....

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

WHEREAS

:

(A) The Government of West Bengal in the Irrigation & Waterways Department has entrusted “the Authority”

.....
....., West Bengal.

(B) The Authority had resolved to implement the Project “(

.....) of Irrigation & Waterways
Department, Government of West Bengal” (hereinafter called the ‘**Project**’ in West
Bengal by Engineering, Procurement, Construction (“EPC”) basis in accordance
with the terms & conditions to be set forth in an agreement to be entered into.

(C) The Authority had accordingly invited through electronic Procurement
System RFP prescribing the technical and commercial terms and conditions,

and invited e-bids by its Request for Qualification-cum-Request for Proposal. No.**/EPC OF 2016-17 *** dated ***** .

The first stage it invites “Request For Qualification (RFQ)-cum-Request For Proposal (RFP)”stage is for short listing of bidders for EPC of the above referred section of ‘**Project**’ on specified technical terms.

- (D) The second stage is invites “ Request For Qualification (RFQ)-cum -Request For Proposal (RFP)”stage is for selection of the “ lowest financial proposal ” from the bidders shortlisted pursuant to the RFQ stage for undertaking the Project.
- (E) After evaluation of the bids received, the Authority had accepted the bid of the selected bidder and issued its Letter of Acceptance No. dated, (hereinafter called the “LOA”) to the selected bidder for rehabilitation and augmentation of the above section of ‘**Project**’ at the contract price specified hereinafter, requiring the selected bidder to inter alia:
 - (i) deliver to the Authority a legal opinion from the legal counsel of the selected bidder with respect to the authority of the selected bidder to enter into this Agreement and the enforceability of the provisions thereof, within 10 (ten) days of the date of issue of LOA; and
 - (ii) execute this Agreement within 15 (fifteen) days of the date of issue of LOA.
- (F) The Contractor has fulfilled the requirements specified in Recital (E) above;

NOW THEREFORE in consideration of the foregoing and the respective covenants and agreements set forth in this Agreement, the sufficiency and adequacy of which is hereby acknowledged, the Authority hereby covenants to pay the Contractor, in consideration of the obligations specified herein, the Contract Price or such other sum as may become payable under the provisions of the Agreement at the times and in the manner specified by the Agreement and intending to be legally bound here by, the parties agree as follows:

ARTICLE 1

DEFINITIONS AND INTERPRETATION

1.1 Definitions

The words and expressions beginning with capital letters and defined in this Agreement (including those in Article 27) 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 Interpretation

1.2.1 In this Agreement, unless the context otherwise requires,

- (a) references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;
- (b) references to laws of 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 State of West Bengal 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 “implementation” include, unless the context otherwise requires, survey and investigation, design & developing, engineering, procurement, supply of plant, materials, equipment, labour, delivery, transportation, installation, processing, fabrication, testing, and commissioning of the Project, including maintenance during the Construction Period, removing of defects, if any, 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, up-gradation and other activities incidental thereto during the Construction Period, 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;
- (i) any reference to day shall mean a reference to a calendar day;

- (j) references to a “business day” shall be construed as a reference to a day (other than a Sunday) on which banks in Kolkata are generally open for business;
- (k) any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;
- (l) 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;
- (m) any reference to any period commencing “from” a specified day or date and “till” or “until” a specified day or date shall include both such days or dates; provided that if the last day of any period computed under this Agreement is not a business day, then the period shall run until the end of the next business day;
- (n) the words importing singular shall include plural and vice versa;
- (o) references to any gender shall include the other and the neutral gender;
- (p) “lakh” means a hundred thousand (100,000) and “crore” means ten million (10,000,000);
- (q) “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;
- (r) references to the “winding-up”, “dissolution”, “insolvency”, or “re-organization” of a company or corporation shall be construed so as to include any equivalent or analogous 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;
- (s) save and except as otherwise provided in this Agreement, any reference, at any time, to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this Clause shall not operate so as to increase liabilities or obligations of the Authority hereunder or pursuant hereto in any manner whatsoever;
- (t) any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party or the Engineer-in-Charge shall be valid and effective only if it is in writing under the hand of a duly authorised representative of such Party or the Engineer-in-Charge, as the case may be, in this behalf and not otherwise;
- (u) 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;
- (v) references to Recitals, Articles, Clauses, Sub-clauses or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-clauses and Schedules of or to this Agreement, and references to a Paragraph shall, subject to any contrary indication, be construed as a reference to a Paragraph of this Agreement or of the Schedule in which such reference appears;

- (w) 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
 - (x) time shall be of the essence in the performance of the Parties’ respective obligations. If any time period specified herein is extended for the reasons specified in the Agreement, such extended time shall also be of the essence.
- 1.2.2 Unless expressly provided otherwise in this Agreement, any Documentation required to be provided or furnished by the Contractor to the Authority shall be provided free of cost and in four copies, and if the Authority is required to return any such Documentation with its comments and/or approval, it shall be entitled to retain three copies thereof.
- 1.2.3 The rule of construction, if any, that a contract should be interpreted against the parties responsible for the drafting and preparation thereof, shall not apply.
- 1.2.4 Any word or expression used in this Agreement shall, unless otherwise defined or construed in this Agreement, bear its ordinary English meaning and, for these purposes, the General Clauses Act, 1897 shall not apply.
- 1.3 Measurements and arithmetic conventions

All measurements and calculations shall be in the metric system and calculations done to 2 (two) decimal places, with the third digit of 5 (five) or above being rounded up and below 5 (five) being rounded down.
- 1.4 Priority of agreements and errors/discrepancies
 - 1.4.1 This Agreement, and all other agreements and documents forming part of or referred to in this Agreement are to be taken as mutually explanatory and, unless otherwise expressly provided elsewhere in this Agreement, the priority of this Agreement and other documents and agreements forming part hereof or referred to herein shall, in the event of any conflict between them, be in the following order:
 - (a) this Agreement; and
 - (b) all other agreements and documents forming part hereof or referred to herein; i.e. this Agreement at (a) above shall prevail over the agreements and documents at (b).
 - 1.4.2 Subject to the provisions of Clause 1.4.1, in case of ambiguities or discrepancies within this Agreement, the following shall apply:
 - (a) between two or more Clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in other Clauses;
 - (b) between the Clauses of this Agreement and the Schedules, the Clauses shall prevail and between Schedules and Annexes, the Schedules shall prevail;
 - (c) between any two Schedules, the Schedule relevant to the issue shall prevail;
 - (d) between the written description on the Drawings and the Specifications and Standards, the latter shall prevail;

- (e) between the dimension scaled from the Drawing and its specific written dimension, the latter shall prevail; and
- (f) between any value written in numerals and that in words, the latter shall prevail.

{1.5 Joint and several liabilities

1.5.1 If the Contractor has formed a Consortium of two or more persons for implementing the Project:

- (a) these persons shall, without prejudice to the provisions of this Agreement, be deemed to be jointly and severally liable to the Authority for the performance of the Agreement; and
- (b) the Contractor shall ensure that no change in the composition of the Consortium is effected without the prior consent of the Authority.

1.5.2 Without prejudice to the joint and several liability of all the members of the Consortium, the Lead Member shall represent all the members of the Consortium and shall at all times be liable and responsible for discharging the functions and obligations of the Contractor. The Contractor shall ensure that each member of the Consortium shall be bound by any decision, communication, notice, action or inaction of the Lead Member on any matter related to this Agreement and the Authority shall be entitled to rely upon any such action, decision or communication of the Lead Member. The Authority shall have the right to release payments solely to the Lead Member and shall not in any manner be responsible or liable for the inter se allocation of payments among members of the Consortium. }^s

^s This Clause 1.5 may be omitted if the Contractor is not a Consortium. Even if the Contractor is a Consortium, the Authority may, at its discretion, delete this provision.

Part II
Scope of Project

ARTICLE 2
SCOPE OF THE PROJECT

2.1 Scope of the Project

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

Broad objectives of the project:.....

ARTICLE 3
OBLIGATIONS OF THE CONTRACTOR

3.1 Obligations of the Contractor

- 3.1.1 Subject to and on the terms and conditions of this Agreement, the Contractor shall undertake the survey, investigation, design, engineering, procurement, construction, and maintenance of the Project and observe, fulfill, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 3.1.2 The Contractor shall comply with all Applicable Laws and Applicable Permits (including renewals as required) in the performance of its obligations under this Agreement.
- 3.1.3 Subject to the provisions of Clauses 3.1.1 and 3.1.2, the Contractor shall discharge its obligations in accordance with Good Industry Practice and as a reasonable and prudent person.
- 3.1.4 The Contractor shall remedy any and all loss or damage to the Project from the Appointed Date until the end of the Construction Period at the Contractor’s cost, save and except to the extent that any such loss or damage shall have arisen from any default or neglect of the Authority, and specified upto the end of defect liability period.
- 3.1.5 The Contractor shall remedy any and all loss or damage to the Project during the Defects Liability Period at the Contractor’s cost to the extent that such loss or damage shall have arisen out of the reasons specified in Clause 17.3.
- 3.1.6 The Contractor shall remedy any and all loss or damage to the Project during the Maintenance Period at the Contractor’s cost, including those stated in Clause 14.1.2, save and except to the extent that any such loss or damage shall have arisen on account of any default or neglect of the Authority or on account of a Force Majeure Event.
- 3.1.7 The Contractor shall, at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out in this Agreement:
 - (a) make, or cause to be made, necessary applications to the relevant Government Instrumentalities with such particulars and details as may be required for obtaining Applicable Permits set forth in Schedule-F and obtain and keep in force and effect such Applicable Permits in conformity with the Applicable Laws;
 - (b) procure, as required, the appropriate proprietary rights, licences, agreements and permissions for Materials, methods, processes and systems used or incorporated into the Project;
 - (c) make reasonable efforts to maintain harmony and good industrial relations among the personnel employed by it or its Sub-contractors in connection with the performance of its obligations under this Agreement;

- (d) ensure and procure that its Sub-contractors comply with all Applicable Permits and Applicable Laws in the performance by them of any of the Contractor's obligations under this Agreement;
 - (e) not do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement;
 - (f) support, cooperate with and facilitate the Authority in the implementation and operation of the Project in accordance with the provisions of this Agreement;
 - (g) ensure that the Contractor comply with the safety and welfare measures for labour in accordance with the Applicable Laws and Good Industry Practice;
 - (h) keep, on the Site, a copy of this Agreement, publications named in this Agreement, the Drawings, Documents relating to the Project, and Change of Scope Orders and other communications given under this Agreement. The Engineer-in-Charge and its authorized personnel shall have the right of access to all these documents at all reasonable times;
 - (i) cooperate with other contractors employed by the Authority and personnel of any public authority; and
 - (j) not interfere unnecessarily or improperly with the convenience of the public, or the access to and use and occupation of all roads and footpaths, irrespective of whether they are public or in the possession of the Authority or of others.
- 3.1.8 The Contractor shall undertake all necessary superintendence to plan, arrange, direct, manage, inspect and test the Works.

3.2 Obligations relating to sub-contracts and any other agreements

- 3.2.1 The Contractor shall not sub-contract any work of related to any sub component or portion/ portions of the project.

The Contractor shall not sub-contract any Works of the Project and shall carry out Works directly under its own supervision and through its own personnel; Provided, however, that in respect of the Works carried out directly by the Contractor, it may enter into contracts for the supply and installation of Materials, Plant, equipment, machineries furniture, safety devices and labour, as the case may be, for such Works.

3.3 **Employment of foreign nationals**

The Contractor acknowledges, agrees and undertakes that employment of foreign personnel by the Contractor and/or its Suppliers on agencies 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 Contractor. Notwithstanding anything to the contrary contained in this Agreement, refusal of or inability to obtain any such permits and approvals by the Contractor shall not constitute Force Majeure Event, and shall not in any manner excuse the Contractor from the performance and discharge of its obligations and liabilities under this Agreement.

3.4 **Contractor's personnel**

- 3.4.1 The Contractor shall ensure that the personnel engaged by it or by its suppliers and agents in the performance of its obligations under this Agreement are at all times appropriately qualified, skilled and experienced in their respective functions in conformity with Good Industry Practice.

3.4.2 The Engineer-in-Charge may, for reasons to be specified in writing, direct the Contractor to remove any member of the Contractor's or Supplier or Agents' personnel; Provided that any such direction issued by the Engineer-in-Charge shall specify the reasons for the removal of such person.

3.4.3 The Contractor shall on receiving such a direction from the Engineer-in-Charge, order for the removal of such person or persons with immediate effect. It shall be the duty of the Contractor to ensure that such persons are evicted from the Site within 7 (seven) days of any such direction being issued in pursuance of Clause 3.4.2. The Contractor shall further ensure that such persons have no further connection with the Works or Maintenance under this Agreement. The Contractor shall then appoint (or cause to be appointed) a replacement.

3.5 **Advertisement on Project**

The Project or any part thereof shall not be used in any manner to advertise any commercial product or services.

3.6 **Contractor's care of the Works**

The Contractor shall bear full risk in and take full responsibility for the care of the Works, and of the Materials, goods and equipment for incorporation therein, from the Appointed Date until the date of Provisional Certificate (with respect to the Works completed prior to the issuance of the Provisional Certificate) and/or Completion Certificate (with respect to the Works referred to in the Punch List), save and except to the extent that any such loss or damage shall have arisen from any default or neglect of the Authority.

3.5 **Advertisement on Project**

The Project or any part thereof shall not be used in any manner to advertise any commercial product or services.

3.6 **Contractor's care of the Works**

The Contractor shall bear full risk in and take full responsibility for the care of the Works, and of the Materials, goods and equipment for incorporation therein, from the Appointed Date until the date of Provisional Certificate (with respect to the Works completed prior to the issuance of the Provisional Certificate) and/or Completion Certificate (with respect to the Works referred to in the Punch List), save and except to the extent that any such loss or damage shall have arisen from any default or neglect of the Authority.

3.7 **Electricity, water and other services**

The Contractor shall be responsible for procuring of all power, water and other services that it may require.

3.8 **Unforeseeable difficulties**

Except as otherwise stated in the Agreement:

- (a) the Contractor accepts complete responsibility for having foreseen all difficulties and costs of successfully completing the Works;
- (b) the Contract Price shall not be adjusted to take account of any unforeseen difficulties or costs; and
- (c) the Scheduled Completion Date shall not be adjusted to take account of any unforeseen difficulties or costs except due to Force majeure.

^s May be deleted, if the Contractor is not a Consortium.

ARTICLE 4

OBLIGATIONS OF THE AUTHORITY

4.1 Obligations of the Authority

- 4.1.1 The Authority shall, at its own cost and expense, undertake, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 4.1.2 The Authority shall be responsible for the reasonable correctness of the Scope of the Project, Project Facilities, Specifications and Standards and the criteria for testing of the completed Works.
- 4.1.3 The Authority shall provide to the Contractor:
- (a) upon receiving the quadruplicate copies of this Agreement for signed, the Right of Way in accordance with the provisions of Clauses 8.2 and 8.3, within a period of 15 (fifteen) days from the date of this Agreement, on no less than 90% (ninety per cent) of the total scope of work of the Project;
- 4.1.4 The Authority agrees to provide support to the Contractor and undertakes to observe, comply with and perform, subject to and in accordance with the provisions of this Agreement and the Applicable Laws, the following:
- (a) upon written request from the Contractor, and subject to the Contractor complying with Applicable Laws, provide reasonable support to the Contractor in procuring Applicable Permits required from any Government Instrumentality for implementation of the Project;
 - (b) upon written request from the Contractor, provide reasonable assistance to the Contractor in obtaining access to all necessary infrastructure facilities and utilities, including water and electricity at rates and on terms no less favourable than those generally available to commercial customers receiving substantially equivalent services;
 - (c) procure that no barriers that would have a material adverse effect on the works are erected or placed on or about the Project by any Government Instrumentality or persons claiming through or under it, except for reasons of Emergency, National security, law and order or collection of Inter-State Taxes;
 - (d) not do or omit to do any act, deed or thing which may in any manner is violative of any of the provisions of this Agreement;
 - (e) support, cooperate with and facilitate the Contractor in the Implementation of the Project in accordance with the provisions of this Agreement; and
 - (f) upon written request from the Contractor and subject to the provisions of Clause 3.3, provide reasonable assistance to the Contractor and any expatriate personnel of the Contractor to obtain applicable visas and work permits for the Purposes of discharge by the Contractor of their obligations under this Agreement.

4.2 **Maintenance obligations prior to the Appointed Date**

The Authority shall, prior to the Appointed Date, maintain the Project, at its own cost and expense, so that normal operation is not materially inferior as compared to its condition 10 (ten) days prior to the last date for submission of the Bid, and in the event of any material deterioration or damage other than normal wear and tear, undertake repair thereof. For the avoidance of doubt, the Authority shall undertake only routine maintenance prior to the Appointed Date, and it shall undertake special repairs only in the event of excessive deterioration or damage caused due to unforeseen events such as floods or earthquake.

4.3 **Statutory Clearances**

No further environment clearance is required for commissioning of the project.

ARTICLE 5
REPRESENTATIONS AND WARRANTIES

5.1 Representations and warranties of the Contractor

The Contractor 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/or 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 within the State of West Bengal 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 any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- (g) there are no actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its obligations under this Agreement;
- (h) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any Government Instrumentality which may result in any material adverse effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;
- (i) it has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a material adverse effect on its ability to perform its obligations under this Agreement;
- (j) no representation or warranty by it contained herein or in any other document furnished by it to the Authority 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;

- (k) no sums, in cash or kind, have been paid or will be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for securing the contract or entering into this Agreement or for influencing or attempting to influence any officer or employee of the Authority in connection therewith;
- (l) all information provided by the {selected bidder/ members of the Consortium} in response to the Notice of Request for Qualification and Request for Proposals or otherwise, is to the best of its knowledge and belief, true and accurate in all material respects; and
- (m) nothing contained in this Agreement shall create any contractual relationship or obligation between the Authority and any agencies, manufactures suppliers, designers, consultants or agents of the Contractor.

5.2 **Representations and warranties of the Authority**

The Authority represents and warrants to the Contractor that:

- (a) it has full power and Authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Agreement, exercise its rights and perform its obligations, under this Agreement;
- (b) it has taken all necessary actions under the Applicable Laws to authorise the execution, delivery and performance of this Agreement;
- (c) it has the financial standing and capacity to perform its obligations under this Agreement;
- (d) this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- (e) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Instrumentality which may result in any material adverse effect on the Authority's ability to perform its obligations under this Agreement;
- (f) it has complied with Applicable Laws in all material respects;
- (g) it has good and valid right to the Site and has the power and Authority to grant the Right of Way in respect thereof to the Contractor; and
- (h) it has procured Right of Way and statutory clearances such that the Contractor can commence construction forthwith on 90% (ninety per cent) of the total working area of the Project.

5.3 **Disclosure**

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

ARTICLE 6
DISCLAIMER

6.1 Disclaimer

- 6.1.1 The Contractor acknowledges that prior to the execution of this Agreement, the Contractor has, after a complete and careful examination, made an independent evaluation of the Request for Qualification, Request for Proposal, Scope of the Project, Specifications and Standards of design, construction and maintenance, Site, local conditions, physical qualities of ground, subsoil and geology, traffic volumes, suitability and availability of access routes to the Site and all information provided by the Authority or obtained, procured or gathered otherwise, and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder. Save as provided in Clause 4.1.2 and Clause 5.2, the Authority makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy, adequacy, correctness, reliability and/or completeness of any assessment, assumptions, statement or information provided by it and the Contractor confirms that it shall have no claim whatsoever against the Authority in this regard.
- 6.1.2 The Contractor acknowledges and hereby accepts to have satisfied itself as to the correctness and sufficiency of the Contract Price.
- 6.1.3 The Contractor acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Clause 6.1.1 above and hereby acknowledges and agrees that the Authority shall not be liable for the same in any manner whatsoever to the Contractor, or any person claiming through or under any of them, and shall not lead to any adjustment of Contract Price or Scheduled Completion Date.
- 6.1.4 The Parties agree that any mistake or error in or relating to any of the matters set forth in Clause 6.1.1 above shall not vitiate this Agreement, or render it voidable.
- 6.1.5 In the event that either Party becomes aware of any mistake or error relating to any of the matters set forth in Clause 6.1.1 above, that Party shall immediately notify the other Party, specifying the mistake or error.
- 6.1.6 Except as otherwise provided in this Agreement, all risks relating to the Project shall be borne by the Contractor; and the Authority shall not be liable in any manner for such risks or the consequences thereof.

Part III
Construction and Maintenance

ARTICLE 7
PERFORMANCE SECURITY

7.1 Performance Security

- 7.1.1 The amount of performance security of the above work is amounting to 7.5% of the contract price or the final value of work actually executed on completion whichever is higher. At the bidding stage, the bidder will deposit around 2% of estimated cost (defined earlier) through online system of e-Procurement/e-Tender (RTGS/NEFT) as their Bid Security or the EMD. Rest of the amount to make up for overall 7.5% which is more or less 5.5% will be progressively deducted from the running account/ interim stage payment bills of the contractor in the progressive bills up to the completion of work with reference to the contract price of the bid.
- 7.1.2 Notwithstanding anything to the contrary contained in this Agreement, the Parties agree that in the event of failure of the Contractor to provide the Performance Security in accordance with the provisions of Clause 7.1.1 and within the time specified therein or such extended period as may be provided by the Authority, the Authority may forfeit the Bid Security and appropriate the proceeds thereof as Damages, and thereupon all rights, privileges, claims and entitlements of the Contractor under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Contractor, and this Agreement shall be deemed to have been terminated by mutual agreement of the Parties.

7.2 Extension of Performance Security

The Contractor would be required initially to provide the full Performance Security for a period of 1 (one) years after completion of the project; provided that it shall procure the extension of the validity of the Performance Security, as necessary, at least 2 (two) months prior to the date of expiry of Project completion date thereof. Upon completion of Deflect liability period and the extended warranty period as applicable from the actual Project implementation (Project Completion date), the Contractor would be returned Performance Security.

7.3 Appropriation of Performance Security

- 7.3.1 Upon occurrence of a Contractor's Default, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to forfeit and appropriate the relevant amounts from the Performance Security as Damages for such Contractor's Default.
- 7.3.2 Upon such forfeit and appropriation from the Performance Security, the Contractor shall, within 30 (thirty) days thereof, replenish, in case of partial appropriation, to its original level the Performance Security, and in case of appropriation of the entire Performance Security provide a fresh Performance Security, as the case may be, and the Contractor shall, within the time so granted, replenish or furnish fresh Performance Security as aforesaid failing which the Authority shall be entitled to terminate the Agreement in accordance with Article 22. Upon replenishment or furnishing of a fresh Performance Security, as the case may be, as aforesaid, the Contractor shall be entitled to an additional Cure Period of 30 (thirty) days for remedying the Contractor's Default, and in the event of the Contractor not curing its default within such Cure Period, the Authority shall be entitled to forfeit and appropriate such Performance Security as Damages, and to terminate this Agreement in accordance with Article 22.

7.4 Release of Performance Security

After successful completion of first ... year (Guarantee period) defect liability period, which is defined as initial ... year guarantee period, security deposit will be released in such a way for which lump sum amount of Rs. Lakh would be retained by 'The Authority' for next years of Extended Warranty Period. Each year balance security release will be on a pro-rata basis from the Performance Guaranteed sum of Lakh i.e. Lakh to be released per year till it becomes Nil at the end of years of extended warranty period, if bidder performs satisfactorily as per Agreement.

7.5 Retention Money

- 7.5.1 From every running account payment for Works due to the Contractor in accordance with the provisions of Clause 18.5
- 7.5.2 Upon occurrence of a Contractor's Default, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to appropriate the relevant amounts from the Retention Money as Damages for such Contractor's Default.
- 7.5.3 Within 60 (sixty) days of the date of issue of the Completion Certificate, the Authority shall discharge performance security furnished by the Contractor under the provisions of Clause 7.2 and clause 7.3
- 7.5.4 The Parties agree that in the event of Termination of this Agreement, the Retention Money specified in this Clause 7.5 shall be treated as if they are Performance Security and shall be reckoned as such for the purposes of Termination Payment under Clause 22.6.

ARTICLE 8

RIGHT OF WAY

8.1 The Site

The site of the Project (the "Site") shall comprise the site described in Schedule-A in respect of which the Right of Way shall be provided by the Authority to the Contractor. The Authority shall be responsible for:

- (a) Acquiring and providing Right of Way on the Site in accordance with the scope of work finalised by the Authority, free from all encumbrances, and free access thereto for the execution of this Agreement; and
- (b) Obtaining licences and permits for statute clearances for the Project.

8.2 Procurement of the Site

- 8.2.1 The Engineer-in-Charge and the Contractor shall, within 15 (fifteen) days of the date of this Agreement, inspect the Site and prepare a Memorandum containing an inventory of the Site including the vacant and unencumbered land, buildings, all existing machineries and equipments and any other immovable property on or attached to the Site. Subject to the provisions of Clause 8.2.3, such Memorandum shall have appended thereto an appendix (the "Appendix") specifying in reasonable detail those parts of the Site to which vacant access and Right of Way has not been given to the Contractor. Signing of the Memorandum, in two counterparts (each of which shall constitute an original), by the authorised representatives of the Parties shall be deemed to constitute a valid evidence of giving the Right of Way to the Contractor for discharging its obligations under and in accordance with the provisions of this Agreement and for no other purpose whatsoever.

Whenever the Engineer-in-Charge is ready to hand over any part or parts of the Site included in the Appendix, it shall inform the Contractor, by notice, the proposed date and time such of handing over. The Representative of Engineer-in-Charge and the Contractor shall, on the date so notified, inspect the specified parts of the Site, and prepare a memorandum containing an inventory of the vacant and unencumbered access to land, structure, and any other immovable property on or attached to the Site so handed over. Signing of the Memorandum, in two counterparts (each of which shall constitute an original), by the authorised representatives of the Parties shall be deemed to constitute a valid evidence of giving the relevant Right of Way to the Contractor.

- 8.2.2 The Authority shall provide the Right of Way to the Contractor in respect of all land by the date specified in Schedule-A for those parts of the Site referred to therein, or no later than 30 (thirty) days of the Appointed Date for those parts of the Site which have not been specified in Schedule-A, and in the event of delay for any reason other than Force Majeure or breach of this Agreement by the Contractor, it shall allow extension of time for project completion for equivalent period.
- 8.2.3 Notwithstanding anything to the contrary contained in this Clause 8.2, the Authority shall specify the parts of the Site, if any, for which Right of Way shall be provided to the Contractor on the dates specified in Schedule-A. Such parts shall also be included in the Appendix prepared in pursuance of Clause 8.2.1.

Provided that if any Work cannot be undertaken within the limits of a Police Station or an administrative block within any area falling in a reserved forest or wildlife sanctuary, as the case may be, because the requisite clearances or approvals for commencing construction of Works therein have not been given within days of the Appointed date, the affected Works shall be deemed to be withdrawn under the provisions of this Clause 8.2.3.

8.2.4 In the event of withdrawal of Works under Clause 8.2.3, the Contract Price shall be reduced by an amount equal to 90 (ninety) per cent of the value of the Works withdrawn and the Contractor shall not be entitled to any other compensation or Damages for the withdrawal of Works.

8.3 Site to be free from Encumbrances

Subject to the provisions of Clause 8.2, the Site shall be made available by the Authority to the Contractor pursuant hereto free from all Encumbrances and occupations and without the Contractor being required to make any payment to the Authority on account of any costs, compensation, expenses and charges for the acquisition and use of such Site for the duration of the Project Completion Schedule.

8.4 Protection of Site from theft and pilferage

On and after signing the Memorandum and/or subsequent Memorandum referred to in Clause 8.2.1, and until the issue of the Completion Certificate, the Contractor shall maintain a round-the-clock vigil over the Site and shall ensure and procure that no theft and pilferage thereon takes place. During the Construction Period, the Contractor shall protect the Site from any and all thefts, pilferage or Encumbrances, and shall not place or create nor permit any other person claiming through or under the Agreement to place or create any security threat over all or any part of the Site or the Project Assets, or on any rights of the Contractor therein or under this Agreement, save and except as otherwise expressly set forth in this Agreement. In the event of any theft or pilferage of any parts from the Site, the Contractor shall report forthwith to the Authority and undertake its Replenishment at its own cost and expenses.

8.5 Special/temporary Right of Way

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

8.6 Access to the Engineer-in-Charge and other Departmental Officers

8.6.1 The Right of Way given to the Contractor hereunder shall always be subject to the right of access of the Authority and the Engineer-in-Charge and their employees and agents for inspection, viewing and exercise of their rights and performance of their obligations under this Agreement.

8.6.2 The Contractor shall ensure, subject to all relevant safety procedures, that the Authority has un-restricted access to the Site during any emergency situation, as decided by the Engineer-in-Charge.

8.7 Geological and archaeological finds

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

ARTICLE 9

UTILITIES

9.1 Existing utilities

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

9.2 Shifting of obstructing utilities

The Contractor shall, in accordance with Applicable Laws and with assistance of the Authority, cause shifting of any utility (including electric lines, water pipes and telephone cables) to an appropriate location or alignment, if such utility or obstruction adversely affects the execution of Works or Maintenance of the Project in accordance with this Agreement. The actual cost of such shifting, as approved and communicated by the entity owning the utility, shall be paid by the Contractor and reimbursed by the Authority to the Contractor. In the event of any delay in such shifting by the entity owning the utility beyond a period of 180 (one hundred and eighty) days from the date of notice by the Contractor to the entity owning the utility and to the Authority, the Contractor shall be entitled to Time Extension in accordance with relevant Clause for and in respect of the part(s) of the Works affected by such delay; provided that if the delays involve any time overlaps, the overlaps shall not be additive.

9.3 New utilities

9.3.1 The Contractor shall allow, subject to such conditions as the Authority may specify, access to, and use of the Site for laying telephone lines, water pipes, electric cables or other public utilities. Where such access or use causes any financial loss to the Contractor, it may require the user of the Site to pay compensation or damages as per Applicable Laws. For the avoidance of doubt, it is agreed that use of the Site under this Clause 9.3 shall not in any manner relieve the Contractor of its obligation to construct and maintain the Project in accordance with this Agreement and any damage caused by such use shall be restored forthwith at the cost of the Authority.

9.3.2 The Authority may, by notice, require the Contractor to connect any adjoining road to the Project, and the connecting portion thereof falling within the Site shall be constructed by the Contractor at the Authority's cost in accordance with Article 10.

9.3.3 The Authority may by notice require the Contractor to connect, through a paved road, any adjoining service station, Control Room, Power House, Sub-station or any other facility or amenity to the Project, whereupon the connecting portion thereof that falls within the Site shall be constructed by the Contractor on payment of the cost. The cost to be paid by the Authority to the Contractor shall be determined by the Engineer-in-Charge. For the avoidance of doubt, in the event such utility is to be constructed for the benefit of any entity, the Authority may require such entity to make an advance deposit with the Contractor or the Authority, as the case may be, of an amount equal to the estimated cost as determined by the Engineer-in-Charge and such advance shall be adjusted against the cost of construction as determined by the Engineer-in-Charge hereunder.

9.3.4 In the event the construction of any Works is affected by a new utility or works undertaken in accordance with this Clause 9.3, the Contractor shall be entitled to a reasonable Time Extension as determined by the Engineer-in-Charge with the approval of Departmental QBEC.

ARTICLE 10
DESIGN AND COMMISSIONING OF THE PROJECT

10.1 Obligations prior to commencement of Works

10.1.1 Within 20 (twenty) days of the Appointed Date, the Contractor shall:

- (a) appoint its representative, duly authorized to deal with the Authority in respect of all matters under or arising out of or relating to this Agreement;
- (b) appoint a design director (the “Design Director”) who will head the Contractor’s design unit and shall be responsible for surveys, investigations, collection of data, and preparation of preliminary and detailed designs;
- (c) undertake and perform all such acts, deeds and things as may be necessary or required before commencement of Works under and in accordance with this Agreement, the Applicable Laws and Applicable Permits; and
- (d) make its own arrangements for mobilisation of materials needed for the Project under and in accordance with the Applicable Laws and Applicable Permits.

10.1.2 The Authority shall, on or before the date of signing of Agreement, appoint or post or place an Executive Engineer to function as the “Engineer-in-Charge”, to discharge the functions and duties specified in this Agreement, and shall notify to the Contractor the name, address of the Engineer-in-Charge forthwith.

10.1.3 Within 15 (fifteen) days of the issue of Work order, the Contractor shall submit to the Authority (Superintending Engineer) and the Engineer-in-Charge a programme (the “Programme”) for the Works, developed using networking techniques in conformity of Schedule I and Schedule-J, giving the following details:

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

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

- (a) the order in which the Contractor intends to carry out the Works, including the anticipated timing of the stages of sub-components of the Works;
- (b) the periods for reviews under Clause 10.2;
- (c) the sequence and timing of inspections and tests specified in this Agreement.

The Contractor shall submit a revised programme whenever the previous programme is inconsistent with the actual progress or with the Contractor’s obligations.

Part III The stage payments would be released by the Engineer-in-charge only on the basis of the agreed physical completion of sub components of the Project as specified under Article 18 of this Agreement in terms of ‘**Schedule I**’ and ‘**Schedule-J**’ contained in the Agreement.

10.1.4 The Contractor shall compute, on the basis of the Drawings prepared in accordance with Clause 10.2.4, and provide to the Engineer-in-Charge, the quantities, as the case may be, in respect of the various items of work specified in **Schedule-H** and contained in the BOQ and

comprising the Scope of the Project. The Parties expressly agree that these details shall form the basis for estimating the interim stage payments for the Works in accordance with the provisions of Clause 18.3. For the avoidance of doubt, the sum of payments to be computed in respect of all the items of work shall not exceed the Contract Price, as may be adjusted in accordance with the provisions of this Agreement.

10.1.5 The Contractor shall appoint a licenced safety consultant (the “Safety Consultant”) to carry out safety audit during execution stage of the Project in accordance with the Applicable Laws and Good Industry Practice. The Safety Consultant shall be appointed after proposing to the Authority a panel of three names of qualified and experienced firms from whom the Engineer-in-Charge may choose one to be the Safety Consultant.

The Contractor shall also obtain the consent of the Authority for the key personnel of the Safety Consultant who shall have adequate experience and qualifications in safety audit of Barrage, Dam, or other major hydel projects. The Authority shall, within 15 (fifteen) days of receiving a proposal from the Contractor hereunder, convey its decision, with reasons, to the Contractor, and if no such decision is conveyed within the said period, the Contractor may proceed with engaging of the Safety Consultant.

10.1.6 The safety audit pursuant to Clause 10.1.5 shall be carried out by the Safety Consultant in respect of all such details of Gates and related mechanical & electrical equipments and machines that have a bearing on safety of Users or associated with accidents. The recommendations of the Safety Consultant shall be incorporated in the design of the Project and the Contractor shall forward to the Engineer-in-Charge a certificate to this effect together with the recommendations of the Safety Consultant. For the avoidance of doubt, the Safety Consultant to be engaged by the Contractor shall be independent of the design and implementation team of the Contractor. The system should be cleared by Certified Licensing Authority for such items prior to commissioning such Soft ware Audit clearance reports to be furnished for being eligible of receiving full payment.

10.2 Design and Drawings

10.2.1 Design and Drawings shall be developed in conformity with the Specifications and Standards set forth in **Schedule-D**. In the event, the Contractor requires any relaxation in design standards, the alternative design criteria for such section shall be provided for review of the Engineer-in-Charge, with may only be accepted by the Departmental QBEC.

10.3 Construction of the Project Sub-components

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

10.3.2 The Contractor shall construct the Project in accordance with the Project Completion Schedule set forth in **Schedule-J**. In the event that the Contractor fails to achieve any Project Milestone or the Scheduled Completion Date within a period of 30 (thirty) days from the date set forth in Schedule-J, unless such failure has occurred due to Force Majeure or for reasons solely attributable to the Authority, **it shall pay Damages to the Authority of a sum calculated at the rate of 0.05% (zero point zero five percent) of the Contract Price for delay of each day reckoned from the date specified in Schedule-I & Schedule-J and until such Project Milestone is achieved or the Works are**

completed; provided that if the period for any or all Project Milestones or the Scheduled Completion Date is extended in accordance with the provisions of this Agreement, the dates set forth in **Schedule-J** shall be deemed to be modified accordingly and the provisions of this Agreement shall apply as if **Schedule-J** has been amended as above; provided further that in the event the Works are completed within or before the Scheduled Completion Date including any Time Extension, applicable for that work or section, the Damages paid under this Clause 10.3.2 shall be refunded by the Authority to the Contractor, but without any interest thereon.

For the avoidance of doubt, it is agreed that recovery of Damages under this Clause 10.3.2 shall be without prejudice to the rights of the Authority under this Agreement including the right of Termination thereof. The Parties further agree that Time Extension hereunder shall only be reckoned for and in respect of the affected works as specified in Clause 10.5.2.

10.3.3 The Authority shall notify the Contractor of its decision to impose Damages in pursuance with the provisions of this Clause 10.3. Provided that no deduction on account of Damages shall be effected by the Authority without notifying the Contractor of its decision to impose the Damages, and taking into consideration the representation, if any, made by the Contractor within 20 (twenty) days of such notice. The Parties expressly agree that the total amount of Damages under Clause 10.3.2 shall not exceed 10% (ten percent) of the Contract Price.

10.4 Maintenance during Construction Period

During the Construction Period, the Contractor shall maintain, at its cost, the project components and equipments and structures machineries etc and safety thereof are at no time materially inferior as compared to their condition 10 (ten) days prior to the date of this Agreement, and shall undertake the necessary repair and maintenance works for this purpose; provided that the Contractor may, at its cost, interrupt and divert the flow of traffic if such interruption and diversion is necessary for the efficient progress of Works and conforms to **Good Industry Practice**; provided further that such interruption and diversion shall be undertaken by the Contractor only with the prior written approval of the Engineer-in-charge which approval shall not be unreasonably withheld. For the avoidance of doubt, it is agreed that the Contractor shall at all times be responsible for ensuring safe operation of the Project.

10.5 Extension of time for completion

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

- (a) delay in providing the Right of Way, statutory clearances or approval of authorities, specified in Clause 4.1.4;
- (b) Change of Scope (unless an adjustment to the Scheduled Completion Date has been agreed under Article 13);
- (c) occurrence of a Force Majeure Event;
- (d) any delay, impediment or prevention caused by or attributable to the Authority, the Authority's personnel or the Authority's other contractors on the Site; and
- (e) any other cause or delay which entitles the Contractor to Time Extension in accordance with the provisions of this Agreement.

10.5.2 The Contractor shall, no later than 15 (fifteen) days from the occurrence of an event or circumstance specified in Clause 10.5.1, inform the Engineer-in-Charge by notice in writing, with a copy to the Superintending Engineer and the Chief Engineer, 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) days shall be calculated from the date on which the Contractor became aware, or should have become aware, of the occurrence of such an event or circumstance.

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

10.5.3 In the event of the failure of the Contractor to issue to the Engineer-in-Charge a notice in accordance with the provisions of Clause 10.5.2 within the time specified therein, the Contractor shall not be entitled to any Time Extension and shall forfeit its right for any such claims in future. For the avoidance of doubt, in the event of failure of the Contractor to issue notice as specified in this clause 10.5.3, the Authority shall be discharged from all liability in connection with the claim.

10.5.4 The Engineer-in-Charge shall, on receipt of the claim in accordance with the provisions of Clause 10.5.2, examine the claim expeditiously within the time frame specified herein. In the event the Engineer-in-Charge requires any clarifications to examine the claim, the Engineer-in-Charge shall seek the same within 7 (seven) days from the date of receiving the claim. The

Contractor shall, on receipt of the communication of the Engineer-in-Charge requesting for clarification, furnish the same to the Engineer-in-Charge within 10 (ten) days thereof. The Engineer-in-Charge shall, within a period of 7 (seven) days from the date of receipt of such clarifications obtain the permission of the Chief Engineer and then forward in writing to the Contractor its determination of Time Extension;

provided that when determining each extension of time under this Clause 10.5, the Engineer-in-Charge shall review previous determinations and may increase, but shall not decrease, the total Time Extension.

10.5.5 If the event or circumstance giving rise to the notice has a continuing effect:

- (a) a fully detailed claim shall be considered as interim;
- (b) the Contractor shall, no later than 10 (ten) days after the close of each month, send further interim claims specifying the accumulated delay, the extension of time claimed, and such further particulars as the Engineer-in-Charge may reasonably require; and
- (c) the Contractor shall send a final claim within 30 (thirty) days after the effect of the event or the circumstance ceases.

Upon receipt of the claim hereunder, the Engineer-in-Charge shall examine the same in accordance with the provisions of Clause 10.5.4 within a period of 60 (sixty) days of the receipt thereof.

10.6 **Incomplete Works**

In the event the Contractor fails to complete the Works in accordance with the Project Completion Schedule, including any Time Extension granted under this Agreement, the

Contractor shall endeavor to complete the balance work expeditiously and shall pay Damages to the Authority in accordance with the provisions of Clause 10.3.2 for delay of each day until the Works are completed in accordance with the provisions of this Agreement. Recovery of Damages under this Clause shall be without prejudice to the rights of the Authority under this Agreement including the right to termination under Clause 22.1.

10.7 Operation & Maintenance Manual

No later than 60 (sixty) days prior to the Project Completion Date, the Contractor shall, in consultation with the Engineer-in-Charge, evolve an operation & maintenance manual (the "Operation and Maintenance Manual") for the regular and preventive maintenance and smooth running of the Project in conformity with the Specifications and Standards, safety requirements and Good Industry Practice, and shall provide 4 (four) copies thereof to the Engineer-in-Charge. The Engineer-in-Charge shall review the Operation & Maintenance Manual within 15 (fifteen) days of its receipt and communicate its comments to the Contractor for necessary modifications, if any, with approval of the Chief Engineer of the Project.

ARTICLE 11

QUALITY ASSURANCE, MONITORING AND SUPERVISION

11.1 Quality of Materials and workmanship

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

11.2 Quality control system

11.2.1 The Contractor shall establish a quality control mechanism to ensure compliance with the provisions of this Agreement (the "Quality Assurance Plan" or "QAP").

11.2.2 The Contractor shall, within 15 (fifteen) days of the Appointed Date, submit to the Engineer-in-Charge its Quality Assurance Plan which shall include the following:

- (a) organisation, duties and responsibilities, procedures, inspections and documentation;
- (b) quality control mechanism including sampling and testing of Materials, test frequencies, standards, acceptance criteria, testing facilities, reporting, recording and interpretation of test results, approvals, check list for site activities, and proforma for testing and calibration in accordance with the Specifications Good Industry Practice; and
- (c) Internal Quality Audit System.

The Engineer-in-Charge shall convey its comments to the Contractor within a period of 15 (fifteen) days of receipt of the QAP stating the modifications, if any, required, and the Contractor shall incorporate those in the QAP to the extent required for conforming with the provisions of this Clause 11.2.

11.2.3 The Contractor shall procure all documents, apparatus and instruments, fuel, consumables, water, electricity, labour, Materials, samples, and qualified personnel as are necessary for examining and testing the Project Assets and workmanship in accordance with the Quality Assurance Plan.

11.2.4 The cost of testing of Construction, Materials and workmanship under this Article 11 shall be borne by the Contractor.

11.3 Methodology

The Contractor shall, at least 15 (fifteen) days prior to the commencement of the construction, submit to the Engineer-in-charge for review the methodology proposed to be adopted for executing the Works, giving details of equipment to be deployed, management and measures for ensuring safety. The Engineer-in-Charge shall complete the review and convey its comments to the Contractor within a period of 10 (ten) days from the date of receipt of the proposed methodology from the Contractor.

11.4 Inspection and Technical Audit by the Authority/Department

The Chief Engineer of the Project or any representative of the Authority on this behalf may inspect and review the progress and quality of the execution of Project and issue appropriate directions to the Engineer-in-Charge and the Contractor for taking remedial action in the event the Works are not in accordance with the provisions of this Agreement.

11.5 External Technical Audit

At any time during construction, the Authority may appoint an external Technical Auditor to conduct an audit of the quality of the Works. The findings of the audit, to the extent accepted by the Authority, shall be notified to the Contractor and the Engineer-in-Charge for taking remedial action in accordance with this Agreement. The Contractor shall provide all assistance as may be required by the auditor in the conduct of its audit hereunder. Notwithstanding anything contained in this Clause 11.5, the external technical audit shall not affect any obligations of the Contractor or the Engineer-in-Charge under this Agreement.

11.6 Inspection of construction records

The Authority shall have the right to inspect the records of the Contractor relating to the Works.

11.7 Monthly progress reports

During the Construction Period, the Contractor shall, no later than 10 (ten) days after the close of each month, furnish to the Authority and the Engineer-in-Charge a monthly report on progress of the Works and shall promptly give such other relevant information as may be required by the Engineer-in-Charge.

11.8 Inspection

11.8.1 The Engineer-in-charge and its authorised representative shall at all reasonable times:

- (a) have full access to all parts of the Site and to all places from which construction Materials are being obtained for use in the Works; and
- (b) during production, manufacture and construction at the Site and at the place of production, be entitled to examine, inspect, measure and test the Materials and workmanship, and to check the progress of manufacture of Materials/sub-components.

11.8.2 The Contractor shall give the Engineer-in-Charge and its authorised agents access, facilities and safety equipment for carrying out their obligations under this Agreement.

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

11.9 Samples

The Contractor shall submit the following samples of Materials and relevant information to the Engineer-in-Charge for pre-construction review:

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

11.10 Tests

11.10.1 For determining that the Works conforming to the Specifications and Standards, the Engineer-in-Charge shall require the Contractor to carry out or cause to be carried out tests, at such time and frequency and in such manner in accordance with Good Industry Practice for quality assurance. The test checks by the Engineer-in-Charge shall comprise at least 20 (twenty) percent of the quantity or number of tests prescribed for each category or type of test for quality control by the Contractor.

11.10.2 In the event that results of any tests conducted under this Clause 11.10 establish any Defects or deficiencies in the Works, the Contractor shall carry out remedial measures and furnish a report to the Engineer-in-charge in this behalf. The Engineer-in-charge shall require the Contractor to carry out or cause to be carried out tests to determine that such remedial measures have brought into compliance with the Specifications and Standards, and the procedure shall be repeated until such Works conform to the Specifications and Standards. For the avoidance of doubt, the cost of such tests and remedial measures in pursuance thereof shall be solely borne by the Contractor.

11.11 Examination of work before covering up (embedded portions)

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

11.12 Rejection

If, as a result of an examination, inspection, measurement or testing, any Plant, Materials, design or workmanship is found to be defective or otherwise not in accordance with the provisions of this Agreement, the Engineer-in-Charge shall reject the Plant, Materials, design or workmanship by giving notice to the Contractor, with reasons. The Contractor shall then promptly make good the Defect and ensure that the rejected item complies with the requirements of this Agreement.

If the Engineer-in-charge requires the Plant, Materials, design or workmanship to be retested, the tests shall be repeated under the same terms and conditions, as applicable in each case. If the rejection and retesting cause the Authority to incur any additional costs, such cost shall be recoverable by the Authority from the Contractor; and may be deducted by the Engineer-in-charge from any amount due to be paid to the Contractor.

11.13 Remedial work

11.13.1 Notwithstanding any previous test or certification, the Engineer-in-Charge may instruct the Contractor to:

- (a) Remove from the Site and replace any Machineries or Material which are not in accordance with the provisions of this Agreement;
 - (b) Remove and re-execute any work which is not in accordance with the Provisions of this Agreement and the Specification and Standards;
- And,

- (c) execute any work, which, if urgently required for the safety of the Project, whether because of an accident, unforeseeable event or otherwise; provided that in case of any work required on account of a Force Majeure Event, the provisions of Clause 21.6 shall apply.

11.13.2 If the Contractor fails to comply with the instructions issued by the Engineer-in-Charge under Clause 11.13.1, within the time specified in the Engineer-in-charge's notice or as mutually agreed, the Engineer-in-charge may have the work executed by another agency with prior written approval of Superintending Engineer & Chief Engineer under intimation to the contractor. The cost so incurred by the Authority for undertaking such work shall, without prejudice to the rights of the Authority to recover Damages in accordance with the provisions of this Agreement, be recoverable from the Contractor and may be deducted by the Authority from any monies due to be paid to the Contractor.

11.14 **Delays during construction**

Without prejudice to the provisions of Clause 10.3.2, in the event the Contractor does not achieve any of the **Project Milestones** or the Engineer-in-Charge shall have reasonably determined that the rate of progress of Works is such that Completion of the Project is not likely to be achieved by the end of the Scheduled Completion Date, it shall notify the same to the Contractor, and the Contractor shall, within 15 (fifteen) days of such notice, by a communication inform the Engineer-in-charge in reasonable detail about the steps it proposes to take to expedite progress and the period within which it shall achieve the Project Completion Date.

11.15 **Quality control records and Documents**

The Contractor shall hand over to the Engineer-in-Charge a copy of all its quality control records and documents before the Completion Certificate is issued pursuant to Clause 12.2.

11.16 **Video recording**

During the Construction Period, the Contractor shall provide to the Engineer-in-Charge for every calendar quarter, a video recording, which will be compiled into a 3 (three)-hour compact disc or digital video disc, as the case may be, covering the status and progress of Works in that quarter. The video recording shall be provided to the Engineer-in-charge no later than 15 (fifteen) days after the close of each quarter after the Appointed Date.

11.17 **Suspension of unsafe Construction/substandard work**

- 11.17.1 Upon recommendation of the Engineer-in-charge to this effect, the Authority may by notice require the Contractor to suspend forthwith the whole or any part of the Works if, in the reasonable opinion of the Engineer-in-Charge, such work threatens the safety of the Users and pedestrians.
- 11.17.2 The Contractor shall, pursuant to the notice under Clause 11.17.1, suspend the Works or any part thereof for such time and in such manner as may be specified by the Engineer-in-charge and thereupon carry out remedial measures to secure the safety of suspended works, the Users and pedestrians. The Contractor may by notice require the Engineer-in-Charge to inspect such remedial measures forthwith and make a report to the Authority recommending whether or not the suspension hereunder may be revoked. Upon receiving the recommendations of the Engineer-in-charge, the Authority shall either revoke such suspension or instruct the Contractor to carry out such other and further remedial measures as may be necessary in the reasonable opinion of the Authority, and the procedure set forth in this Clause 11.17 shall be repeated until the suspension hereunder is revoked.

- 11.17.3 Subject to the provisions of Clause 20.6, all reasonable costs incurred for maintaining and protecting the Works or part thereof during the period of suspension (the “**Preservation Costs**”), shall be borne by the Contractor; provided that if the suspension has occurred as a result of any breach of this Agreement by the Authority, the Preservation Costs shall be borne by the Authority.
- 11.17.4 If suspension of Works is for reasons not attributable to the Contractor, the Engineer-in-charge shall determine any Time Extension to which the Contractor is reasonably entitled.

ARTICLE 12
COMPLETION CERTIFICATE

12.1 Tests or Trial run of the project on completion

12.1.1 At least 30 (thirty) days prior to the likely completion of the Project, or a Section thereof, the Contractor shall notify the Engineer-in-Charge of its intent to subject the Project or a Section thereof, of trial operation of the Project. The date and time of each of the trial operation of the Project shall be determined by the Engineer-in-Charge in consultation with the Contractor, and notified to the Chief Engineer who along with the Superintending Engineer may witness the trial run. The Contractor shall either conduct the Tests/Trial run as directed by the Engineer-in-Charge or provide such assistance as the Engineer-in-charge may reasonably require for conducting the trial operation of the Project. In the event of the Contractor and the Engineer-in-Charge failing to mutually agree on the dates for conducting the Tests/Trial run, the Contractor shall fix the dates by giving not less than 7 (seven) days' notice to the Engineer-in-Charge.

12.1.2 All the trial operation of the Project or Tests shall be conducted in accordance with the **Schedule-K**. The Engineer-in-Charge shall either conduct or observe, monitor and review the Tests conducted by the Contractor, as the case may be, and review the results of the Tests to determine compliance of the sub component of the Project or a Section thereof, with Specifications and Standards and if it is reasonably anticipated or determined by the Engineer-in-Charge during the course of any Test that the performance of the Project or Section or any part thereof, does not meet the Specifications and Standards, it shall have the right to suspend or delay such Test and require the Contractor to remedy and rectify the Defect or deficiencies. Upon completion of each Test, the Engineer-in-Charge shall provide to the Contractor and the Engineer-in-charge, copies of all Test data including detailed trial operation of the Project and the System results. For the avoidance of doubt, it is expressly agreed that the Engineer-in-Charge may require the Contractor to carry out or cause to be carried out additional trial operation of the Project, in accordance with the Specifications and standards contained in the RFP & BOQ as a part of the Agreement, for determining the compliance of the Project or Section thereof with the Specifications and standards.

12.2 Provisional Certificate

12.2.1 Subject to the provisions of Clause 12.2.5, upon completion of all Works forming part of the Project, save and except the Works for which Time Extension has been granted under Clause 10.5, the Engineer-in-Charge shall, at the request of the Contractor, issue a provisional certificate of completion substantially in the form set forth in Schedule-L (the "Provisional Certificate") if the trial run for and in respect of the also all other sub components of work are completed and are successful. The Provisional Certificate shall have appended thereto a list of outstanding items of work (the "**Punch List**") that need to be completed in accordance with the provisions of this Agreement. The Contractor undertakes to complete the minor outstanding items of works in respect of those Sections of the Project for which the Provisional Certificate has been issued, within a period of 30 (thirty) days of the date of Provisional Certificate, and those parts of the Works in respect of which Time Extension has been granted, within the extended period thereof. For the avoidance of doubt, the Parties agree that the Punch List shall include all Works for which Time Extension has been granted and shall also include any minor outstanding items of work forming part of the completed Sections if such works do not materially affect the use of

the completed Sections for their intended purpose. The Parties further agree that Provisional Certificate shall not be issued if the completed Works cannot be safely and reliably placed in service of the Users thereof.

- 12.2.2 Upon issue of Provisional Certificate, the provisions of Articles 14 and 17 shall apply to the completed parts of the Project and the property and ownership of all such completed Works shall vest in the Authority and the Department.
- 12.2.3 If the Engineer-in-Charge determines that the Project or any completed part thereof does not conform to the provisions of this Agreement and cannot be safely and reliably placed in operation, it shall forthwith make a report in this behalf and send copies thereof to the Authority and the Contractor and withhold issuance of the Provisional Certificate until the Defects or deficiencies are rectified by the Contractor and trial run are successful in accordance with this Article 12.
- 12.2.4 Notwithstanding anything to the contrary contained in Clause 12.2.3, the Authority may, at any time after receiving a report from the Engineer-in-Charge under that Clause, direct the Engineer-in-Charge to issue a Provisional Certificate under Clause 12.2.1 and such direction shall be complied forthwith.
- 12.2.5 No Provisional Certificate shall be issued under the provisions of this Clause 12.2 until the Contractor has submitted valid claims for payment of at least 80% (eighty per cent) of the amount arrived at after reducing the lump sum price specified in Clause 18.1.1 by the amount attributable to works which have been withdrawn under the provisions of Clause 8.3.3. For the avoidance of doubt and by way of illustration, the Parties agree that if the Contract Price specified in Clause 18.1.1 is Rs. 105 cr. (Rs. one hundred and five crore) and the works withdrawn under Clause 8.3.3 have a value of Rs. 5 cr. (Rs. five crore), a Provisional Certificate shall not be issued until valid claims for payment of an amount of Rs. 80 cr. (Rs. eighty crore) have been submitted by the Contractor in accordance with the provisions of this Agreement. It is further agreed that all price adjustments made in pursuance of Clause 18.10 shall not be reckoned for computation of the claims for payments referred to in this Clause 12.2.5.

12.3 Completion of remaining Works

All items in the Punch List shall be completed by the Contractor in accordance with the provisions of this Agreement. For any delay in their completion other than for the reasons solely attributable to the Authority or due to 'Force Majeure', the Authority shall be entitled to recover Damages from the Contractor in accordance with the provisions of Clause 10.3.2 of this Agreement.

12.4 Completion Certificate

- 12.4.1 Upon completion of all Works, including the items specified in the Punch List, and the Engineer-in-Charge determining the Tests to be successful, it shall forthwith issue to the Contractor and the Authority a certificate substantially in the form set forth in Schedule-L (the "Completion Certificate").
- 12.4.2 Upon receiving the Completion Certificate, the Contractor shall remove its equipment, materials, debris and temporary works labour campus, stakeyards, other installation from the Site within a period of 30 (thirty) days thereof, failing which the Authority may remove or cause to be removed, such equipment, materials, debris and temporary works and recover from the Contractor an amount equal to 120% (one hundred and twenty per cent) of the actual cost of removal incurred by the Authority.

12.4.3 Without prejudice to the obligations of the Contractor specified in Articles 14 and 17, the property and ownership of all the completed Works forming part of the Project shall vest in the Authority.

12.5 Rescheduling of trial run of the Project

If the Engineer-in-Charge is unable to issue the Completion Certificate or Provisional Certificate, as the case may be, because of events or circumstances on account of which the trial run operation could not be delivered smooth function as required as per Terms & Conditions of the Project Agreement, the Contractor shall be entitled to re-schedule the trials and hold the same as soon as reasonably practicable with prior written intimation or at least 3 (three) days before next trial.

ARTICLE 13
CHANGE OF SCOPE

13.1 Change of Scope

13.1.1 The Authority may, notwithstanding anything to the contrary contained in this Agreement, require the Contractor to make modifications/alterations to the Works (“**Change of Scope**”) before the issue of the Completion Certificate either by giving an instruction or by requesting the Contractor to submit a proposal for Change of Scope involving additional cost or reduction in cost. Any such Change of Scope shall be made and valued in accordance with the provisions of this Article 13.

13.1.2 Change of Scope shall mean:

- (a) change in specifications of any item of Works;
- (b) omission of any work from the Scope of the Project except under Clause 8.3; provided that, subject to Clause 13.5, the Authority shall not omit any work under this Clause in order to get it executed by any other Authority; and / or
- (c) any additional work, Plant, Materials or services which are not included in the Scope of the Project, including any associated Tests on completion of construction.

13.1.3 If the Contractor determines at any time that a Change of Scope will, if adopted, (i) accelerate completion, (ii) reduce the cost to the Authority of executing, maintaining or operating the Project, (iii) improve the efficiency or value to the Authority of the completed Project, or (iv) otherwise be of benefit to the Authority, it shall prepare a proposal with relevant details at its own cost. The Contractor shall submit such proposal, supported with the relevant details and the amount of reduction in the Contract Price to the Authority to consider such Change of Scope. The Authority shall, within 15 (fifteen) days of receipt of such proposal, either accept such Change of Scope with modifications, if any, and initiate proceedings therefore in accordance with this Article 13 or reject the proposal and inform the Contractor of its decision. For the avoidance of doubt, the Parties agree that the Contractor shall not undertake any Change of Scope without the express written consent of the Chief Engineer of the project, save and except any Works necessary for meeting any Emergency or Force Majure.

13.2 Procedure for Change of Scope

13.2.1 In the event of the Authority determining that a Change of Scope is necessary, it may direct the Engineer-in-Charge to issue to the Contractor a notice specifying in reasonable detail the works and services contemplated there under (the “Change of Scope Notice”).

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

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

- (ii) proposed design for the Change of Scope; and
- (iii) proposed modifications, if any, to the Project Completion Schedule of the Project.

For the avoidance of doubt, the Parties expressly agree that, subject to the provisions of Clause 13.4.2, the Contract Price shall be increased or decreased, as the case may be, on account of Change of Scope.

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

- (a) For works where Schedule of Rates (SOR) of Irrigation & Waterways Directorate State's Public Works Department are available shall be applicable for determination of costs.
- (b) If none of the above is available, then the contractor would submit a supplementary tender along with quantities, rates and item specification with analysis for consideration of the Engineer-in-Charge. The total value of work including supplementary tender should in no case exceed the maximum limit of 5% of the bid price.
- (c) In that case prior approval of the Government would be required for any increase over original bid price of the project.

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

- (a) issue a 'Change of Scope Order' requiring the Contractor to proceed with the performance thereof at the rates and conditions approved by the Authority till the matter is resolved in accordance with Article 25; or

13.2.5 The provisions of this Agreement, insofar as they relate to Works and Tests, shall apply mutatis mutandis to the works undertaken by the Contractor under this Article 13.

13.3 **Payment for Change of Scope**

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

13.4 **Restrictions on Change of Scope**

13.4.1 No Change of Scope shall be executed unless the Chief Engineer has issued the Change of Scope Order save and except any Works necessary for meeting any Emergency.

13.4.2 Unless the Parties mutually agree to the contrary, the total value of all Change of Scope Orders shall not exceed 5 (five) per cent of the Contract Price.

13.4.3 Notwithstanding anything to the contrary in this Article 13, no change made necessary because of any default of the Contractor in the performance of its obligations under this Agreement shall be deemed to be Change of Scope, and shall not result in any adjustment of the Contract Price or the Project Completion Schedule.

ARTICLE 14

MAINTENANCE DURING DEFECT LIABILITY PERIOD

14.1 Maintenance obligations of the Contractor

14.1.1 The Contractor shall maintain the Project for a period of years commencing from the date of the Provisional Certificate or the date of completion of original project (the "Maintenance Period"). For the performance of its Maintenance obligations, the Contractor shall not be entitled to any separate payment for the defect liability Period. Amount shall be, inclusive of all taxes. The amount payable for this additional five years warranty & maintenance shall be adjusted to reflect any increase or decrease arising out of variation in WPI to be determined in accordance with the provisions of Clause 18.12. For the avoidance of doubt, it is agreed that in the event no Provisional Certificate is issued, the Maintenance Period shall commence from the date of the Completion Certificate.

14.1.2 During the defect liability period, the Authority shall provide to the Contractor access to the Site for Maintenance in accordance with this Agreement. The obligations of the Contractor hereunder shall include:

- (a) permitting safe, smooth and uninterrupted functioning of the operation of the Project;
- (b) undertaking routine maintenance including prompt servicing of equipments, installations, tool and plants
- (c) undertaking prompt repairs to system & equipments ;
- (d) Safely securing and protecting including guarding from pilferage and theft or of any unauthorized use of the Project;
- (e) informing the Authority of any theft, pilferage, encroachment on the Project; and
- (f) operation and maintenance of all systems, control room upkeep, running maintenance, communication, patrolling to guard the various equipments and administrative actions necessary for the efficient maintenance of the Project in accordance with the provisions of this Agreement.

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

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

14.2 Maintenance Requirements

The Contractor shall ensure and procure that at all times during the Maintenance Period, the Project conforms to the defect liability & operation maintenance requirements set forth in **Schedule-E** (the "Maintenance Requirements").

14.3 Maintenance Programme

14.3.1 The Contractor shall prepare a monthly maintenance programme (the "Maintenance Programme") in consultation with the Engineer-in-charge and submit the same to the

Engineer-in-Charge not later than 10 (ten) days prior to the commencement of the month in which the Maintenance is to be carried out. For this purpose a joint monthly inspection by the Contractor and the Engineer-in-Charge shall be undertaken. The Maintenance Programme shall contain the following:

- (a) Instruction issued by the Engineer-in-charge;
- (b) the proposed maintenance works; and
- (c) deployment of resources for maintenance works.

14.4 Safety, break down of systems and accidents & disaster management device

14.4.1 The Contractor shall ensure safe and smooth operation of gates, and in the event of unsafe conditions, to avert total system breakdowns and accidents, it shall follow the relevant operating procedures for recovery without delay. Such procedures shall conform to the provisions of this Agreement and Good Industry Practice.

14.5.1 The Contractor shall not fully close the Project site for undertaking construction or repair and maintenance works except with the prior written approval of the Engineer-in-charge. Such approval shall be sought by the Contractor through a written request to be made at least 3 (three) days before the proposed closure of bridge or a lane and shall be accompanied by particulars thereof. Within 2 (two) business days of receiving such request, the Engineer-in-Charge shall grant permission with such modifications as it may deem necessary and a copy of such permission shall be sent to the Authority.

14.5.2 Upon receiving the permission pursuant to Clause 14.5.1, the Contractor shall be entitled to close the Bridge fully or a lane for the period specified therein, and in the event of any delay in re-opening such lane, the Contractor shall, for every stretch of 250 (two hundred and fifty) metres, or part thereof, pay Damages to the Authority calculated at the rate of 0.1% (zero point one per cent) of the monthly maintenance payment for each day of delay until the lane has been re-opened for traffic.

14.6 Reduction of payment for non-performance of Maintenance during defect liability period and defect liability obligations

14.6.1 In the event that the Contractor fails to repair or rectify any Defect or deficiency set forth in **Schedule-E** within the period specified therein, it shall be deemed as failure of performance of Maintenance obligations by the Contractor and the Authority shall be entitled to effect reduction in monthly lump sum payment for maintenance in accordance with Clause 18.7 and **Schedule-M**, without prejudice to the rights of the Authority under this Agreement, including Termination thereof and forfeit of Performance Security.

14.6.2 If the nature and extent of any Defect justifies more time for its repair or rectification than the time specified in **Schedule-E**, the Contractor shall be entitled to additional time in conformity with Good Industry Practice. Such additional time shall be determined by the Engineer-in-Charge and conveyed to the Contractor and the Chief Engineer of the project with reasons thereof.

14.7 Authority's right to take remedial measures

In the event the Contractor does not maintain and/or repair the Project or any part thereof in conformity with the Maintenance Requirements, the Maintenance Manual or the Maintenance Programme, as the case may be, and fails to commence remedial works within specified schedule contained under Clause 7 of Specifications chapter of the Agreement which shall be extended maximum to 15 days of receipt of the Maintenance Inspection Report under Clause 15.2 or a notice in this behalf from the Authority or the Engineer-in-Charge, as the case may be, the Authority shall, without prejudice to its rights under this Agreement

including Termination thereof, be entitled to undertake such remedial measures at the cost of the Contractor, and to recover its cost from the Contractor. In addition to recovery of the aforesaid cost, a sum equal to 20% (twenty per cent) of such cost shall be paid by the Contractor to the Authority as Damages and the 'Retention Money' with the Authority will be forfeited.

14.8 Restoration of loss or damage to Project

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

14.9 Overriding powers of the Authority

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

14.9.2 In the event that the Contractor, upon notice under Clause 14.9.1, fails to rectify or remove any hardship or danger within a reasonable period, the Authority may exercise overriding powers under this Clause 14.9.2 and take over the performance of any or all the obligations of the Contractor to the extent deemed necessary by it for rectifying or removing such hardship or danger; provided that the exercise of such overriding powers by the Authority shall be of no greater scope and of no longer duration than is reasonably required hereunder; provided further that any costs and expenses incurred by the Authority in discharge of its obligations hereunder shall be recovered by the Authority from the Contractor, and the Authority shall be entitled to deduct any such costs and expenses incurred from the payments due to the Contractor under Clause 18.7 for the performance of its Maintenance obligations.

14.9.3 In the event of a national emergency, civil commotion or any other circumstances specified in Clause 20.3, the Authority may take over the performance of any or all the obligations of the Contractor to the extent deemed necessary by it, and exercise such control over the Project or give such directions to the Contractor as may be deemed necessary; provided that the exercise of such overriding powers by the Authority shall be of no greater scope and of no longer duration than is reasonably required in the circumstances which caused the exercise of such overriding power by the Authority. For the avoidance of doubt, it is agreed that the consequences of such action shall be dealt in accordance with the provisions of Article 20.

It is also agreed that the Contractor shall comply with such instructions as the Authority may issue in pursuance of the provisions of this Clause 14.9.3, and shall provide assistance and cooperation to the Authority, on a best effort basis, for performance of its obligations hereunder.

ARTICLE 15

SUPERVISION AND MONITORING DURING MAINTENANCE (DEFECT LIABILITY PERIOD & DEFECT LIABILITY PERIOD)

15.1 Inspection by the Contractor

- 15.1.1 The Engineer-in-Charge shall undertake regular inspections to evaluate continuously the compliance with the Operation & Maintenance Requirements.
- 15.1.2 The Contractor shall carry out a detailed inspection in accordance with the guidelines contained in the BIS code or the Manual. Report of this inspection together with details of proposed maintenance works as required shall be conveyed to the Engineer-in-Charge forthwith. The Contractor shall complete the proposed maintenance works as per maximum recovery time given under Clause 7 of Technical Specification of Agreement send compliance reported to the Engineer-in-charge. Inspection shall be undertaken by the Contractor and the inspection report together with details of any damages observed and action taken to remedy the same shall be conveyed to the Engineer-in-Charge forthwith.

15.2 Inspection and payments

- 15.2.1 The Engineer-in-Charge may inspect the Project at any time, but at least once every month, to ensure compliance with the Maintenance Requirements. It shall make a report of such inspection (“Maintenance Inspection Report”) stating in reasonable detail the Defects or deficiencies, if any, with particular reference to the Maintenance Requirements, the Maintenance Manual, and the Maintenance Programme, and send a copy thereof to the Chief Engineer, Superintending Engineer and the Contractor within 7 (seven) days of such inspection.
- 15.2.2 After the Contractor submits to the Engineer-in-Charge the Monthly Maintenance Statement for the Project pursuant to Clause 18.6, the Engineer-in-Charge shall carry out an inspection within 7 (seven) days to certify the amount payable to the Contractor. The Engineer-in-Charge shall inform the Contractor of its intention to carry out the inspection at least 3 (three) business days in advance of such inspection. The Contractor shall assist the Engineer-in-charge in verifying compliance with the Maintenance obligations.
- 15.2.3 For each case of non-compliance of Maintenance Obligations as specified in the inspection report of the Engineer-in-Charge, the Engineer-in-Charge shall calculate the amount of reduction in payment in accordance with the formula specified in Schedule-M.
- 15.2.4 Any deduction made on account of non-compliance will not be paid subsequently even after establishing the compliance thereof. Such deductions will continue to be made every month until the compliance is procured.

15.3 Tests

For determining that the Project conforms to the Maintenance Requirements, the Engineer-in-Charge shall require the Contractor to carry out, or cause to be carried out, tests specified by it in accordance with Good Industry Practice. The Contractor shall, with due diligence, carry out or cause to be carried out all such tests in accordance with the instructions of the Engineer-in-Charge and furnish the results of such tests forthwith to the Engineer-in-Charge.

15.4 **Reports of unusual occurrence**

The Contractor shall, during the Maintenance Period, prior to the close of the day, send to the Chief Engineer the Superintending Engineer and the Engineer-in-Charge, by facsimile or e-mail, a report stating accidents and unusual occurrences on the Project relating to the safety and security of the Project premises. A monthly summary of such reports shall also be sent within 3 (three) business days of the closing of month. For the purposes of this Clause 15.4, accidents and unusual occurrences on the Project shall include:

- (a) accident, death or severe injury to any person;
- (b) damaged or dislodged fixed equipment;
- (c) flooding of Project area; and
- (d) any other unusual occurrence.

ARTICLE 16
DEFECTS LIABILITY

16.1 Defects Liability Period

16.1.1 The Contractor shall be responsible for all the Defects and deficiencies, in the Project or any Section thereof, till the expiry of the Defects Liability Period commencing from the date of Provisional Certificate (the “Defects Liability Period”), provided that the Defects Liability Period shall in no case be less than 72 (seventy two) months from the date of Completion Certificate for and in respect of works for which Time Extension was granted, provided further that in the event no Provisional Certificate is issued, the Defects Liability Period shall commence from the date of the Completion Certificate. For the avoidance of doubt, any repairs or restoration in the Project or any Section thereof shall form a part of the Maintenance obligations of the Contractor as specified in Article 14.

16.2 Remediating Defects

Save and except as provided in Clause 14.1.2, the Contractor shall repair or rectify all Defects and deficiencies observed by the Engineer-in-Charge or his representatives during the Defects Liability Period within a period specified under Clause 7 of Technical Specifications of this Agreement from the date of notice issued by the Engineer-in-Charge in this behalf, or within such reasonable period as may be determined by the Engineer-in-Charge at the request of the Contractor, in accordance with Good Industry Practice.

16.3 Cost of remedying Defects

For the avoidance of doubt, any repair or rectification undertaken in accordance with the provisions of Clause 16.2, including any additional testing, shall be carried out by the Contractor at its own risk and cost, to the extent that such rectification or repair is attributable to:

- (a) the design of the of Project;
- (b) Plant, Materials or workmanship not being in accordance with this Agreement and the Specifications and Standards;
- (c) improper maintenance during construction of the Project by the Contractor; and/ or
- (d) failure by the Contractor to comply with any other obligation under this Agreement.

16.4 Contractor’s failure to rectify Defects

In the event that the Contractor fails to repair or rectify such Defect or deficiency within the period specified in Clause 16.2, the Authority shall be entitled to get the same repaired, rectified or remedied at the Contractor’s cost so as to make the Project conform to the Specifications and Standards and the provisions of this Agreement. All costs consequent thereon shall, after due consultation with the Authority and the Contractor, be determined by the Engineer-in-Charge. The cost so determined and an amount equal to twenty percent of the cost as Damages shall be recoverable by the Authority from the Contractor and may be deducted by the Authority from any monies due to the Contractor.

16.5 Contractor to search cause

16.5.1 The Engineer-in-Charge may instruct the Contractor to examine the cause of any Defect in the Works or part thereof before the expiry of the Defect liability Defects Liability Period.

16.5.2 In the event any Defect identified under Clause 16.5.1 is attributable to the Contractor, the Contractor shall rectify such Defect within the period specified by the Engineer-in-charge, and shall bear the cost of the examination and rectification of such Defect.

16.5.3 In the event such Defect is not attributable to the Contractor, the Engineer-in-Charge shall, after due consultation with the Chief Engineer and the Contractor, determine the costs incurred by the Contractor on such examination and notify the same to the Contractor, with a copy to the Superintending Engineer, and the Contractor shall be entitled to payment of such costs by the Government.

16.5.4 If the contractor fails to rectify the defect, in addition to Clause 16.5.3, the 'Retention Money' lying with the Authority will be liable to be forfeited.

16.6. Extension of Defects Liability Period

The Defects Liability Period shall be deemed to be extended till the identified Defects under Clause 16.2 have been remedied within the defect liability period.

ARTICLE 17

DEFINITION OF AUTHORITY AND ENGINEER-IN-CHARGE

17.1 DUTIES OF OFFICERS OF THE IRRIGATION AND WATERWAYS DIRECTORATE.

I. Chief Engineer

- 17.1.1. The Chief Engineer is the administrative and professional Head of the Project, and is responsible to the Governor for the efficient working of the Project thereof. He is the responsible professional adviser of Government in all matters relating to Public Works, or to the total branch he is in charge.
- 17.1.2. It will be the duty of the Chief Engineer to recommend to Government Appointed Departmental Tender Committee (DTC) the L1 bid offer after having got clearance of the QBEC. The Chief is also a member of the DTC as such he is required to undertake quick actions so that the L1 bid received in the EPC-RFP is then along with comments of DTC is placed before the Department for a formal Administrative Approval not later than 30 days from the Bid opening date After obtaining such approval from the Department the Chief Engineer will issue the LOA to the L1 bidder and instruct the Authority and the Engineer-in-charge to complete the Agreement formalities and AOC.
- 17.1.3 The Chief Engineer will monitor the budget estimates relating to the Project, and also prepare, as soon as possible after the close of each year, a report of the progress made during that period on works under his charge, giving a brief but clear account of the operation.
- 17.1.4. The Chief Engineer will have no Authority over the Audit Officer in regard to audit matters, but will have a claim on him for assistance and advice in matters relating to accounts and finance. At the same time the Chief Engineer will be bound to arrange that the Audit Officer is kept fully cognizant of all proceeding and proposals to enable the latter to fulfill his functions.
- 17.1.5 The Chief Engineer is the highest authority of the Department in terms of Technical advises & guidance. The Chief Engineer is the Chairman of the Quotation-cum-Bid Evaluation Committee (QBEC)
- 17.1.6. In regard to matters relating to finance and accounts, the Chief Engineer will-
 - (a) exercise a concurrent control, with the Audit Officer, over the duties of the officers of the Department in maintaining accounts and give legitimate support to the Audit Officer in enforcing strict attention to the rules concerning the disbursement of money, the custody of stores and submission of accounts;
 - (b) see that the budget appropriations of the year are fully expended in so far as is consistent with general economy and the prevention of large expenditure in the closing months of the year for the sole purpose of avoiding lapses;
 - (c) be responsible for ensuring that any money which is not likely to be needed during the year is promptly surrendered, so as to allow of its appropriation for other purposes by the proper authority; and
 - (d) see that materials required for the preparation of budget estimates of receipts and expenditure of a year by the Finance Department, as well as reports of progress made on works in charge of the Directorate are furnished by the subordinate authorities punctually by the prescribed dates.

II. Superintending Engineer identified as ‘the Authority’

- 17.2.1. The administrative unit of the Directorate is the Circle, in charge of a Superintending Engineer, who is responsible to the Chief Engineer for the administration and general professional control of the Project and in charge of officers within his Circle. The Superintending Engineer in charge of the Project is defined and identified as **‘the Authority’ in the EPC Agreement.**
- 17.2.2. It is the duty of the Superintending Engineer ‘**the Authority**’ to inspect the state of the works and to satisfy himself that the system of management prevailing is efficient and economical. Besides regular tours of inspection it is also the duty of Superintending Engineer to proceed to report on any important design or work, or on any serious accident or threatened danger connected with the works.
- 17.2.3 The Superintending Engineer as ‘**the Authority**’ is required to ascertain and report on the efficiency of the subordinate, office, and petty establishment, and to see that the staff employed in the Project is actually necessary and adequate for its management.
- 17.2.4 The Superintending Engineer is also a member of the Departmental Quotation-cum-Bid Evaluation Committee for the EPC. He is also a member of the DTC. He is the Request for Proposal inviting Authority. He would represent the Government in all matters relating to the Request for Proposal, Bid process, holding of Pre-bid meetings as the Departmental Authority. .
- 17.2.5 A Superintending Engineer as ‘**the Authority**’ is authorized to correspond direct with any of the local police and administrative authorities, civil or military, within his Circle. He will address General Officer Commanding Divisions or Brigades, through their Staff Officers, and all other officers direct.

III. Executive Engineer designated and identified as the Engineer-in-charge

- 17.3.1. The executive unit of the Directorate is the Division, in charge of an Executive Engineer, who is responsible to the Superintending Engineer for the execution and management of the Project. An Executive Engineer is designated as the Engineer-in-charge of the Project. If there are more than one Executive Engineer engaged in the Project, the Chief Engineer of the Project will determine who will function as the Engineer-in-Charge.
- 17.3.2. An Executive Engineer can receive positive orders only from his own departmental superiors, ie the Chief Engineer or the Superintending Engineer only.
- 17.3.3. Executive Engineers are responsible to supervise plan monitor prepare payment bills and implement the Project at the site.
- 17.3.4. Executive Engineer is required to report to the Authority on any important accident or unusual occurrence connected with the Project, and to state how he has acted in consequence.
- 17.3.5. The Executive Engineer or the Engineer- in-charge will-
 - (a) not commence the construction of any work or spend public funds without the sanction of competent authority;
 - (b) close the accounts immediately the work is finished, and prepare the Completion Report, if required by the rules;
 - (c) take the necessary steps for obtaining fund allocation for the Project, keep their accounts and submit them punctually to the audit office under the rules for the time being in force;

- (d) exercise a thorough and efficient control and check over their accountants, and carefully examine the papers; and
 - (e) be responsible for the correctness, in all respects of the original records of payment of works bills, contingency and stores, receipts and expenditure and for seeing that complete vouchers are obtained.
- 17.3.6 The Engineer-in-Charge shall perform the duties and exercise the authority in accordance with the provisions of this Agreement, and substantially in accordance with the terms of reference (“Terms of Reference” or “TOR”) set forth in Annex 1 of Schedule N, but subject to obtaining prior written approval of **Chief Engineer of the Project** before determining:
- (a) Any Time Extension;
 - (b) Any additional cost to be paid to the Contractor;
 - (c) the Termination Payment; or
 - (d) any other matter which is not specified in (a), (b) or (c) above and which creates an obligation or liability on either Party for a sum exceeding Rs. 10,000 (Rs. Zero point one zero lakh).
- 17.3.7 All directions and decisions or communications of the Engineer-in-Charge shall be effective or valid only if it is taken and communicated with the approval of the Chief Engineer for and in respect of any matter specified in Clause 17.3.6.
- 17.3.8 The Engineer-in-Charge shall submit regular periodic reports, at least once every month to the Chief Engineer in respect of its duties and functions under this Agreement. Such reports shall be submitted by the Engineer-in-Charge within 10 (ten) days of the beginning of every month.
- 17.3.9 Delegation of technical and financial powers by the Engineer-in-Charge to other sub ordinates or superior authorities is not generally permitted.
- 17.3.10 However, the Engineer-in-Charge may, by order in writing, delegate any of his duties and responsibilities to the Assistant Engineer/s and, or may revoke any such delegation, under intimation to the Superintending Engineer and the Contractor.
- 17.3.11 Any failure of the Engineer-in-Charge to disapprove any work, plant or Materials shall constitute approval of the Authority, and shall therefore the contractor cannot dispute or raise complaints with the Authority, for Plant or Materials, which is not in accordance with the provisions of this Agreement and the Specifications and Standards.
- 17.3.12 Notwithstanding anything stated in Clause 17.3.10 above, the Engineer-in-Charge shall not delegate the power to refer any matter for the Authority’s prior approval wherever required in accordance with the provisions of Clause 17.3.6.

IV. Assistant Engineers & Junior Engineers

- 17.4.1. The division is divided into Sub-divisions in charge of Sub-divisional Officers who are Assistant Engineers or Assistant Engineers under control of whom Junior Engineers or such officers are available. Both are subordinate Engineers who are responsible to the Executive Engineer in charge for the supervision, management and preparation of payment bills, reports of the Project.

Part IV

Financial Covenants

ARTICLE 18
PAYMENTS

18.1 Contract Price

18.1.1 The Engineer-in-charge shall make payments to the Contractor for the Works on the basis of the lump sum bid price accepted by the Chief Engineer on the basis of recommending of QBEC and DTC in consideration of the obligations specified in this Agreement for an amount of Rs. (Rs.) (the “**Contract Price**”), which shall be subject to adjustments in accordance with the provisions of this Agreement. For the avoidance of doubt, the Parties expressly agree that the Contract Price shall also include the cost of Operation & Maintenance including defect liability which shall be paid separately in accordance with the provisions of Clause 18.7. The Parties further agree that save and except as provided in this Agreement, the Contract Price shall be valid and effective until issue of final Completion Certificate after successful completion of all contractual obligations by the Contractor after Defect Liability Period.

18.1.2 The Contract Price includes all duties, taxes, royalty, and fees that may be levied in accordance with the laws and regulations in force as on the Base Date on the Contractor's equipment, Plant, Materials and supplies acquired for the purpose of this Agreement and on the services performed under this Agreement. Nothing in this Agreement shall relieve the Contractor from its responsibility to pay any tax including any tax that may be levied in India on profits made by it in respect of this Agreement.

18.1.3 The Contract Price shall not be adjusted for any change in costs stated in Clause 18.1.2 above, except as stated in Clauses 18.10.

18.1.4 The Contract Price shall not be adjusted to take account of any unforeseen difficulties or costs, unless otherwise provided for in this Agreement.

18.1.5 Unless otherwise stated in this Agreement, the Contract Price covers all the Contractor's obligations for the Works under this Agreement and all things necessary for the Construction and the remedying of any Defects in the Project.

18.1.6 All payments under this Agreement shall be made in Indian Rupees.

18.2 Advance Payment is not permitted except billed against work already completed.

18.3 Procedure for estimating the payment for the Works

18.3.1 The Authority shall make interim stage payments to the Contractor as certified by the Engineer-in-Charge on completion of a stage, in a sub component, number or area as specified in the BOQ, and valued in accordance with the proportion of the Contract Price assigned to each item and its stage in **Schedule-H**.

18.3.2 The Contractor shall base its claim for interim stage payment for the stages completed till the end of the month for which the payment is claimed, valued in accordance with Clause 18.3.1, supported with necessary particulars and documents in accordance with this Agreement.

18.3.3 Any reduction in the Contract Price arising out of Change of Scope or the works withdrawn under Clause 13.3 shall not affect the amounts payable for the items or stage payments thereof which are not affected by such Change of Scope or withdrawal.

18.4 Stage Payment Statement for Works

The Contractor shall submit a running account bill claim in the standard format (the “Stage Payment Statement”), in 3 copies, by the 7th (seventh) day of the month to the Engineer-in-

Charge in the form set forth in **Schedule-O**, showing the amount calculated in accordance with Clause 18.3 to which the Contractor considers himself entitled for completed stage(s) of the Works. The Stage Payment Statement shall be accompanied with the progress reports and any other supporting documents. The Contractor shall not submit any claim for payment of incomplete stages of sub component of work.

18.5 **Stage Payment for Works**

18.5.1 Within 10 (ten) days of receipt of the Stage Payment Statement from the Contractor pursuant to Clause 18.4, the Engineer-in-Charge shall enter the detailed item of work as per BOQ in respect to 100% completed subcomponent and furnish certificates in the Measurement book regarding the work has been executed as per specification and to the full extent and to satisfaction of Engineer-in-Charge. The running account bill shall accompany statement signed by both parties and also signed by contractor in the Authority's Measurement book as acquittance broadly determine the amount due to the Contractor **and recommend the release of 90 (ninety) percent of the amount so determined as part payment** against the Stage Payment Statement, pending issue of the Interim Payment Certificate by the Engineer-in-Charge. Within 10 (ten) days of the receipt of recommendation of the Engineer-in-Charge, the Treasury shall make electronic payment directly to the Contractor's bank account. **The bank account of the Contractor where he intends to receive all financial transactions/ payments should be officially declared and having mandatorily 'Internet Core Banking facility' without default at the commencement of Project. Failure to officially intimate the Engineer-in-Charge & the Authority regarding the official beneficiary Bank account by the Contractor would be the sole responsibility of him regarding not getting payments etc.or wrong credit.**

18.5.2 Within 15 (fifteen) days of the receipt of the Stage Payment Statement referred to in Clause 18.4, the Engineer-in-Charge shall determine and shall deliver to the Contractor an IPC certifying the amount due and payable to the Contractor, after adjusting the payments already released to the Contractor against the said statement. For the avoidance of doubt, the Parties agree that the IPC shall specify all the amounts that have been deducted from the Stage Payment Statement and the reasons there for.

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

18.5.4 The Engineer-in-charge may, for reasons to be recorded, withhold from stage payment:

- (a) the estimated value of work or obligation that the Contractor has failed to perform in accordance with this Agreement and the Engineer-in-Charge had notified the Contractor; and
- (b) the estimated cost of rectification of work done being not in accordance with the Agreement.

18.5.5 Payment by the Engineer-in-Charge shall not be deemed to indicate the Authority's acceptance, approval, consent or satisfaction with the work done.

18.6 **Monthly Maintenance Statement of the Project**

18.6.1 The Contractor shall submit to the Engineer-in-Charge a monthly maintenance statement ("Monthly Maintenance Statement") in 3 (three) copies by the 7th (seventh) day of each month in the format set forth in '**Schedule-O**' for the Maintenance of the Project during the previous month.

18.6.2 The monthly lump sum amount payable for Maintenance shall be as specified in Clause 14.1 and the BOQ. I.T &PT shall be deducted as per Rules.

18.7 Payment for Maintenance of the Project during defect liability period.

18.7.1 Within 15 (fifteen) days of receipt of the Monthly Maintenance Statement from the Contractor pursuant to Clause 18.6, the Engineer-in-Charge shall verify the Contractor's monthly maintenance statement and certify the amount to be paid to the Contractor taking into account:

- (a) Compliance with the Maintenance Requirements; and
- (b) reduction for non-compliance with the Maintenance Requirement in accordance with Clause 14.6 and Shedule-M.

The Engineer-in-Charge shall deliver to the Authority an IPC approving or amending the monthly maintenance statement to reflect the amount due to the Contractor in accordance with this Agreement.

18.7.2 Maintenance shall be measured in units given in BOQ each; provided, however, that payment thereof shall be made in fixed monthly amounts in accordance with this Agreement. If the Maintenance Requirements set forth in 'Schedule-E' are not met, reduction in payments shall be made in accordance with the provisions of Schedule-M. The reductions for non-compliance with the Maintenance Requirements shall be applied on the basis of monthly inspections by the Engineer-in-Charge.

18.7.3 The deduction made on account of non-compliance with the Maintenance Requirements shall not be subsequently considered for payment after the compliance is achieved by repair or rectification.

18.7.4 The Authority shall pay to the Contractor every quarter any amount due under any IPC under this Clause 18.7. The payment shall be made no later than 30 (thirty) days from the date of submission of the last IPC for the relevant quarter.

18.8 Payment of Damages

18.8.1 The Contractor may claim Damages due and payable to it in accordance with the provisions of this Agreement.

18.8.2 The Engineer-in-Charge shall issue the IPC within 15 (fifteen) days of the receipt of the claim under Clause 18.8.1, after making adjustments in accordance with the provisions of this Agreement. The Authority shall pay to the Contractor the amount due under any IPC within a period of 30 (thirty) days from the date of the submission of the claim under this Clause 18.8. In the event of the failure of the Authority to make payment to the Contractor within the specified time, the Authority shall be liable to pay to the Contractor interest thereon and the provisions of Clause 18.9 shall apply mutatis mutandis thereto.

18.9 Time of payment

18.9.1 The Engineer-in-Charge shall pay to the Contractor any amount due under any payment certificate issued by the Engineer-in-charge in accordance with the provisions of this Article 18, or in accordance with any other clause of this Agreement as follows:

- (a) Payment shall be made no later than 30 (thirty) days from the date of submission of the Stage Payment Statement by the Contractor to the Engineer-in-charge for certification in accordance with the provisions of Clause 18.4 for an IPC; provided that, in the event the IPC is not issued by the Engineer-in-charge within the aforesaid period of 30 (thirty) days, the Authority shall pay the amount shown in the Contractor's Stage Payment Statement and

any discrepancy therein shall be added to, or deducted from, the next payment certificate issued to the Contractor; and

- (b) payment shall be made no later than 30 (thirty) days from the date of submission of the Final Payment Certificate for Works along with the discharge submitted to the Engineer-in-Charge in accordance with the provisions of Clause 18.15 for certification.

18.10 Final Payment Statement

18.10.1 Within 60 (sixty) days after receiving the Completion Certificate under Clause 12.4, the Contractor shall submit to the Engineer-in-Charge for consideration in triplicate copies of a Final Payment Statement (the “Final Payment Statement”) for Works, with supporting documents showing in detail, in the form prescribed by the Engineer-in-Charge:

- (a) the summary of Contractor’s Stage Payment claims for Works as submitted in accordance with Clause 18.4;
- (b) the amounts received from the Authority against each claim; and
- (c) any further sums which the Contractor considers due to it from the Authority.

If the Engineer-in-Charge disagrees with or cannot verify any part of the Final Payment Statement, the Contractor shall submit such further information as the Engineer-in-charge may reasonably require.

The Engineer-in-Charge shall deliver to the Authority:

- (i) an IPC for those parts of the Final Payment Statement which are not in dispute, along with a list of disputed items which shall then be settled in accordance with the provisions of Article 25; or
- (ii) Final Payment Certificate in accordance with Clause 18.15 if there are no disputed items.

18.10.2 If the Engineer-in-Charge does not prescribe the form referred to in Clause 18.10.1 within 15 (fifteen) of the date of issue of the Completion Certificate, the Contractor shall submit the statement in such form as it deems fit.

18.11 Discharge

Upon submission of the Final Payment Statement for Works, the Contractor shall give to the Authority, with a copy to the Engineer-in-Charge, a written discharge confirming that the total of the Final Payment Statement represents full and final settlement of all monies due to the Contractor in respect of this Agreement for all the Works arising out of this Agreement, except for any monies due to either Party on account of any Defect. Provided that such discharge shall become effective only after the payment due has been made in accordance with the Final Payment Certificate issued pursuant to Clause 18.15.

18.12 Final Payment Certificate

18.12.1 Within 30 (thirty) days after receipt of the Final Payment Statement for Works under Clause 18.13, and the written discharge under Clause 18.14, and there being no disputed items of claim, the Engineer-in-Charge shall deliver to the Authority, with a copy to the Contractor, a final payment certificate (the “Final Payment Certificate”) stating the amount which, in the opinion of the Engineer-in-Charge, is finally due under this Agreement or otherwise. For the avoidance of doubt, before issuing the Final Payment Certificate, the Engineer-in-Charge shall ascertain from the Authority all amounts previously paid by the Authority and for all sums to which the Authority is entitled, the balance, if any, due from the Authority to the Contractor or from the Contractor to the Authority, as the case may be.

18.12.2 The Authority shall, in accordance with the provisions of Clause 18.9, pay to the Contractor the amount which is stated as being finally due in the Final Payment Certificate.

18.13 Final payment statement for Maintenance during defect liability

18.13.1 Within 30 (thirty) days after completion of the first year of defect liability Maintenance Period, the Contractor shall submit to the Engineer-in-Charge three copies of the payment statement for Maintenance of the Project, with supporting documents showing the details set forth below in the form prescribed by the Engineer-in-Charge :

- (a) the total amount claimed in accordance with the monthly statement for Maintenance of Project;
- (b) the amount paid in accordance with the Interim Payment Certificates; and
- (c) any sums which the Contractor considers to be due to it, with supporting documents.

18.13.2 The Engineer-in-Charge shall certify final payment within 30 (thirty) days of the receipt of the final payment statement of Maintenance under Clause 18.6.1 and Schedule-O, segregating the items of amount payable from the items of amount disallowed. The Engineer-in-Charge shall make payment on the basis of the bill payment verified by the Assistant Engineer within a period of 30 (thirty) days of the receipt of the Interim Payment Statement from the Engineer-in-Charge.

18.13.3 If the Engineer-in-Charge does not prescribe the form within 15 (fifteen) days of the date of issue of the Completion Certificate, the Contractor shall submit the statement in such form as it deems fit.

18.14 Change in Law

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

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

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

18.15 Correction of Interim Payment Certificates

The Engineer-in-Charge may by an Interim Payment Certificate make any correction or modification in any previous Interim Payment Certificate issued by the Engineer-in-Charge.

18.16 Authority's claims

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

ARTICLE 19
INSURANCE

19.1 Insurance for Works and Maintenance

19.1.1 The Contractor shall effect and maintain at its own cost the insurances specified in Schedule-P and as per the requirements under the Applicable Laws.

19.1.2 Subject to the provisions of Clause 19.6, the Authority and the Contractor shall, in accordance with its obligations as provided for in this Agreement, be liable to bear the cost of any loss or damage that does not fall within the scope of this Article 19 or cannot be recovered from the insurers.

19.1.3 Subject to the exceptions specified in Clause 19.1.4 below, the Contractor shall, save and except as provided for in this Agreement, fully indemnify, hold harmless and defend the Authority from and against any and all losses, damages, costs, charges and/or claims with respect to:

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

that may arise out of or in consequence of any breach by the Contractor of this Agreement during the execution of the Works or the remedying of any Defects therein.

19.1.4 Notwithstanding anything stated above and in Clause 19.1.4, the Authority shall fully indemnify the Contractor from and against any and all losses, damages, costs, charges, proceedings and/or claims arising out of or with respect to

- (a) the use or occupation of land or any part thereof by the Authority;
- (b) the right of the Authority to execute the Works, or any part thereof, on, over, under, in or through any land;
- (c) the damage to property which is the unavoidable result of the execution and completion of the Works, or the remedying of any Defects therein, in accordance with this Agreement; and
- (d) the death of or injury to persons or loss of or damage to property resulting from any act or neglect of the Authority, its agents, servants or other contractors, not being employed by the Contractor.

Provided that, in the event of any injury or damage as a result of the contributory negligence of the Contractor, the Authority shall be liable to indemnify the Contractor from and against any and all losses, damages, costs, charges, proceedings and/or claims to the extent as may be proportionately determined to be the liability of the Authority, its servants or agents or other contractors not associated with the Contractor in such injury or damage.

19.1.5 Without prejudice to the obligations of the Parties as specified under Clauses 19.1.3 and 19.1.4, the Contractor shall maintain or affect such third party insurances as may be required under the Applicable Laws.

19.1.6 The Contractor shall provide to the Engineer-in-Charge, within 30 days of the Appointed Date, evidence of professional liability insurance maintained by its Design Director to cover the risk of professional negligence in the design of Works. The professional liability coverage shall be for a sum of not less than 2% (Two per cent) of the Contract Price and shall be maintained until the end of the Defects Liability Period.

19.2 **Notice to the Authority**

No later than 15 (fifteen) days after the date of this Agreement, the Contractor 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 19. Within 15 (fifteen) days of receipt of such notice, the Authority may require the Contractor to effect and maintain such other insurances as may be necessary pursuant hereto, and in the event of any difference or disagreement relating to any such insurance, the Dispute Resolution Procedure shall apply.

19.3 **Evidence of Insurance Cover**

19.3.1 All insurances obtained by the Contractor in accordance with this Article 19 shall be maintained with insurers on terms consistent with Good Industry Practice. Within 10 (ten) days from the Appointed Date, the Contractor shall furnish to the Authority 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 Contractor to the Authority. The Contractor shall act in accordance with the directions of the Authority; provided that the Contractor shall produce to the Authority the insurance policies in force and the receipts for payment of the current premia.

19.3.2 The Contractor shall ensure the adequacy of the insurances at all times in accordance with the provisions of this Agreement.

19.4 **Remedy for failure to insure**

If the Contractor 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 insurance, and pay such premium and recover the cost.

19.5 **Waiver of subrogation**

All insurance policies in respect of the insurance obtained by the Contractor pursuant to this Article 19 shall include a waiver of any and all rights of subrogation or recovery of the insurers there under against, inter alia, the Authority, and its assigns, successors, undertakings and their subsidiaries, Affiliates, employees, insurers and underwriters, and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy or in any way connected with any loss, liability or obligation covered by such policies of insurance.

19.6 **Contractor's waiver**

The Contractor hereby further releases, assigns and waives any and all rights of subrogation or recovery against, inter alia, the Authority and its assigns, undertakings and their subsidiaries, Affiliates, employees, successors, insurers and underwriters, which the Contractor

may otherwise have or acquire in or from or in any way connected with any loss, liability or obligation covered by policies of insurance maintained or required to be maintained by the Contractor pursuant to this Agreement (other than third party liability insurance policies) or because of deductible clauses in or inadequacy of limits of any such policies of insurance.

19.7 Cross liabilities

Any such insurance maintained or affected in pursuance of this Article 19 shall include a cross liability clause such that the insurance shall apply to the Contractor and to the Authority as separately insured.

19.8 Accident or injury to workmen

Notwithstanding anything stated in this Agreement, it is hereby expressly agreed between the Parties that the Authority shall not be liable for or in respect of any damages or compensation payable to any workman or other person in the employment of the Contractor or Sub-contractor, save and except as for death or injury resulting from any act, omission or default of the Authority, its agents or servants. The Contractor shall indemnify and keep indemnified the Authority from and against all such claims, proceedings, damages, costs, charges, and expenses whatsoever in respect of the above save and except for those acts, omissions or defaults for which the Authority shall be liable.

19.9 Insurance against accident to workmen

The Contractor shall effect and maintain during the Agreement such insurances as may be required to insure the Contractor's personnel and any other persons employed by it on the Project from and against any liability incurred in pursuance of this Article 19. Provided that for the purposes of this Clause 19.9, the Contractor's personnel/any person employed by the Contractor shall include the Sub-contractor and its personnel. It is further provided that, in respect of any persons employed by any Sub-contractor, the Contractor's obligations to insure as aforesaid under this Clause 19.9 shall be discharged if the Sub-contractor shall have insured against any liability in respect of such persons in such manner that the Authority is indemnified under the policy. The Contractor shall require such Sub-contractor to produce before the Authority, when required, such policy of insurance and the receipt for payment of the current premium within 10 (ten) days of such demand being made by the Authority.

19.10 Application of insurance proceeds

The proceeds from all insurance claims, except for life and injury, shall be applied for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or installation of the Project and the provisions of this Agreement in respect of construction of works shall apply mutatis mutandis to the works undertaken out of the proceeds of insurance.

19.11 Compliance with policy conditions

Each Party hereby expressly agrees to fully indemnify the other Party from and against all losses and claims arising from its failure to comply with conditions imposed by the insurance policies effected in accordance with this Agreement.

Part V

Force Majeure and Termination

ARTICLE 20
FORCE MAJEURE

20.1 Force Majeure

As used in this Agreement, the expression “Force Majeure” or “Force Majeure Event” shall mean occurrence in India of any or all of Non-Political Event, Indirect Political Event and Political Event, as defined in Clauses 20.2, 20.3 and 20.4 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 (i) is beyond the reasonable control of the Affected Party, and (ii) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice, and (iii) has Material Adverse Effect on the Affected Party.

20.2 Non-Political Event

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

- (a) act of God, epidemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionising radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Site);
- (b) strikes or boycotts (other than those involving the Contractor, Sub-contractors or their respective employees/representatives, or attributable to any act or omission of any of them) interrupting supplies and services to the Project for a continuous period of 24 (twenty-four) hours and an aggregate period exceeding 10 (ten) days in an Accounting Year, and not being an Indirect Political Event set forth in Clause 20.3;
- (c) any failure or delay of a Sub-contractor but only to the extent caused by another Non-Political Event;
- (d) any judgement or order of any court of competent jurisdiction or statutory authority made against the Contractor in any proceedings for reasons other than (i) failure of the Contractor to comply with any Applicable Law or Applicable Permit, or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or (iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by the Authority;
- (e) the discovery of geological conditions, toxic contamination or archaeological remains on the Site that could not reasonably have been expected to be discovered through a site inspection; or
- (f) any event or circumstances of a nature analogous to any of the foregoing.

20.3 Indirect Political Event

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

- (a) an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;
- (b) industry-wide or State-wide strikes or industrial action for a continuous period of 24 (twenty-four) hours and exceeding an aggregate period of 10 (ten) days in an Accounting Year;

- (c) any civil commotion, boycott or political agitation which prevents construction of the Project by the Contractor for an aggregate period exceeding 10 (ten) days in an Accounting Year;
- (d) any failure or delay of a Sub-contractor to the extent caused by any Indirect Political Event;
- (e) any Indirect Political Event that causes a Non-Political Event; or
- (f) any event or circumstances of a nature analogous to any of the foregoing.

20.4 **Political Event**

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

- (a) Change in Law, only if consequences thereof cannot be dealt with under and in accordance with the provisions of Clause 18.17;
- (b) compulsory acquisition in national interest or expropriation of any Project Assets or rights of the Contractor or of the Sub-Contractors;
- (c) unlawful or unauthorized or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, license, permit, authorisation, no objection certificate, consent, approval or exemption required by the Contractor or any of the Sub-contractors to perform their respective obligations under this Agreement; provided that such delay, modification, denial, refusal or revocation did not result from the Contractor's or any Sub-contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, license, authorisation, no objection certificate, exemption, consent, approval or permit;
- (d) any failure or delay of a Sub-contractor but only to the extent caused by another Political Event; or
- (e) any event or circumstances of a nature analogous to any of the foregoing.

20.5 **Duty to report Force Majeure Event**

20.5.1 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 20 with evidence in support thereof;
- (b) the estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Agreement;
- (c) the measures which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Event; and
- (d) any other information relevant to the Affected Party's claim.

20.5.2 The Affected Party shall not be entitled to any relief for or in respect of a Force Majeure Event unless it shall have notified the other Party of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event no later than 10 (ten) days after the Affected Party knew, or ought 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.

20.5.3 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 20.5.1, and such other information as the other Party may reasonably request the Affected Party to provide.

20.6 Effect of Force Majeure Event on the Agreement

20.6.1 Upon the occurrence of any Force Majeure after the Appointed Date, the costs incurred and attributable to such event and directly relating to this Agreement (the "Force Majeure costs") shall be allocated and paid as follows:

- (a) upon occurrence of a Non-Political Event, the Parties shall bear their respective Force Majeure costs and neither Party shall be required to pay to the other Party any costs thereof;
- (b) upon occurrence of an Indirect Political Event, all Force Majeure costs attributable to such Indirect Political Event, and not exceeding the Insurance Cover for such Indirect Political Event, shall be borne by the Contractor, and to the extent Force Majeure costs exceed such Insurance Cover, one half of such excess amount shall be reimbursed by the Authority to the Contractor for the Force Majeure events; and
- (c) upon occurrence of a Political Event, all Force Majeure costs attributable to such Political Event shall be reimbursed by the Authority to the Contractor.

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

20.6.2 Save and except as expressly provided in this Article 20, 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.

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

20.7 Termination Notice for Force Majeure Event

20.7.1 If a Force Majeure Event subsists for a period of 60 (sixty) days or more within a continuous period of 120 (one hundred and twenty) days, either Party may in its discretion terminate this Agreement by issuing a Termination Notice to the other Party without being liable in any manner whatsoever, save as provided in this Article 20, 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.

20.8 Termination Payment for Force Majeure Event

20.8.1 In the event of this Agreement being terminated on account of a Non-Political Event, the Termination Payment shall be an amount equal to the sum payable under Clause 22.5.

Provided that in the event Termination occurs during the Maintenance Period, the Engineer-in-charge shall only determine the value of Works associated with Maintenance.

20.8.2 If Termination is on account of an Indirect Political Event, the Termination Payment shall include:

- (a) any sums due and payable under Clause 22.5; and
- (b) the reasonable cost, as determined by the Engineer-in-Charge, of the Plant and Materials procured by the Contractor and transferred to the Authority for use in Construction or Maintenance, only if such Plant and Materials are in conformity with the Specifications and Standards;

Provided that in the event Termination occurs during the Maintenance Period, the Engineer-in-charge shall only determine the value of Works associated with Maintenance.

20.8.3 If Termination is on account of a Political Event, the Authority shall make a Termination Payment to the Contractor in an amount that would be payable under Clause 22.6.2 as if it were an Authority Default.

20.9 **Dispute resolution**

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

20.9.1 Settlement of Disputes and Arbitration:

Except where otherwise provided in the contract, all questions and disputes relating to the meaning of the specifications, designs, drawings and instructions hereinbefore mentioned and as to the quality of workmanship or materials used on the work or as to any other question, claim, right, matter or thing whatsoever, in any way arising out of relating to the contracts, designs, drawings, specifications, estimates, instructions, orders or these conditions or otherwise concerning the works, or the executions or failure to execute the same, whether arising during the progress of the work, or after the completion or abandonment thereof shall be dealt with as mentioned hereinafter:

If the contractor considers any work demanded of him/her to be outside the requirements of the contract, or disputes any drawings, record or decision given in writing by the Engineer-in-Charge or any matter in connection with or arising out of the contract or carrying out of the work to be unacceptable, he/she shall promptly within 15 days request the Chairman of the Departmental Dispute Redressal Committee formed by Government, in writing for written instruction or decision. Thereupon, the Dispute Redressal Committee shall give its written instructions or decision within a period of three months from the date of receipt of the contractor's letter.

Above provisions will be applicable irrespective of the value of the works to which the dispute may relate.

20.10 **Excuse from performance of obligations**

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

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

ARTICLE 21

SUSPENSION OF CONTRACTOR'S RIGHTS

21.1 Suspension upon Contractor Default

Upon occurrence of a Contractor Default, the Authority shall be entitled, without prejudice to its other rights and remedies under this Agreement including its rights of Termination hereunder, to (i) suspend carrying out of the Works or Maintenance or any part thereof, and (ii) carry out such Works or Maintenance itself or authorize any other person to exercise or perform the same on its behalf during such suspension (the "Suspension"). Suspension hereunder shall be effective forthwith upon issue of notice by the Authority to the Contractor and may extend up to a period not exceeding 90 (ninety) days from the date of issue of such notice.

21.2 Authority to act on behalf of Contractor

During the period of Suspension hereunder, all rights and liabilities vested in the Contractor in accordance with the provisions of this Agreement shall continue to vest therein and all things done or actions taken, including expenditure incurred by the Authority for discharging the obligations of the Contractor under and in accordance with this Agreement shall be deemed to have been done or taken for and on behalf of the Contractor and the Contractor undertakes to indemnify the Authority for all costs incurred during such period. The Contractor hereby licenses and sub-licenses respectively, the Authority or any other person authorized by it under Clause 21.1 to use during Suspension, all Intellectual Property belonging to or licensed to the Contractor with respect to the Project and its design, engineering, construction and maintenance, and which is used or created by the Contractor in performing its obligations under the Agreement.

21.3 Revocation of Suspension

21.3.1 In the event that the Authority shall have rectified or removed the cause of Suspension within a period not exceeding 60 (sixty) days from the date of Suspension, it shall revoke the Suspension forthwith and restore all rights of the Contractor under this Agreement. For the avoidance of doubt, the Parties expressly agree that the Authority may, in its discretion, revoke the Suspension at any time, whether or not the cause of Suspension has been rectified or removed hereunder.

21.3.2 Upon the Contractor having cured the Contractor Default within a period not exceeding 60 (sixty) days from the date of Suspension, the Authority shall revoke the Suspension forthwith and restore all rights of the Contractor under this Agreement.

21.4 Termination

21.4.1 At any time during the period of Suspension under this Article 21, the Contractor may by notice require the Authority to revoke the Suspension and issue a Termination Notice. The Authority shall, within 15 (fifteen) days of receipt of such notice, terminate this Agreement under and in accordance with Article 22.

21.4.2 Notwithstanding anything to the contrary contained in this Agreement, in the event that Suspension is not revoked within 90 (ninety) days from the date of Suspension hereunder, the Agreement shall, upon expiry of the aforesaid period, be deemed to have been terminated by mutual agreement of the Parties and all the provisions of this Agreement shall apply, mutatis mutandis, to such Termination as if a Termination Notice had been issued by the Authority upon occurrence of a Contractor Default.

ARTICLE 22
TERMINATION

22.1 Termination for Contractor Default

22.1.1 Save as otherwise provided in this Agreement, in the event that any of the defaults specified below shall have occurred, and the Contractor fails to cure the default within the Cure Period set forth below, or where no Cure Period is specified, then within a Cure Period of 60 (sixty) days, the Contractor shall be deemed to be in default of this Agreement (the “Contractor Default”), unless the default has occurred 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:

- (a) the Contractor fails to provide, extend or replenish, as the case may be, the Performance Security in accordance with this Agreement;
- (b) subsequent to the replenishment or furnishing of fresh Performance Security in accordance with Clause 7.3, the Contractor fails to cure, within a Cure Period of 30 (thirty) days, the Contractor Default for which the whole or part of the Performance Security was appropriated;
- (c) the Contractor does not achieve the latest outstanding Project Milestone due in accordance with the provisions of Schedule-J, subject to any Time Extension, and continues to be in default for 45 (forty five) days;
- (d) the Contractor abandons or manifests intention to abandon the construction or Maintenance of the Project during defect liability period or the defect liability period without the prior written consent of the Authority;
- (e) the Contractor fails to proceed with the Works in accordance with the provisions of Clause 10.1 or stops Works and/or the Maintenance during entire defect liability period for 30 (thirty) days without reflecting the same in the current programme and such stoppage has not been authorized by the Engineer-in-Charge;
- (f) the Project Completion Date does not occur within the period specified in Schedule-J for the Scheduled Completion Date, or any extension thereof;
- (g) failure to complete the Punch List items within the periods stipulated there for in Clause 12.2.1;
- (h) the Contractor fails to rectify any Defect, the non-rectification of which shall have a Material Adverse Effect on the Project, within the time specified in this Agreement or as directed by the Engineer-in-Charge;
- (i) the Contractor subcontracts the Works or any part thereof in violation of this Agreement or assigns any part of the Works or the Maintenance without the prior approval of the Authority;
- (j) the Contractor creates any Encumbrance in breach of this Agreement; (k) an execution levied on any of the assets of the Contractor has caused a Material Adverse Effect ;
- (l) the Contractor is adjudged bankrupt or insolvent, or if a trustee or receiver is appointed for the Contractor or for the whole or material part of its assets that has a material bearing on the Project;

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

22.1.2 Without prejudice to any other rights or remedies which the Authority may have under this Agreement, upon occurrence of a Contractor Default, the Authority shall be entitled to terminate this Agreement by issuing a Termination Notice to the Contractor; provided that before issuing the Termination Notice, the Authority shall by a notice inform the Contractor of its intention to issue such Termination Notice and grant 15 (fifteen) days to the Contractor 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.

22.1.3 After termination of this Agreement for Contractor Default, the Authority may complete the Works and/or arrange for any other entities to do so. The Authority and these entities may then use any Materials, Plant and equipment, Contractor's documents and other design documents made by or on behalf of the Contractor.

22.2 Termination for Authority Default

22.2.1 In the event that any of the defaults specified below shall have occurred, and the Authority fails to cure such default within a Cure Period of 90 (ninety) days or such longer period as

has been expressly provided in this Agreement, the Authority shall be deemed to be in default of this Agreement (the "Authority Default") unless the default has occurred as a result of any breach of this Agreement by the Contractor or due to Force Majeure. The defaults referred to herein shall include:

- (a) the Authority commits a material default in complying with any of the provisions of this Agreement and such default has a Material Adverse Effect on the Contractor;
- (b) the Authority has failed to make payment of any amount due and payable to the Contractor within the period specified in this Agreement;
- (c) the Authority repudiates this Agreement or otherwise takes any action that amounts to or manifests an irrevocable intention not to be bound by this Agreement; or
- (d) the Engineer-in-Charge fails to issue the relevant Interim Payment Certificate within 90 (ninety) days after receiving a statement and supporting documents.

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

If on the consideration of the Authority's representation or otherwise, the contractor does not issue the Termination Notice on such 15th day and prefers to continue with the project, it is deemed that the cause of action of the Termination Notice has been condoned by the Contractor. Hence he forfeits his right to any other remedy on that count.

22.3 Termination for Authority's convenience

Notwithstanding anything stated hereinabove, the Authority may terminate this Agreement for convenience. The termination shall take effect 30 (thirty) days from the date of notice hereunder.

22.4 Requirements after Termination

Upon Termination of this Agreement in accordance with the terms of this Article 22, the Contractor shall comply with and conform to the following:

- (a) deliver to the Authority all Plant and Materials which shall have become the property of the Authority under this Article 22;
- (b) deliver all relevant records, reports, Intellectual Property and other licenses pertaining to the Works, Maintenance, other design documents and in case of Termination occurring after the Provisional Certificate has been issued, the "as built" Drawings for the Works;
- (c) transfer and/or deliver all Applicable Permits to the extent permissible under Applicable Laws; and
- (d) vacate the Site within 15 (fifteen) days.

22.5 Valuation of Unpaid Works

22.5.1 Within a period of 45 (forty-five) days after Termination under Clause 22.1, 22.2 or 22.3, as the case may be, has taken effect, the Engineer-in-Charge shall proceed in accordance with Clause 18.5 to determine as follows the valuation of unpaid Works (the “**Valuation of Unpaid Works**”):

- (a) value of the completed stage of the Works, less payments already made;
- (b) reasonable value of the partially completed stages of works as on the date of Termination, only if such works conform with the Specifications and Standards; and
- (c) value of Maintenance, if any, for completed months, less payments already made, and shall adjust from the sum thereof (i) any other amounts payable or recoverable, as the case may be, in accordance with the provisions of this Agreement; and (ii) all taxes due to be deducted at source.

22.5.2 The Valuation of Unpaid Works shall be communicated to the Authority, with a copy to the Contractor, within a period of 30 (thirty) days from the date of Termination.

22.6 Termination Payment

22.6.1 Upon Termination on account of Contractor’s Default under Clause 22.1, the Authority shall:

- (a) en-cash and appropriate the Performance Security and Retention Money, or in the event the Contractor has failed to replenish or extend the Performance Security, claim the amount stipulated in Clause 7.1.1, as agreed pre-determined compensation to the Authority for any losses, delays and cost of completing the Works and Maintenance, if any;
- (b) en-cash and appropriate the bank guarantee, if any, for and in respect of the outstanding Advance Payment and interest thereon; and
- (c) pay to the Contractor, by way of Termination Payment, an amount equivalent to the Valuation of Unpaid Works after adjusting any other sums payable or recoverable, as the case may be, in accordance with the provisions of this Agreement.

22.6.2 Upon Termination on account of an Authority Default under Clause 22.2 or for Authority’s convenience under Clause 22.3, the Authority shall:

- (a) return the Performance Security and Retention Money forthwith;
- (b) en-cash and appropriate the bank guarantee, if any, for and in respect of the outstanding Advance Payment; and
- (c) pay to the Contractor, by way of Termination Payment, an amount equal to:
 - (i) Valuation of Unpaid Works;
 - (ii) the reasonable cost, as determined by the Engineer-in-Charge, of the Plant and Materials procured by the Contractor and transferred to the Authority for its use, only if such Plant and Materials are in conformity with the Specifications and Standards;
 - (iii) the reasonable cost of temporary works, as determined by the Engineer-in-Charge; and

- (iv) 10% (ten per cent) of the cost of the Works and Maintenance that are not commenced or not completed, and shall adjust from the sum thereof (i) any other amounts payable or recoverable, as the case may be, in accordance with the provisions of this Agreement, and (ii) all taxes due to be deducted at source.

22.6.3 Termination Payment shall become due and payable to the Contractor within 30 (thirty) days of a demand being made by the Contractor to the Authority with the necessary particulars, and in the event of any delay, the Authority shall pay interest at the Base Rate plus 2% (two percent), calculated at quarterly rests, 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 Authority of its payment obligations in respect thereof hereunder.

22.6.4 The Contractor expressly agrees that Termination Payment under this Article 22 shall constitute a full and final settlement of all claims of the Contractor on account of Termination of this Agreement and that it shall not have any further right or claim under any law, treaty, convention, contract or otherwise.

22.7 **Other rights and obligations of the Parties**

Upon Termination for any reason whatsoever

- (a) property and ownership in all Materials, Plant and Works and the Project shall, as between the Contractor and the Authority, vest in the Authority in whole; provided that the foregoing shall be without prejudice to Clause 22.6
- (b) risk of loss or damage to any Materials, Plant or Works and the care and custody thereof shall pass from the Contractor to the Authority; and
- (c) the Authority shall be entitled to restrain the Contractor and any person claiming through or under the Agreement from entering upon the Site or any part of the Project except for taking possession of materials, stores, implements, construction plants and equipment of the Contractor, which have not been vested in the Authority in accordance with the provisions of this Agreement.

22.8 **Survival of rights**

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

Part VI

Other Provisions

ARTICLE 23
ASSIGNMENT AND CHARGES

23.1 Restrictions on assignment and charges

This Agreement shall not be assigned by the Contractor 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.

23.2 Hypothecation of Materials or Plant

Notwithstanding the provisions of Clause 23.1, the Contractor may pledge or hypothecate to its lenders, any Materials or Plant prior to their incorporation in the Works. Further, the Contractor may, by written notice to the Authority, assign its right to receive payments under this Agreement either absolutely or by way of charge, to any person providing financing to the Contractor in connection with the performance of the Contractor's obligations under this Agreement. The Contractor acknowledges that any such assignment by the Contractor shall not relieve the Contractor from any obligations, duty or responsibility under this Agreement.

ARTICLE 24

LIABILITY AND INDEMNITY

24.1 General indemnity

24.1.1 The Contractor will indemnify, defend, save and hold harmless the Authority and its officers, servants, agents, Government Instrumentalities and Government owned and/or controlled entities/enterprises, (the "Authority Indemnified Persons") against any and all suits, proceedings, actions, demands and third party claims for any loss, damage, cost and expense of whatever kind and nature, whether arising out of any breach by the Contractor of any of its obligations under this Agreement or from any negligence under the Agreement, including any errors or deficiencies in the design documents, or tort or on any other ground whatsoever, except to the extent that any such suits, proceedings, actions, demands and claims have arisen due to any negligent act or omission, or breach or default of this Agreement on the part of the Authority Indemnified Persons.

24.2 Indemnity by the Contractor

24.2.1 Without limiting the generality of Clause 24.1, the Contractor shall fully indemnify, hold harmless and defend the Authority and the Authority Indemnified Persons from and against any and all loss and/or damages arising out of or with respect to:

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

24.2.2 Without limiting the generality of the provisions of this Article 24, the Contractor shall fully indemnify, hold harmless and defend the Authority Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which the Authority Indemnified Persons may hereafter suffer, or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other intellectual property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the Contractor or by the Sub-contractors in performing the Contractor's obligations or in any way incorporated in or related to the Project. If in any such suit, action, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the Contractor shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the revocation or suspension of the injunction or restraint order. If, in any such suit, action, claim or proceedings, the Project, or any part thereof or comprised therein, is held to constitute an infringement and its use is permanently enjoined, the Contractor shall promptly make every reasonable effort to secure for the Authority a license, at no cost to the Authority, authorizing continued use of the infringing work. If the Contractor is unable to secure such license within a reasonable time, the Contractor shall, at its own expense, and without impairing the Specifications and Standards, either replace the affected work, or part, or process thereof with non-infringing work or part or process, or modify the same so that it becomes non-infringing.

24.3 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 24 (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.

24.4 Defense of claims

24.4.1 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 24, the Indemnifying Party shall be entitled, at its option, to assume and control the defence of such claim, action, suit or proceeding, liabilities, payments and obligations at its expense and through the counsel of its choice; provided it gives prompt notice of its intention to do so to the Indemnified Party and reimburses the Indemnified Party for the reasonable cost and expenses incurred by the Indemnified Party prior to the assumption by the Indemnifying Party of such defence. The Indemnifying Party shall not be entitled to settle or compromise any claim, demand, action, suit or proceeding without the prior written consent of the Indemnified Party, unless the Indemnifying Party provides such security to the Indemnified Party as shall be reasonably required by the Indemnified Party to secure the loss to be indemnified hereunder to the extent so compromised or settled.

24.4.2 If the Indemnifying Party has exercised its rights under Clause 24.3, 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).

24.4.3 If the Indemnifying Party exercises its rights under Clause 24.3, 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 authorised 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 defenses 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 24.4.3 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.

24.5 No consequential claims

Notwithstanding anything to the contrary contained in this Article 24, 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.

24.6 Survival on Termination

The provisions of this Article 24 shall survive Termination.

ARTICLE 25
DISPUTE RESOLUTION

25.1 Dispute Resolution

25.1.1 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 25.2.

25.1.2 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.

25.2 Conciliation

In the event of any Dispute between the Parties, either Party may call upon Chief Engineer of the Project of the Irrigation & Waterways Directorate, Government of West Bengal, or such other person as the Parties may mutually agree upon (the “Conciliator”) to mediate and assist the Parties in arriving at an amicable settlement thereof.

25.3 Dispute Redressal Committee

25.3.1 Any Dispute which is not resolved amicably by conciliation, as provided in Clause 25.2, Settlement of Disputes through Departmental Secretary headed Departmental Dispute Redressal Committee (DDRC):

Except where otherwise provided in the contract, all questions and disputes relating to the meaning of the specifications, designs, drawings change in scope of work, stage payment and instructions hereinbefore mentioned and as to the quality of workmanship or materials used on the work or as to any other question, claim, right, matter or thing whatsoever, in any way arising out of relating to the contracts, designs, drawings, specifications, bill value, instructions, orders or these conditions or otherwise concerning the works, or the executions or failure to execute the same, whether arising during the progress of the work, or after the completion or abandonment thereof shall be dealt with as mentioned hereinafter:

If the contractor considers any work demanded of him/her to be outside the requirements of the contract, or disputes any drawings, record or decision given in writing by the Engineer-in-charge or any matter in connection with or arising out of the contract or carrying out of the work to be unacceptable, he/she shall promptly within 15 days request the Chairman of the Departmental Dispute Redressal Committee (DDRC) formed by the Government, in writing for written instruction or decision. Thereupon, the Dispute Redressal Committee shall give its written instructions or decision within a period of one month from the date of receipt of the contractor’s letter.

25.4 Adjudication by Regulatory Authority, Tribunal or Commission

25.4.1 In the event of constitution of a statutory regulatory authority, tribunal or commission, as the case may be, with powers to adjudicate upon disputes between the Contractor and the Authority, all Disputes arising after such constitution shall, instead of reference to Arbitration, be adjudicated upon by such regulatory authority, tribunal or commission in accordance with the Applicable Law and all references to Dispute Resolution Procedure 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 court of competent jurisdiction within Kolkata only, as the case may be, or no such appeal has been preferred within the time specified in the Applicable Law.

ARTICLE 26
MISCELLANEOUS

26.1 Governing law and jurisdiction

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

26.2 Waiver of immunity

Each Party unconditionally and irrevocably:

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

26.3 Delayed payments

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 60 (sixty) days of receiving a demand along with the necessary particulars.

26.4 Waiver

26.4.1 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.

26.4.2 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.

26.5 Liability for review of Documents and Drawings

Except to the extent expressly provided in this Agreement:

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

26.6 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.

26.7 Survival

26.7.1 Termination shall:

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

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

26.8 Entire Agreement

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

26.9 Severability

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

26.10 **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.

26.11 **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.

26.12 **Successors and assigns**

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

26.13 **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 Contractor, 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 Contractor may from time to time designate by notice to the Authority; provided that notices or other communications to be given to an address outside Kolkata 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 person in their declared official addresses / contact / e-mails as the Contractor may from time to time designate by notice to the Authority;

[***]

- (b) in the case of the Authority, be given by facsimile or e-mail and by letter delivered by hand and be addressed to the Superintending Engineer, North Bengal Mechanical & Electrical Circle with a copy delivered to the Authority's Representative or such other person as the 'Authority' may from time to time designate by notice to the Contractor; provided that if the Contractor does not have an registered office in West Bengal, it may send such notice by facsimile or e-mail and by registered acknowledgement due, air mail or by courier; 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 e-mail, it shall be deemed to have been delivered on the working day following the date of its delivery.

26.14 **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.

26.15 Counterparts

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

26.16 Confidentiality

The Parties shall treat the details of this Agreement as private and confidential, except to the extent necessary to carry out obligations under it or to comply with Applicable Laws. The Contractor shall not publish, permit to be published, or disclose any particulars of the Works in any trade or technical paper or elsewhere without the previous agreement of the Authority.

26.17 Copyright and Intellectual Property rights

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

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

26.17.2 The Contractor's Documents and other design documents made by (or on behalf of) the Contractor shall not, without the Contractor's consent, be used, copied or communicated to a third party by (or on behalf of) the Authority for purposes other than those permitted under this Clause 26.17.

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

26.18 Limitation of Liability

26.18.1 Neither Party shall be liable to the other Party for loss of use of any Works, loss of profit, loss of any contract or for any indirect or consequential loss or damage which may be suffered by the other Party in connection with this Agreement, save and except as provided under Articles 22 and 24.

26.18.2 The total liability of one Party to the other Party under and in accordance with the provisions of this Agreement, save and except as provided in Articles 22 and 24, shall not exceed the Contract Price. For the avoidance of doubt, this Clause shall not limit the liability in any case of fraud, deliberate default or reckless misconduct by the defaulting Party.

ARTICLE 27
DEFINITIONS

27.1 **Definitions**

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

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

“Advance Payment” shall have the meaning set forth in Clause 18.2; **“Affected Party”** shall have the meaning set forth in Clause 20.1;

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

“Agreement” means this Agreement, its Recitals, and 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 thereunder, and judgements, decrees, injunctions, writs and orders of any court of record, applicable to this Agreement and the exercise, performance and discharge of the respective rights and obligations of the Parties hereunder, as may be in force and effect during the subsistence of this Agreement;

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

“Appointed Date” means that date which is later of the 15th day of the date of this Agreement, the date on which the the Authority has provided the Right of Way on not less than 90% (Ninety per cent) of the total area of activity of Project;

“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;

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

“Authority Default” shall have the meaning set forth in Clause 22.2; **“Engineer-in-Charge”** shall have the meaning set forth in Clause 17, Para-III, **“Authority’s Representative”** means such person or persons as may be authorized by the Engineer-in-charge being the Assistant Engineer, the Junior Engineer to act on its behalf under this Agreement and shall include any person or persons having authority to exercise any rights or perform and fulfil any obligations of the Authority under this Agreement;

“Bank” means a bank incorporated under sole control of RBI in India only, having Internet Core Banking facilities;

“**Base Rate**” means the floor rate of interest announced by the State Bank of India for all its lending operations;

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

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

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

“**Change in Law**” means the occurrence of any of the following after the Base Date:

- (a) the enactment of any new Indian law;
- (b) the repeal, modification or re-enactment of any existing Indian law;
- (c) the commencement of any Indian law which has not entered into effect until the Base Date;
- (d) a change in the interpretation or application of any Indian law by a judgement of a court of record which has become final, conclusive and binding, as compared to such interpretation or application by a court of record prior to the Base Date; or

“**Change of Scope**” shall have the meaning set forth in Article 13;

“**Change of Scope Notice**” shall have the meaning set forth in Clause 13.2.1;

“**Change of Scope Order**” shall have the meaning set forth in Clause 13.2.4;

“**Completion Certificate**” shall have the meaning set forth in Clause 12.4;

{“**Consortium**” means the consortium of entities which have formed a joint venture for implementation of this Project ;}§

“**Construction**” shall have the meaning set forth in Clause 1.2.1 (f);

“**Construction Period**” means the period commencing from the Appointed Date and ending on the date of the Completion Certificate;

“**Contract Price**” means the amount specified in Clause 18.1.1;

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

“**Contractor Default**” shall have the meaning set forth in Clause 22.1;

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

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

- (b) not relieve any Party from liability to pay Damages or compensation under the provisions of this Agreement; and
- (c) not in any way be extended by any period of Suspension under this Agreement; provided that if the cure of any breach by the Contractor requires any reasonable action by the Contractor that must be approved by the Authority or the Engineer-in-charge hereunder, the applicable Cure Period shall be extended by the period taken by the Authority or the Engineer-in-Charge to accord their approval;

“Department” would mean the Government in the Irrigation & Waterways, West Bengal having Head Quarter at Jalasampad Bhavan, Salt Lake, Kolkata 700091;

“Departmental Committee” would mean any such committee which has been constituted by the Government in the Irrigation & Waterways Department with specific composition and Terms of Reference by a written order;

“Damages” shall have the meaning set forth in paragraph (w) of Clause 1.2.1;

“Defect” means any defect or deficiency in Construction of the Works or any part thereof, which does not conform with the Specifications and Standards, and in the case of Maintenance, means any defect or deficiency which is specified in Schedule-E;

“Defects Liability Period” shall have the meaning set forth in Clause 17.1;

“Dispute” shall have the meaning set forth in Clause 25.1.1;

“Dispute Resolution Procedure” means the procedure for resolution of Disputes set forth in Article 25;

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

“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 safety or 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 or due to passage of heavy flood discharge through river or other commitments of release of water through Head Regulator Gate Operations;

“Encumbrances” means, in relation to the Project, any encumbrances such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations, and shall include any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project, where applicable herein but excluding utilities referred to in Clause 9.1;

“EPC” means engineering, procurement and construction;

“Final Payment Certificate” shall have the meaning set forth in Clause 18.15.1;

“Final Payment Statement” shall have the meaning set forth in Clause 18.13.1;
“Force Majeure” or “Force Majeure Event” shall have the meaning ascribed to it in Clause 20.1;

“GAD” or “General Arrangement Drawings” shall have the meaning set forth in Clause 4.1.3 (b);

“GOWB” or “Government” means the Government of West Bengal;

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

“Government Instrumentality” means any Department, Division or Sub-division of the Government or the State Government and includes any commission, board, authority, agency or municipal and other local authority or statutory body including panchayat under the control of the Government or the State Government, as the case may be, and having jurisdiction over all or any part of the Project or the performance of all or any of the services or obligations of the Contractor under or pursuant to this Agreement;

“Indemnified Party” means the Party entitled to the benefit of an indemnity pursuant to Article 24;

“Indemnifying Party” means the Party obligated to indemnify the other Party pursuant to Article 24;

“Indirect Political Event” shall have the meaning set forth in Clause 20.3;

“Insurance Cover” means the aggregate of the maximum sums insured under the insurances taken out by the Contractor pursuant to Article 19, and includes all insurances required to be taken out by the Contractor under Clauses 19.1 and 19.9 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;

“Interim Payment Certificate” or “IPC” means the interim payment certificate issued by the Engineer-in-Charge for payment to the Contractor in respect of Contractor’s claims for payment raised in accordance with the provisions of this Agreement;

{**“Lead Member”** shall, in the case of a consortium, mean the member of such consortium who shall have the authority to bind the contractor and each member of the Consortium; and shall be deemed to be the Contractor for the purposes of this Agreement ;}§

The Lead Member shall itself undertake and perform at least 30 (Thirty) percent of the total length of the Project and Lead Member shall hold at least 51% of equity share among the members / partners of joint venture.

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

“**Maintenance**” means the maintenance of the Project during defect liability period as set forth in Article 14 for the period specified therein;

“**Maintenance Inspection Report**” shall have the meaning set forth in Clause 15.2.1;

“**Maintenance Manual**” shall have the meaning ascribed to it in Clause 10.7;

“**Maintenance Programme**” shall have the meaning set forth in Clause 14.3;

“**Maintenance Period**” shall have the meaning set forth in Clause 14.1.1;

“**Maintenance Requirements**” shall have the meaning set forth in Clause 14.2;

“**Code**” shall mean the specifications given in the Bureau of Indian Standard Codes.

“**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;

“**Materials**” are all the supplies used by the Contractor for incorporation in the Works or for the maintenance of the Project;

“**Monthly Maintenance Statement**” shall have the meaning set forth in Clause 18.6.1;

“**Department**” means the Department of Irrigation & Waterways, Govt. of West Bengal having his headquarters at Jalasampad Bhawan, Salt Lake, Sector-II, Kolkata 700091;

“**Non-Political Event**” shall have the meaning set forth in Clause 20.2;

“**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 set forth in Clause 7.1;

“**Plant**” means the apparatus and machinery intended to form or forming part of the Works;

“**Political Event**” shall have the meaning set forth in Clause 20.4;

“**Programme**” shall have the meaning set forth in Clause 10.1.3;

“**Project**” means the construction and maintenance of the Project 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 Assets**” means all physical and other assets relating to (a) tangible assets and administrative offices; and (b) Project Facilities situated on the Site;

“**Project Completion Date**” means the date on which the Provisional Certificate is issued and in the event no Provisional Certificate is issued, the date on which the Completion Certificate is issued;

“Project Completion Schedule” means the progressive Project Milestones set forth in Schedule-J for completion of the Project on or before the Scheduled Completion Date;

“Project Facilities” means all the amenities and facilities situated on the Site, as described in Schedule-C;

“Project” means the Site comprising the existing road {, proposed bypasses and tunnels} forming part of NH-34 from km 16.00 to km 23.20 and all Project Assets, and its subsequent development and augmentation in accordance with this Agreement;

“Project Milestone” means the project milestone set forth in Schedule-J; **“Proof Consultant”** shall have the meaning set forth in Clause 10.2.2; **“Provisional Certificate”** shall have the meaning set forth in Clause 12.2; **“Punch List”** shall have the meaning set forth in Clause 12.2.1;

“Quality Assurance Plan” or **“QAP”** shall have the meaning set forth in Clause 11.2;

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

“Request for Proposals” or **“RFP”** shall have the meaning set forth in Recital ‘D’;

“Request for Qualification” or **“RFQ”** shall have the meaning set forth in Recital ‘C’;

“Retention Money” shall have the meaning set forth in Clause 7.5.1;

“Right of Way” means the constructive possession of the Site free from encroachments and encumbrances, together with all way leaves, easements, unrestricted access and other rights of way, howsoever described, necessary for construction and maintenance of the Project in accordance with this Agreement;

“Safety Consultant” shall have the meaning set forth in Clause 10.1.5;

“Scheduled Completion Date” shall be the date set forth in Clause 10.3.1; **“Scope of the Project”** shall have the meaning set forth in Clause 2.1;

“Section” means a part of the Project;

“Site” shall have the meaning set forth in Clause 8.1;

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

“Stage Payment Statement” shall have the meaning set forth in Clause 18.4;

“Structures” means the Project appurtenants, as the case may be;

“Suspension” shall have the meaning set forth in Article 21;

“Taxes” means any Indian taxes including excise duties, customs duties, value added tax, sales tax, local taxes, cess and any impost or surcharge of like nature (whether Central, State or local) on the goods, Materials, equipment and services incorporated in and forming part of the Project charged, levied or imposed by any Government Instrumentality, but excluding any

interest, penalties and other sums in relation thereto imposed on any account whatsoever. For the avoidance of doubt, Taxes shall not include taxes on corporate income;

“**Termination**” means the expiry or termination of this Agreement;

“**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 either Party to the other upon Termination in accordance with Article 22;

“**Terms of Reference**” or “**ToR**” shall have the meaning set forth in Clause 17.2.1;

“**Tests**” means the tests set forth in Schedule-K to determine the completion of Works in accordance with the provisions of this Agreement;

“**Time Extension**” shall have the meaning set forth in Clause 10.5.1;

“**User**” means a person who travels or intends to travel on the Project or any part thereof in/on any vehicle;

“**Valuation of Unpaid works**” shall have the meaning set forth in Clause 22.5.1;

“**Works**” means all works including survey and investigation, design, engineering, procurement, construction, Plant, Materials, maintenance, temporary works and other things necessary to complete the Project in accordance with this Agreement; and

“**WPI**” means the wholesale price index for various commodities as published by the Ministry of Commerce and 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 WPI published for the period ending with the preceding month.

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

SIGNED, SEALED AND
DELIVERED

SIGNED, SEALED AND DELIVERED

For and on behalf of
Governor of West Bengal by:

For and on behalf of
THE CONTRACTOR by:

(Signature)

(Signature) The

Superintending Engineer

(Designation)

(Designation)

In the presence of witnesses: 1

2.

{COUNTERSIGNED and accepted by:

Name and particulars of other members of the Consortium}

Schedules

SCHEDULE - A

(See Clauses 2.1 and 8.1)

(Joint Memorandum to be signed by the Contractor and the Engineer-in-charge)

1 The Site of the project for “

of Irrigation & Waterways Department, Government of West Bengal” and structures comprising the Site are described in the ‘**Appendix**’ below:

APPENDIX

- 1.1 Site of the Project shall include the _____ and other appurtenants.
- 1.2 The date for handing over the Right of Way (RoW) of the project site to the Contractor in terms of the Agreement being at least 90% of total RoW on the Appointed date as contained under Article-27.1 is.....
- 1.3 The remaining 10% RoW shall be handed over by the Authority within 80% of Construction Period viz. _____ days from the Date of commencement of Project.
- 1.4 Inventory list relating to the project site including buildings, structures, equipments, machineries and any other immovable properties on, or attached to, the site prepared jointly by the Engineer-in-Charge and the Contractor, within 15(Fifteen) days from the date of signing of the Agreement, and such inventory list constitutes a part of the this Memorandum referred to in Clause 8.2.1 of this Agreement.
- 1.4 The Project completion period desired by the Authority for completion of the project has to be followed by the Contractor during framing of implementation planning and programme. The Contractor may, however, improve upon the plans and programme with the prior approval from the Engineer-in-Charge within the available Right of Way and submit to the Authority within 7 days of commencement of the work as per work order/LOA.
- 1.5 The Inventory list of the project site is detailed below:
 - i).....
 - ii).....

2. Land: Temporary handing over of Land for implementation of the Project.

The Site of the Project comprises the land (sum total of land already in possession and land to be possessed)as described below:

- 1. Authority’s Land free from all encumbrances required for construction of project
 - 2. Authority’s Land identified for construction of Godown, Labour Hutment within 8 km of work site during construction phase.
-

Above mentioned land as per following schedule is temporarily handed over to the Contractor free of any rent only for the construction of the Project work.

3. Date for handing over to the Contractor 90% of Right of Way:

.....
The Engineer in charge shall hand over at least 90% of the Right of Way required for execution of the Project on the Appointed Date and the remaining 10% before the date of actual requirement in order to follow the programme of implementation.

The dates on which the Authority shall provide Right of Way to the Contractor on different stretches of the Site are stated below: (within 30 days from the Appointed Date or the Date of issuance of work order

.....
4. List of Departmental equipments, machineries, Tools & Plant handed over to the contractor:

- i a.
- b. — — —
- c.

ii. Other machineries and equipments handed over to contractor by the Engineer-in-Charge for execution of the project

- a.
- b.
- c.

5. The GAD and Index map for proposed project implementation are given in drawing nos.....which are handed over to the contractor at site on

The original GAD/Schematic diagram of
and other related documents handed over to the contractor for execution of the work to be refunded in original condition on

- i)
- ii)
- iii)

6. Required Statutory Clearances for implementation of the project obtained by the Authority and communicated to the Contractor on.....

- i) No environmental clearance is required for the project.
- ii) No other statute is to be obtained by the Authority for implementation of the Project.

Signature of the contractor/bidder
with date and seal

Signature of the Engineer-in-Charge
with date and seal

SCHEDULE - B
(See Clause 2.1)

DEVELOPMENT OF THE PROJECT

1. Development of the Project

Development of the Project shall mean the project for construction

of Irrigation & Waterways Department, Government of West Bengal” as described hereunder.

2. Specifications and Standards

The Project shall be designed and constructed in conformity with the Specifications and Standards specified at **Schedule-D**.

3. Description of the Project shall be given by the Authority in detail together with explanatory drawings (where necessary) to explain the Authority’s requirements precisely in order to avoid subsequent changes in the Scope of the Project. The particulars that must be specified in this Schedule-B are listed below as per the requirements of the Manual of Specifications and Standards and construction procedure

If any standards, specifications or details are not given in the Request for Proposal, the e-Notice or RFQ, Agreement or its annexures and Appendices, the minimum construction requirements shall be specified in the Schedule of work contained in the BOQ. In addition to these particulars, all other essential project specific details, as required, should be provided in the technical specifications and appendices annexed with the RFP in order to define the Scope of the Project clearly and precisely.

Construction of sub-components of the project (As per Clause 10.3 of Agreement)

The construction work to be completed in terms of the Physical Milestones fixed for the project as per project completion schedule contained in **Schedule ‘J’**.

If the contractor is unable to carryout the work in terms of the approved programme and fails to achieve Project Milestones as stated under **Schedule-I and Schedule-J**, the contractor would be required to pay compensation to the Authority & 0.05% of the bid price per day of delay in terms of Clause 10.3.2 of the Agreement.

Signature of the contractor/bidder
with date and seal

Signature of the Engineer-in-Charge
with date and seal

SCHEDULE – C

(See Clause 2.1)

PROJECT FACILITIES

1 Project Facilities

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

2 Description of Project Facilities

The Project Facilities comprise Government land to be provided to the contractor as per availability at site of project relating to implementation as is described below:

- i. Vacant land for Labour Hutment
- ii. Vacant land for Stack yard and Godown.

Note: However the contractor within 30 calendar days of completion of the project shall restore the land to its original condition at his own expenses and restore it to the Authority.

3 Other Project Facilities

Signature of the contractor/bidder
with date and seal

Signature of the Engineer-in-Charge
with date and seal

SCHEDULE – D

(See Clause 2.1)

SPECIFICATIONS AND STANDARDS

1 Construction

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

Regarding standard construction material following specification should be adopted

(Annexed Technical Specification Chapter of the RFP)

2 Design Standards

3 Specification and standard

4 Deviation from the specifications and standards

Signature of the contractor/bidder
with date and seal

Signature of the Engineer-in-Charge
with date and seal

SCHEDULE –E

(See Clauses 2.1 and 14.2)

MAINTENANCE REQUIREMENTS DURING DEFECT LIABILITY

1 Maintenance Requirements during defect liability

- 1.1 The Contractor shall, at all times maintain the Project accordance with the provisions of this Agreement, Applicable Laws and Applicable Permits.
- 1.2 The Contractor shall repair or rectify any Defect or deficiency set forth in Paragraph 2 of this Schedule-E within the time limit specified therein and any failure in this behalf shall constitute non-fulfillment of the Maintenance obligations by the Contractor. Upon occurrence of any breach hereunder, the Authority shall be entitled to effect reduction in monthly lump sum payment as set forth in Clause 14.6 of this Agreement, without prejudice to the rights of the Authority under this Agreement, including Termination thereof.
- 1.3 All Materials, works and construction operations shall conform to the Specifications as per BIS Codes as per BOQ and other International Standard Codes and Good Industry practice. Where the specifications for a work are not given, Good Industry Practice shall be adopted. (Reference to Schedule-D)

2 Repair/rectification of Defects and deficiencies

The obligations of the Contractor in respect of Maintenance Requirement during defect liability shall include repair and rectification of the Defects and deficiencies specified under **Schedule-E** within the time limit set forth therein.

3 Other Defects and deficiencies

In respect of any Defect or deficiency not specified in **Schedule-E**, the Engineer-in-charge may, in conformity with Good Industry Practice, specify the permissible limit of deviation or deterioration with reference to the Specifications and Standards, and any deviation or deterioration beyond the permissible limit shall be repaired or rectified by the Contractor within the time limit specified by the Engineer-in-charge.

4 Extension of time limit

Notwithstanding anything to the contrary specified in this **Schedule-E**, if the nature and extent of any Defect or deficiency justifies more time for its repair or rectification than the time specified herein, the Contractor shall be entitled to additional time in conformity with Good Industry Practice. Such additional time shall be determined by the Engineer-in-charge and conveyed to the Contractor and the Authority with reasons thereof.

5 Emergency repairs/restoration

Notwithstanding anything to the contrary contained in this Schedule-E, if any Defect, deficiency or deterioration in the Project poses a hazard to safety or risk of damage to property, the Contractor shall promptly take all reasonable measures for eliminating or minimizing such danger.

6 Daily inspection by the Contractor

The Contractor shall, through its engineer, undertake a daily visual inspection of the Project and maintain a record thereof in a register to be kept in such form and manner as the Engineer-in-charge may specify. Such record shall be kept in safe custody of the Contractor and shall be open to inspection by the Engineer-in-charge at any time during office hours.

7. Repairs on account of natural calamities

All damages occurring to the Project on account of a Force Majeure Event or default or neglect of the Authority shall be undertaken by the Authority at its own cost. The Authority may instruct the Contractor to undertake the repairs at the rates agreed between the Parties.

8. Repair/rectification of Defects and deficiencies

The Contractor shall repair and rectify the Defects and deficiencies specified in **Schedule-E** within the time limit set forth under Clause 7 of the 'Technical Specification' chapter of the Agreement.

Defect liability Maintenance

The bidder will be responsible for the free on-site maintenance (with free placement) of the entire system as defined in sections 5-10 during the warranty period.

9 Spares

9.1.1 Spares to be included in the Bid price and Bid evaluation

1. Critical Subsystems like Gate Position Sensing Unit, Gate Control Unit/RTU, Sensing Instruments etc. which are not for installation but for immediate replacement at subsystem level in case of failure.
2. Critical high usage components (not entire subsystems) which will be used for field level repair. This may include Gate Control Parts, Gate Position Sensors, communication components, connectors etc.

9.1.2 Spares to be quoted but not to be included in the Bid price and Bid Evaluation

1. In addition, the Bidder must submit a complete list of recommended spare parts at Subsystem Level as well as Component Level, which will be ordered separately as and when needed.
2. Price quoted must be valid for 5 (five) years from the date of Final Acceptance of the system.

10. Training:

The designated Purchaser's Technical personnel shall be trained by the Supplier to enable them to effectively operate the total system. Suitable training handouts / manual shall be given to each of the Trainee. The training schedule shall be agreed to by both the parties during the Performance of the Contract. The details of the trainings are specified as below.

The Contractor shall impart training to ‘

10.01 Training Component

10.01.1 Training Programme

The Bidder is required to provide an extensive training programme for the system. The training set forth in the following paragraphs is a minimum requirement and the bidder should propose any additional training that he considers critical for long term success of the system operations.

The Bidder is expected to provide an outline or table indicating the contents of each of the required courses. The table shall describe the specific topics to be covered for each day of the training period.

The Bidder is responsible for the salaries of the training instructors and all training materials. The costs of travel, transportation and per diem for the trainees shall be borne by the Purchaser.

10.01.2 Training in General Operation

Training shall be provided by the bidder in several phases. The training shall include both classroom and field trainings and will be continued during all five years. The bidder is required to have experts in the field and equipment specialists. The training shall include:

Table: Formal training courses

Sl. No.	Description	Numbers of Training sessions/Year	Number of Participants per Session
1	Users Training Course for senior management.		
2	User Training Course for working staff.		
3	Operation and Maintenance course (two weeks).		
4	Design, operation and maintenance of the database at Central Data Centre (including back-up, recovery and web-services).		
5	Specialized Training for Maintenance Technicians on O&M		
6	Theory and practice		

The training course will take place at the *Project premises or as decided by the Authority*. In case of formal training, the Purchaser will provide classroom and other logistics. The Bidder will facilitate the professional and the training materiel. On-the-job training will be provided by the Bidder in conjunction with the installation of hydro-meteorological stations and during the course of maintenance as required.

The Bidder shall prepare a training course plan and include the same in the Bid Document. These trainings will be repeated every year during warranty and annual maintenance periods for refreshing the trained staff and training additional staff.

The classroom training, hands on experience and troubleshooting will be prepared as video for easy access and will be posted on the web. All training modules will be also provided as a media file (Windows Media Player Compatible) on a USB Drive. Five copies on five separate media shall be required

A On-Job Training

On-job training will be provided by the selected Bidder during installation of the system and Field Instruments and also during the course of maintenance and operations of the system as required.

B Training Video

The classroom training and hands-on experience of troubleshooting will be used to prepare a video and will be posted on the web for easy access. All training modules will also be provided as Windows Media Player compatible media files on a USB Drive. Three copies on three separate media shall be required.

C Location and Logistics of Training

The theoretical training will take place at the Office of the Executive Engineer.....
Purchaser will provide class room and other logistics.

10.01.3 Operation & Maintenance Manual

11. Technical Documentation:

Technical Documentation involving detailed instructions for Operation and Maintenance is to be delivered with every unit of the equipment supplied. The Language of the documentation shall be in English.

Signature of the contractor/bidder
with date and seal

Signature of the Engineer-in-Charge
with date and seal

SCHEDULE – F

(See Clause 3.1.7(a))

APPLICABLE PERMITS

1 Applicable Permits

- 1.1 The Contractor shall obtain, as required under the Applicable Laws, the following Applicable Permits:

Signature of the contractor/bidder
with date and seal

Signature of the Engineer-in-Charge
with date and seal

SCHEDULE - H
 (See Clauses 10.1.4 and 18.3)
Contract Price Weightages

- 1.1 The contract price of this Agreement is Rs...../- (Rupees.....) only
 1.2 Proportions of the contract price for different stages of construction of the project work shall be as specified below:

Item	Weightage in % to the bid price	Stage of payment	Percentage Weightage
Project Milestone-I i.			
Project Milestone-II i.			
Project Milestone-III i.			
Project Milestone-IV i.			
Project Milestone-V			
Project Milestone-VI			
All miscellenous and ancillary works			
Finishing items			
Trial run 1			
Trial run 2			
Final delivery of work on project completion			

Signature of the contractor/bidder
with date and seal

Signature of the Engineer-in-Charge
with date and seal

SCHEDULE – I

(See Clause 10.2.4)

Drawings & Project Physical Milestones in conformity with the e-RFP time schedule

1 Drawings

In compliance of the obligations set forth in Clause 10.2 of this Agreement, the Contractor shall furnish to the Engineer-in-charge, free of cost, all Drawings listed contained this Schedule- I and Project Physical Milestones in order to complete the work withindays as listed in the **Schedule-I**.

2 Additional Drawings

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

Project planning and programme for implementation and for making stage payment or running account bill payments

Project Milestone-I

Project Milestone-II

Project Milestone-III

Project Milestone-IV

Project Milestone-V

Project Milestone-VI

Physical Molestone of Project is achieved as per the CPM / PERT networking programme prepared and submitted by the contractor to achieve completion of the work within desired time limits of Project Completion in the RFP.

SCHEDULE - J
(See Clause 10.3.2)

PROJECT COMPLETION SCHEDULE

1 Project Completion Schedule

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

2 Project Milestone-I

2.1 Project Milestone-I shall occur on the date falling on the ...th (...th day) day from the Appointed Date (the "Project Milestone-I").

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

3 Project Milestone-II

3.1 Project Milestone-II shall occur on the date falling on theth (....th) day from the Appointed Date (the "Project Milestone-II").

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

4 Project Milestone-III

4.1 Project Milestone-III shall occur on the date falling on theth (.....th) day from the Appointed Date (the "Project Milestone-III").

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

5 Project Milestone-IV

5.1 Project Milestone-IV shall occur on the date falling on theth (.....th) day from the Appointed Date (the "Project Milestone-IV").

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

6 Project Milestone-V

6.1 Project Milestone-V shall occur on the date falling on theth(....th)day from the Appointed Date (the "Project Milestone-V").

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

7.1 Project Milestone-VI shall occur on the date falling on theth (.....th) day from the Appointed Date (the “Project Milestone-VI”).

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

8 Scheduled Completion Date

8.1 The Scheduled Completion Date shall occur on theth (.....th) Day upon achievement of balance 5% of Project Milestone including additional work due to change in scope of work if applicable from the Appointed Date.

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

9 Extension of time

Upon extension of any or all of the aforesaid Project Milestones or the Scheduled Completion Date, as the case may be, under and in accordance with the provisions of this Agreement, the Project Completion Schedule shall be deemed to have been amended accordingly and stage payment deferred as per received Milestones which must be approved at least 30 days before by Quotation-cum-Bid Evaluation Committee (QBEC) before expiry of the originally agreed schedule for completion of work.

10. Construction Period

The project completion time of days includes Force Majure period arising or likely to arise for 30 days due to heavy monsoon rainfall or flood situation.

10.1 The Construction Period would mean that period from the Appointed Date (Date of issuance of commencement of work order till the date of issuance of Provisional Completion Certificate).

Signature of the contractor/bidder
with date and seal

Signature of the Engineer-in-Charge
with date and seal.

SCHEDULE – K

(See Clause 12.1.2)

Tests and Trial Run of the Project on Physical Completion

1 Schedule for Tests

- 1.1 The Contractor shall, no later than 30 (thirty) days prior to the likely completion of construction, notify the Engineer-in-charge and the Authority of its intent to subject the Project to Trial runs and Tests, and no later than 7 (seven) days prior to the actual date of Tests, furnish to the Engineer-in-Charge and the Authority detailed inventory and particulars of all works and equipment forming part of Works.
- 1.2 The Contractor shall notify the Engineer-in-charge of its readiness to subject the Project to Tests at any time after 7 (seven) days from the date of such notice, and upon receipt of such notice, the Engineer-in-charge shall, in consultation with the Contractor, determine the date and time for each Test and notify the same to the Authority who may designate its representative to witness the Tests. The Engineer-in-charge shall thereupon conduct the Tests itself or cause any of the Tests to be conducted in accordance with Article 12 and this Schedule-K.

2 Tests

- 2.1 Visual and physical test: The Engineer-in-charge shall conduct a visual and physical check of construction to determine that all works and equipment forming part thereof conform to the provisions of this Agreement.
- 2.2 The designed engineers and operators of the contractor shall run and then also display the procedure to the Engineer-in-Charge the performance of the system.
- 2.3 If trial run of all the gates are completed in a positive inspection schedule, it shall continue for all remaining gates on next date.
- 2.4 Other tests: The Engineer-in-charge may require the Contractor to carry out or cause to be carried additional trial runs tests, in accordance BIS Code and with Good Industry Practice, for determining the compliance of the Project with Specifications and Standards as contained in the RFQ and Agreement.
 - a. Safety Audit: The Engineer-in-charge shall carry out, or cause to be carried out, a safety audit to determine conformity of the Project with the safety requirements and Good Industry Practice.

3 Agency for conducting Tests

All Tests and trial runs set forth in this Schedule-K shall be conducted by the Engineer-in-Charge or such other agency or person as it may specify in consultation and as per direction to with the Chief Engineer of the Project.

Repeat or 2nd Trial Run would have to be conducted in a similarly manner also to explain procedure to manage emergencies.

4 Completion Certificate

Upon successful completion of Trial run, the Engineer-in-charge shall issue the provisional Completion Certificate in accordance with the provisions of Article 12.2

SCHEDULE – L

(See Clause 12.2 and 12.4)

PROVISIONAL CERTIFICATE

- 1 I, (Name of the Engineer-in-charge), acting as the Engineer-in-charge, under and in accordance with the Agreement dated (the **“Agreement”**), for Construction West Bengal (the **“Project”**) on Engineering, Procurement and Construction (EPC) basis through (Name of Contractor), hereby certify that the Tests in accordance with Article 12 of the Agreement have been undertaken to determine compliance of the Project with the provisions of the Agreement.

- 2 Works that are incomplete on account of Time Extension have been specified in the Punch List appended hereto, and the Contractor has agreed and accepted that it shall complete all such works in the time and manner set forth in the Agreement. In addition, certain minor works are incomplete and these are not likely to cause material inconvenience to the smooth operation or affect emergent situation management. The Contractor has agreed and accepted that as a condition of this Provisional Certificate, it shall complete such minor works within 30 (thirty) days hereof. These minor works have also been specified in the aforesaid Punch List.

- 3 In view of the foregoing, I am satisfied that the Project stretch can be safely and reliably placed in operation for Users thereof, and in terms of the Agreement, the Project is hereby provisionally declared fit for entry into operation on this the day of..... 20.....

**ACCEPTED, SIGNED, SEALED
DELIVERED
For and on behalf of
CONTRACTOR by:**

**SIGNED, SEALED AND AND
DELIVERED
For and on behalf of
ENGINEER-IN-CHARGE by:**

(Signature)

(Signature)

COMPLETION CERTIFICATE

(In Official Pad)

- 1 I, (Name of the Engineer-in-charge), acting as the Engineer-in-charge, authorized by the Government in the Irrigation & Waterways Department under and in accordance with 'the Agreement' bearing No..... dated (the "Agreement"), The project stretch (the "Name of Project") on Engineering, Procurement and Construction (EPC) basis through (Name of Contractor), hereby certify that the Tests in accordance with Article 12 of the Agreement have been successfully undertaken to determine compliance of the 'Project' with the provisions of the Agreement, and I am satisfied that the Project can be safely and reliably placed in operation/ commissioned by the Authority thereof.

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

SIGNED, SEALED AND DELIVERED

As the Engineer-in-charge of Government

by:

(Signature)

(Name with Designation)

(Office Address with Phone & FAX)

(Official e-Mail address)

SCHEDULE – M

(See Clauses 14.6, 15.2 and 18.7)

PAYMENT REDUCTION FOR NON-COMPLIANCE

(To be entered in the Measurement book of the Engineer-in-Charge on behalf of the Authority)

1. Payment reduction for non-compliance with the Maintenance Requirements

- 1.1 Monthly lump sum payments for maintenance shall be reduced in the case of non-compliance with the Maintenance Requirements set forth in Schedule-E.
- 1.2 Any deduction made on account of non-compliance with the Maintenance Requirements shall not be paid even after compliance subsequently. The deductions shall continue to be made every month until compliance is done.
- 1.3 The Engineer-in-charge shall calculate the amount of payment reduction on the basis of weight age in percentage assigned to non-conforming items as given in Paragraph 2.

2. Percentage reductions in lump sum payments

- 2.1 The following percentages shall govern the payment reduction:

S. No.	Item/Defect/Deficiency	Percentage
(a)		
(i)		
(ii)		
(b)		
(i)		
(ii)		
(c)		
(i)		
(ii)		
(iii)		
(d)		
(i)		
(e)		
(i)		
(f)		
(i)		
(ii)		
(g)		

SCHEDULE – O

(See Clauses 18.4.1, 18.6.1, and 18.8.1)

**Forms of Payment Statements to be entered in Measurement book of the Authority and certified by the Engineer-in-Charge and also signed by the contractor which would be treated as his/her acquittance
The measurement book of Government of West Bengal to be used and e-pradhan on-line system bill forms
as per Treasury Rules of Government of West Bengal to be used.**

1. Stage Payment Statement for Works

The Stage Payment Statement for the Project work shall state:

- (a) the estimated amount for the Works executed in accordance with Clause 18.3.1 subsequent to the last claim;
- (b) amounts reflecting adjustments in price for the aforesaid claim;
- (c) the estimated amount of each Change of Scope Order executed subsequent to the last claim;
- (d) amounts reflecting adjustment in price, if any, for (c) above in accordance with the provisions of Clause 13.2.3 (a);
- (e) total of (a), (b), (c) and (d) above;
- (f) Deductions:
 - (i) Any amount to be deducted in accordance with the provisions of the Agreement except taxes;
 - (ii) Any amount towards deduction of taxes;
 - (iii) Deductions @ 5.5% of the gross bill value as performance security in addition to the bid security amount to arrive at a total of 7.5% of the gross value of work; and
 - (iv) Total of (i), (ii) and (iii) above.
- (g) Net claim: (e) – (f) (v);
- (h) The amounts received by the Contractor upto the last claim:
 - (i) For the Works executed (excluding Change of Scope orders);
 - (ii) For Change of Scope Orders, and
 - (iii) Taxes deducted
 - (iv) Performance security on a pro-rata basis deducted

2. Monthly Maintenance Payment Statement during defect liability and Defect liability Periods

The monthly Statement for Maintenance Payment shall state:

- (a) the monthly payment admissible in accordance with the provisions of the Agreement;
- (b) the deductions for maintenance work not done;
- (c) net payment for maintenance due, (a) minus (b);
- (d) amount reflecting adjustments in price under Clause 18.12; and
- (e) amount towards deduction of taxes

(Signature of the contractor/bidder with date and seal)

SCHEDULE – P
(See Clause 19.1)
INSURANCE

1. Insurance during Construction Period

- 1.1 The Contractor shall effect and maintain at its own cost, from the Appointed Date till the date of issue of the Completion Certificate, the following insurances for any loss or damage occurring on account of Non Political Event of Force Majeure, malicious act, accidental damage, explosion, fire and terrorism:
- (a) insurance of Works, Plant and Materials and an additional sum of [15 (fifteen)] per cent of such replacement cost to cover any additional costs of and incidental to the rectification of loss or damage including professional fees and the cost of demolishing and removing any part of the Works and of removing debris of whatsoever nature; and
 - (b) insurance for the Contractor's equipment and Documents brought onto the Site by the Contractor for a sum sufficient to provide for their replacement at the Site.
- 1.2 The insurance under paragraph 1.1 (a) and (b) above shall cover the Authority and the Contractor against all loss or damage from any cause arising under paragraph 1.1 other than risks which are not insurable at commercial terms.

2. Insurance for Contractor's Defects Liability

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

3. Insurance against injury to persons and damage to property

- 3.1 The Contractor shall insure against its liability for any loss, damage, death or bodily injury, or damage to any property (except things insured under Paragraphs 1 and 2 of this Schedule or to any person (except persons insured under Clause 19.9), which may arise out of the Contractor's performance of this Agreement. This insurance shall be for a limit per occurrence of not less than the amount stated below with no limit on the number of occurrences.
The insurance cover shall be not less than: **10% of the Bid Price**
- 3.2 The insurance shall be extended to cover liability for all loss and damage to the Authority's property arising out of the Contractor's performance of this Agreement excluding:
- (a) the Authority's right to have the construction works executed on, over, under, in or through any land, and to occupy this land for the Works; and
 - (b) damage which is an unavoidable result of the Contractor's obligations to execute the Work.

4. Insurance to be in joint names

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

(Signature of the contractor/bidder with date and seal)

SCHEDULE – Q
(See Clause 10.5 of Agreement)
EXTENSION OF TIME

Memo No.

Dated,

To

The Chief Engineer.....Project

Sub: Extension of time for completion (the “Time Extension”)

(Contractor to submit his application to the Engineer-in-Charge who would then review the application on the basis of EPC Agreement and other terms and condition and recommend the same through the Superintending Engineer to the Chief Engineer of the project for final approval)

Ref: 1) EPC Agreement No.

2) LOA No.

Sir,

In terms of clause 10.5 of the EPC Agreement, for and in respect of extension of time, we are entitled to seek extension of time in the Project Completion Schedule (the “**Time Extension**”) to the extent that completion of Project Milestone No..... is or will be delayed due to the following reasons, namely:

- (a) delay in providing the Right of Way, statutory clearances or approval of authorities, specified in Clause 4.1.4;
- (b) Change of Scope unless an adjustment to the Scheduled Completion Date has been agreed under Article 13;
- (c) occurrence of a Force Majeure Event;
- (d) any delay, impediment or prevention caused by or attributable to the Authority, the Authority's personnel or the Authority's other contractors on the Site; and
- (e) any other cause or delay which entitles the Contractor to Time Extension in accordance with the provisions of this Agreement.

As per the Agreement, we are entitled for Time Extension (not later than 15 (fifteen) days from the occurrence of an event or circumstance specified above, as we have informed the Engineer-in-Charge in writing, with a copy to the Superintending Engineer and the Chief Engineer, 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 the Agreement.

Time Extension being sought shall be due and applicable only for the Works which are affected by the aforesaid events or circumstances and shall not in any manner affect the Project Completion Schedule for and in respect of the Works which are not affected hereunder.

(Note: 1. In the event of the failure of the Contractor to issue to the Engineer-in-Charge a notice in accordance with the provisions of Clause 10.5.2 within the time specified therein, the Contractor shall not be entitled to any Time Extension and shall forfeit its right for any such claims in future. For the avoidance of doubt, in the event of failure of the Contractor to issue notice as specified in this clause 10.5.3, the Authority shall be discharged from all liability in connection with the claim.

2. The Engineer-in-Charge shall, on receipt of the claim in accordance with the provisions of Clause 10.5.2, examine the claim expeditiously within the time frame specified herein. In the event the Engineer-in-Charge requires any clarifications to examine the claim, the Engineer-in-Charge shall seek the same within 7 (seven) days from the date of receiving the claim. The Contractor shall, on receipt of the communication of the Engineer-in-Charge requesting for clarification, furnish the same to the Engineer-in-Charge within 10 (ten) days thereof. The Engineer-in-Charge shall, within a period of 7 (seven) days from the date of receipt of such clarifications obtain the permission of the Chief Engineer and then forward in writing to the Contractor its determination of Time Extension.

Provided that when determining each extension of time under this Clause 10.5, the Engineer-in-Charge shall review previous determinations and may increase, but shall not decrease, the total Time Extension.

3. If the event or circumstance giving rise to the notice has a continuing effect:
- (a) a fully detailed claim shall be considered as interim;
 - (b) the Contractor shall, no later than 10 (ten) days after the close of each month, send further interim claims specifying the accumulated delay, the extension of time claimed, and such further particulars as the Engineer-in-Charge may reasonably require; and
 - (c) the Contractor shall send a final claim within 30 (thirty) days after the effect of the event or the circumstance ceases.
4. Upon receipt of the claim hereunder, the Engineer-in-Charge shall examine the same in accordance with the provisions of Clause 10.5.4 within a period of 60 (sixty) days of the receipt thereof.)

Hence kindly grantdays of Extension of Time , so that the revised programme for completion of the project based on Project Milestones would be as under:

- a. Project Milestone No. revised to
- b. Project Milestone No. revised to
- c. Revised Project Completion date.....

the revised bar chart / CPM-PERT networking programme schedule is appended. The consequent financial stage payment would be modified as per agreement which is proposed hereunder:

- a. Modification No. 1
- b. Modification No. 2
- c. Final payment

Encl: As stated

Yours sincerely,

(Name of the bidder)
Address
Phone No.

*****END OF DOCUMENT*****