

**Annexure X – Format of Trust and Retention Account Agreement for SGPs**

**TRUST AND RETENTION ACCOUNT AGREEMENT**

**TRUST AND RETENTION ACCOUNT AGREEMENT** (hereinafter referred to as this "**Agreement**") is entered into on this the \_\_\_\_\_ day of \_\_\_\_\_ (Month), 2016 at \_\_\_\_\_ (Place).

**BETWEEN:**

M/S \_\_\_\_\_ LIMITED, an existing company within the meaning of the Companies Act, 2013 with CIN No. \_\_\_\_\_ and its registered office at \_\_\_\_\_ (hereinafter referred to as the "**Successful Bidder**", which expression shall, unless it be repugnant to the subject or context thereof, include its successors and permitted assigns) of the **FIRST PART**;

AND

M/S \_\_\_\_\_ LIMITED, an existing company within the meaning of the Companies Act, 2013 with CIN No. \_\_\_\_\_ and a banking company within the meaning of Section 5 (c) of the Banking Regulation Act, 1949 (10 of 1949) and having its registered office at \_\_\_\_\_ (the "**Account Bank**", which expression shall, unless it be repugnant to the subject or context thereof, include its successors, transferees and permitted assigns) of the **SECOND PART**;

AND

M/S \_\_\_\_\_ LIMITED, an existing company within the meaning of the Companies Act, 2013 with CIN No. \_\_\_\_\_ and a banking company within the meaning of Section 5 (c) of the Banking Regulation Act, 1949 (10 of 1949) and having its registered office at \_\_\_\_\_ in its capacity as the lenders' agent for the Lenders (hereinafter referred to as the "**Lenders' Agent**", which expression shall, unless it be repugnant to the subject or context thereof, include its successors and permitted assigns) of the **THIRD PART**.

The Successful Bidder, the Account Bank and the Lenders' Agent are individually referred to as "**Party**" and collectively as "**Parties**".

**WHEREAS:**

**RECITALS**

A. Government of India ("**GOI**") vide Office Memorandum No.4/2/2015-Th-I dated 27<sup>th</sup> March 2015 ("**Office Memorandum**") has introduced the Scheme for

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utilisation of Gas based power generation capacity for the financial years (April-March) 2015-16 and 2016-17 ("**Scheme**").

- B. The Scheme has envisaged provision of support from PSDF Fund (hereinafter defined) in connection with supply of RLNG (hereinafter defined) to stranded gas based plant ("**SGP**") and the power plants receiving limited domestic gas ("**DGP**") selected through a reverse e-bidding process.
- C. Accordingly, the GOI invited bids from the SGPs under the Tender Document bearing no [●]<sup>1</sup> dated [●]<sup>2</sup> for grant of support from PSDF Fund ("**Tender Document**"). The Successful Bidder being the owner of a SGP i.e. the Power Plant (hereinfter defined), submitted its bid in response to the Tender Document.
- D. Pursuant to the Tender Document and the bid submitted by the Successful Bidder, the GOI through the Letter of Award dated [●]<sup>3</sup> bearing no. [●]<sup>4</sup> ("**Letter of Award**") sanctioned support from the PSDF Fund upto the Sanctioned PSDF Support Amount (hereinfter defined) for generation of the Total Incremental Electricity (hereinfter defined) during the Relevant Period (hereinfter defined) by the Successful Bidder at its Power Plant.
- E. The Successful Bidder has agreed to supply the Total Incremental Electricity to the Discom(s) (hereinafter defined) under the PPA (hereinafter defined).
- F. As per the terms and conditions of the Tender Document, the Sanctioned PSDF Support Amount will be transferred to the Discoms being the purchaser of the Total Incremental Electricity. The Discoms are required to make payment of and the Successful Bidder is required to collect the payment of the Gross Payment (hereinafter defined) directly in the Trust and Retention Account (hereinafter defined) of the Successful Bidder.
- G. Further, the Successful Bidder is required to utilise the money collected in the Trust and Retention Account in accordance with the waterfall mechanism set out in this Agreement.
- H. The Successful Bidder has availed loans (hereinafter collectively referred to as the "**Loans**") from the lenders (the "**Lenders**") for meeting the costs of setting up and implementing the Power Plant, the details of which are set out under **Schedule – I**. The Lenders' Agent has been appointed by the Lenders to act as the agent of the lenders under the Financing Documents (hereinafter defined).

<sup>1</sup> Insert the number of the Tender Document.

<sup>2</sup> Insert the date of the Tender Document.

<sup>3</sup> Insert the date of the Letter of Award.

<sup>4</sup> Insert the number of the Letter of Award.

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I. In view of the aforesaid, the Parties wish to enter into this Agreement for setting out the terms and conditions to deal with all receipt and payments including the Gross Payment in accordance with the requirements of the Tender Document.

**NOW, THEREFORE,** in consideration of the premises herein set forth and other good and valid consideration, the receipt and adequacy of which are hereby expressly acknowledged, the Parties hereby agree as follows:

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

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

**Account(s)** means the Trust and Retention Account and each of the sub – accounts being the Revenue Account, the Statutory Dues Account, the Fuel Cost Account, Operations and Maintenance Expense Account, Interest Service Account, Debt Repayment Account and the Surplus Account.

**Affiliates** means in relation to any Person, a Person that controls, is controlled by or is under the common control with such party.

**Applicable Law** means all applicable statutes, laws, by – laws, rules, regulations, orders, ordinances, protocols, codes, guidelines, policies, notices, directions, judgments, decrees or other requirements or official directive of any governmental authority or court or other law, rule or regulation, approval from the relevant governmental authority, government resolution, directive, or other government restriction or any similar form of decision of, or determination by, or any interpretation or adjudication having the force of law in India.

**Appropriate Commission** means the Central Electricity Regulatory Commission or the State Electricity Regulatory Commission (as the case may be) constituted under the Electricity Act, 2003 or such other succeeding authority or commission as may be notified by Government of India from time to time.

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<b>Business Day</b>	means a day on which banks are normally open for business in [●] <sup>5</sup> , India.
<b>Debt Repayment Account</b>	means the sub – account so named established by the Successful Bidder with the Account Bank and maintained in accordance with Section 8.
<b>Debt Repayment Amount</b>	means, in relation to the Relevant Period, the principal amounts of the Loans which is due or payable to the Lenders in accordance with the Financing Documents.
<b>Discom(s)</b>	means [●] <sup>6</sup> being a distribution licensees holding licence for distribution of electricity issued under Section 14 of the Electricity Act, 2003 or under the acts set out in the Schedule specified in Section 14 to the Electricity Act, 2003, to which the Successful Bidder is required to supply the Total Incremental Electricity under the PPA.
<b>E-bid RLNG</b>	shall have the meaning as ascribed to it in the PSDF Support Agreement.
<b>E-bid RLNG Operator</b>	means GAIL (India) Ltd.
<b>E-bid RLNG Sale Agreement</b>	means the E-bid RLNG Sale Agreement executed / to be executed between the Successful Bidder and the E-Bid RLNG Operator pursuant to the Tender Document for the Relevant Period, as may be amended, supplemented or modified from time to time.
<b>Event of Default</b>	means, collectively, the Event of Default and the Potential Event of Default or such similar term as may be defined in the Financing Documents.
<b>Financing Documents</b>	means, collectively, any loan agreements, security documents and any other financing documents entered into <i>inter alia</i> between the Successful Bidder and the Lenders in relation to the Loans.
<b>Fuel Cost Account</b>	means the sub – account so named established by the Successful Bidder with the Account Bank and maintained in accordance with Section 5.

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<sup>5</sup> Insert the place.

<sup>6</sup> Insert the name of the Discom.

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**Fuel Cost** means all amounts, costs and expenses payable by the Successful Bidder to the E-bid RLNG Operator under the E-bid RLNG Sale Agreement and to the Gas Transporter under the Gas Transportation Agreement.

**Gas Transportation Agreement** means the gas transportation agreement executed / to be executed between the Successful Bidder and the Gas Transporter.

**Gas Transporter** means [•]<sup>7</sup> being the gas transporter for the E-bid RLNG.

**Gross Payment** means all monies / revenues generated from the sale or supply of the Incremental Electricity including the amounts required to be paid by the Discoms to the Successful Bidder under the PPA for purchase of Incremental Electricity including the Sanctioned PSDF Support Amount.

**GOI** shall have the meaning as ascribed to it in Recital A.

**Incremental Electricity** shall have the meaning as ascribed to it in the PSDF Support Agreement.

**Interest Amount** means, in relation to the Relevant Period, the amount of interest and default interest on the Loans, which is due or payable to the Lenders in accordance with the Financing Documents.

**Interest Service Account** means the sub – account so named established by the Successful Bidder with the Account Bank and maintained in accordance with Section 7.

**Letter of Award** shall have the meaning as ascribed to it in Recital D.

**Monthly Distribution Date** means [•]<sup>8</sup> of a month for the Relevant Period.

**Office Memorandum** shall have the meaning as ascribed to it in Recital A.

**Operations and Maintenance** means the operation and maintenance expenses as defined / provided for in the applicable regulations issued

<sup>7</sup> Insert the name of the Gas Transporter.

<sup>8</sup> Insert the day of the month for the Monthly Distribution Date..

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<b>Expenses</b>	by the Appropriate Commission under the Electricity Act, 2003, which operation and maintenance expenses are incurred / to be incurred by the Successful Bidder proportionately for generation of the Incremental Electricity during the Relevant Period.
<b>Operations and Maintenance Expense Account</b>	means the sub – account so named established by the Successful Bidder with the Account Bank and maintained in accordance with Section 6.
<b>Person</b>	includes any company or association or individual or body of individuals, whether incorporated or not.
<b>PPA</b>	means the power purchase agreement dated [●] <sup>9</sup> executed by the Successful Bidder with the Discom for supply of the Total Incremental Electricity.
<b>Power Plant</b>	means [●] <sup>10</sup> MW gas fired power plant of the Successful Bidder located at [●] <sup>11</sup> .
<b>Priority Cashflow Application</b>	shall have the meaning as set forth in Section 3.1.2.
<b>Proceedings</b>	shall have the meaning as set forth in Section 23.
<b>PSDF Fund</b>	shall have the meaning as ascribed to it in the PSDF Support Agreement.
<b>PSDF Support Agreement</b>	means the Power System Development Fund Support Agreement to be entered into between the Successful Bidder and the GOI in the form and format set out in <b>Annexure – XI</b> of the Tender Document.
<b>RLNG</b>	means re – gasified liquefied natural gas.
<b>Relevant Period</b>	shall have the meaning as ascribed to it in the PSDF Support Agreement.
<b>Revenue Account</b>	means the sub – account so named established and maintained by the Successful Bidder with the Account Bank In accordance with Section 3.

<sup>9</sup> Insert the date of the PPA.

<sup>10</sup> The installed capacity of the Specified End Use Plant o be inserted as set out in Annexure – I of the Tender Document.

<sup>11</sup> Insert the address.

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**Sanctioned PSDF Support Amount** shall have the meaning as ascribed to it in the PSDF Support Agreement.

**Scheme** shall have the meaning as ascribed to it in Recital A.

**Secured Parties** means collectively the Lenders and all other secured parties under the Financing Documents.

**Statutory Dues** means: (i) all Taxes and any other payment due and payable for the Relevant Period, to any governmental authority under any Applicable Law; and (ii) negative amount of PSDF Support Amount payable by the Successful Bidder to the Nodal Authority as per the PSDF Support Agreement.

**Statutory Dues Account** means the sub – account so named established and maintained by the Successful Bidder with the Account Bank in accordance with Section 4.

**Surplus Account** means the sub – account so named established and maintained by the Successful Bidder with the Account Bank in accordance with Section 9.

**Taxes** means any and all present and future taxes, including without limitation, gross receipts, sales, turn-over, value added, use consumption, property, income, franchise, capital, occupational, license, excise, interest and documentary stamps taxes, and customs and other duties, assessments, or fees, however imposed, withheld, levied, or assessed by any country or government subdivision thereof or any other taxing authority.

**Total Incremental Electricity** shall have the meaning as ascribed to it in the PSDF Support Agreement.

**TRA Default** shall have the meaning set forth in Section 13.

**Trust and Retention Account** shall have the meaning set forth in Section 2.1.

## 1.2 Principles of Construction

In this Agreement, unless the context otherwise requires:

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- (a) reference to an Account includes a reference to any sub – account of that Account;
- (b) reference to an "amendment" includes a supplement, modification, novation, replacement or re-enactment and "amended" is to be construed accordingly;
- (c) a reference to "assets" include all properties whatsoever both present and future, (whether tangible, intangible or otherwise) (including intellectual property and intellectual property rights), investments, cash-flows, revenues, rights, benefits, interests and title of every description;
- (d) a reference to "authorization" includes an authorization, consent, clearance, approval, permission, resolution, license, exemption, filing and registration;
- (e) a reference to "control" includes the power to direct the management and policies of an entity, whether through the ownership of voting capital, by contract or otherwise;
- (f) a reference to "encumbrance" includes a mortgage, charge, lien, pledge, hypothecation, security interest or any lien of any description whatsoever;
- (g) unless the context otherwise requires, the singular includes the plural and vice versa;
- (h) headings and the use of bold typeface shall be ignored in its construction;
- (i) a reference to a Section or Schedule is, unless indicated to the contrary, a reference to a section or schedule to this Agreement;
- (j) references to this Agreement shall be construed as references also to any separate or independent stipulation or agreement contained in it;
- (k) the words "other", "or otherwise" and "whatsoever" shall not be construed *ejusdem generis* or be construed as any limitation upon the generality of any preceding words or matters specifically referred to;
- (l) references to the word "includes" or "including" are to be construed without limitation;
- (m) references to a person shall include such person's successors and permitted assignees or transferees;

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- (n) all references to agreements, documents or other instruments include (subject to all relevant approvals) a reference to that agreement, document or instrument as amended, supplemented, substituted, novated or assigned from time to time;
- (o) words importing a particular gender include all genders;
- (p) any reference to a public organization shall be deemed to include any successor to such public organization or any organization or functions or responsibilities of such public organization;
- (q) references to "Party" to this Agreement and references to "Parties" shall be construed accordingly;
- (r) "year" "month" and "day" wherever used in this Agreement imply that of English calendar;
- (s) references to any law shall include any constitution, statute, law, rule, regulation, ordinance, judgment, order, decree, authorization, or any published evidence, requirement or governmental restriction having the force of law, or any determination by, or interpretation of any of the foregoing by, any judicial authority, whether in effect as of the date of the Finance Documents or thereafter and each as amended from time to time;
- (t) words and abbreviations, which have, well known technical or trade / commercial meanings are used in the Agreement in accordance with such meanings;
- (u) "repayment" includes "redemption" and vice-versa and repaid, repayable, repay, redeemed, redeemable and redemption shall be construed accordingly;
- (v) in the event of any disagreement or dispute between the lenders and the Successful Bidder regarding the materiality of any matter including any event, occurrence, circumstance, change, fact, information, document authorization, proceeding, act, omission, claims, breach, default or otherwise, the opinion of the Lenders' Agent as to the materiality of any of the foregoing shall be final and binding on the Successful Bidder; and
- (w) a Potential Event of Default is "continuing" if it has not been remedied or waived by the Lenders' Agent and an Event of Default is "continuing" if it has not been waived by the Lenders' Agent.

**2. THE ACCOUNTS**

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2.1 **Establishment of the Accounts**

The Successful Bidder has established with the Account Bank an account with its branch, the details of which are provided in **Schedule – II** hereto, titled the **"Trust and Retention Account"**. The Successful Bidder acknowledges and agrees that it shall maintain the Trust and Retention Account, with the following accounts as sub – accounts to the Trust and Retention Account:

- (i) a sub – account denominated in Rupees titled, **"Revenue Account"**;
- (ii) a sub – account denominated in Rupees titled, **"Statutory Dues Account"**;
- (iii) a sub – account denominated in Rupees titled, **"Fuel Cost Account"**;
- (iv) a sub – account denominated in Rupees titled, **"Operations and Maintenance Expense Account"**;
- (v) a sub – account denominated in Rupees titled, **"Interest Service Account"**;
- (vi) a sub – account denominated in Rupees titled, **"Debt Repayment Account"**; and
- (vii) a sub – account denominated in Rupees titled, **"Surplus Account"**.

2.2 **Declaration of Trust**

The Successful Bidder hereby settles in trust with the Account Bank the sum of Rs. 100/- (Rupees One Hundred only). The Successful Bidder also hereby declares that all the beneficial right, title and interest in and to the trust, Trust and Retention Account, (which, for avoidance of doubts, includes its other sub – accounts as well), the monies therein made from the Trust and Retention Account shall be vested in the Account Bank and held for the benefit of the GOI (PSDF Fund), E-bid RLNG Operator, the Gas Transporter, the Secured Parties and thereafter the Successful Bidder, in such order of priority, in accordance with the terms of this Agreement and their respective interests are provided for herein. The Account Bank hereby accepts the above amount of Rs. 100/- (Rupees One Hundred only) in the trust hereby declared upon the terms and conditions set forth in this Agreement. Amounts deposited in the Trust and Retention Account from time to time shall be held in trust and the monies received and applied as provided in this Agreement. No person other than the GOI (PSDF Fund), E-bid RLNG Operator, the Gas Transporter, the Secured Parties and the Successful Bidder shall have any rights hereunder as the beneficiaries of or as third party beneficiaries under this Agreement.

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**2.3 Maintenance of the Accounts**

The Account Bank shall, save as otherwise provided herein, maintain the Trust and Retention Account in accordance with the terms of this Agreement and its usual practices.

**2.4 Operating Procedures**

The Account Bank, the Lenders' Agent and the Successful Bidder have prior to execution of this Agreement agreed on the detailed mandates, terms and conditions and operating procedures for the Trust and Retention Account (as set out in **Schedule – III**), provided however, in the event of any inconsistency between this Agreement and such mandates, terms and conditions or procedures, this Agreement shall prevail. All transfers and payments pursuant to this Agreement shall be in a manner consistent with the operating procedures.

The Successful Bidder shall submit to the Lenders' Agent the usage monies withdrawn from the various account of the Trust and Retention Account together with a statement from the Account Bank evidencing receipt and withdrawal of funds into and from the Trust and Retention Account. The Lenders' Agent shall be entitled to verify the usage of funds withdrawn from the Trust and Retention Account.

At any time the Lenders' Agent is entitled to seek an account statement from the Account Bank and such evidence of usage of funds by the Successful Bidder from the Trust and Retention Account as required by the Lenders' Agent.

**2.5 Business Day**

If a Monthly Distribution Date is not a Business Day, the Successful Bidder shall be entitled to instruct the Account Bank to make payment to or withdrawal from such Account (and the corresponding withdrawal from or payment to any other Account) on the immediately preceding Business Day, provided that any such payments and withdrawals would have been permitted on such Monthly Distribution Date.

**2.6 Obligations of the Successful Bidder**

Nothing contained in this Agreement shall affect the obligations of the Successful Bidder under any of the Financing Documents.

The Successful Bidder shall simultaneously deliver a copy to the Lenders' Agent of any notice or document delivered to the Account Bank pursuant to this Agreement.

**2.7 Event of Default**

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Upon the occurrence of an Event of Default, the Lenders' Agent shall inform the Account Bank by way of a written notice.

**3. REVENUE ACCOUNT**

The Revenue Account shall be opened in the name of the Successful Bidder and shall be denominated in Rupees.

**3.1.1 Deposits**

The Successful Bidder shall procure that all amounts of the Gross Payment shall be credited or deposited in the Revenue Account. The Successful Bidder shall issue necessary instructions to the Discoms and other relevant person for this purpose.

**3.1.2 Withdrawals**

On each Monthly Distribution Date, the Account Bank shall withdraw from the Revenue Account in accordance with the Successful Bidder's instructions only for the following purposes and in the following order of priority (hereinafter called the "**Priority Cashflow Application**"):

- (a) to pay amounts into the Statutory Dues Account equal to the Statutory Dues that would be due and payable in the month immediately following that Monthly Distribution Date. The transfer into this sub – account will be only for the Statutory Dues payable for the Relevant Period and not for the past or future dues;
- (b) to pay amounts into the Fuel Cost Account equal to the Fuel Cost that would be due and payable to the E-bid RLNG Operator and / or the Gas Transporter in the month immediately following that Monthly Distribution Date for the Relevant Period. The transfer into this sub – account will be only for the Fuel Cost incurred for the Incremental Electricity during the Relevant Period and not for the past or future costs;
- (c) to pay amounts into the Operations and Maintenance Expense Account equal to the Operations and Maintenance Expenses that would be due and payable in the month following that Monthly Distribution Date for the Relevant Period. The transfer into this sub-account will be only for the Operations and Maintenance Expenses proportionately incurred payable for the Incremental Electricity during the Relevant Period and not for the past or future expenses;
- (d) to pay amounts into the Interest Service Account equal to the Interest Amount for the month following that Monthly Distribution Date;

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- (e) to pay amounts into the Debt Repayment Account equal to the Debt Repayment Amount for the Relevant Period; and
- (f) all amounts remaining after the transfer required pursuant to Sections 3.1.2 (a) – to – (e) shall be transferred to the Surplus Account.

**4. STATUTORY DUES ACCOUNT**

**4.1 Statutory Dues Account**

The Statutory Dues Account shall be established in the name of the Successful Bidder and shall be denominated in Rupees. Any requests for transfer and withdrawal of funds from the Statutory Dues Account shall be in accordance with **Schedule - III**.

**4.2 Deposits**

On each Monthly Distribution Date, the Account Bank shall deposit to the Statutory Dues Account, amounts equal to the Statutory Dues as per the request of the Successful Bidder.

**4.3 Withdrawals**

- (a) On any date, upon receiving instructions from the Successful Bidder, the Account Bank shall withdraw amounts from this Account to pay amounts towards payment of Statutory Dues.
- (b) On each Monthly Distribution Date, to the extent that the balance in the Statutory Dues Account exceeds the Statutory Dues amount during such month, the Account Bank shall transfer such amounts to the Revenue Account for the Priority Cashflow Application in accordance with Section 3.1.2.

**5. FUEL COST ACCOUNT**

**5.1 Account**

The Fuel Cost Account shall be established in the name of the Successful Bidder and shall be denominated in Rupees. Any requests for transfer herein under shall be in accordance with **Schedule - III**.

**5.2 Deposits**

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On each Monthly Distribution Date, the Account Bank shall transfer amounts to the Fuel Cost Account equivalent to the amounts equal to the Fuel Cost payable by the Successful Bidder as per the request of the Successful Bidder.

**5.3 Withdrawals**

- (a) On any date, upon receiving instructions from the Successful Bidder, the Account Bank shall withdraw amounts from this Account to pay amounts towards payment of Fuel Cost. The Successful Bidder's request for transfer and withdrawal towards the Fuel Cost shall be accompanied by the invoices received from the E-bid RLNG Operator and the Gas Transporter for supply and transport of the E-Bid RLNG.
- (b) On each Monthly Distribution Date, to the extent that the balance in the Fuel Cost Account exceeds the Fuel Cost amount during such month, the Account Bank shall transfer such amounts to the Revenue Account for the Priority Cashflow Application in accordance with Section 3.1.2.

**6. OPERATIONS AND MAINTENANCE EXPENSE ACCOUNT**

**6.1 Account**

The Operations and Maintenance Expense Account shall be established in the name of the Successful Bidder and shall be denominated in Rupees. Any requests for transfer and withdrawal of funds from the Operations and Maintenance Expense Account shall be in accordance with **Schedule - III**.

**6.2 Deposits**

On each Monthly Distribution Date, the Account Bank shall transfer amounts to the Operations and Maintenance Expense Account equivalent to the amounts equal to the Operations and Maintenance Expense incurred by the Successful Bidder as per the request of the Successful Bidder.

**6.3 Withdrawals**

- (a) On any date, at the instructions of the Successful Bidder, the Account Bank shall withdraw amounts, not exceeding the Operations and Maintenance Expenses for the month as evidenced by a certificate of the Successful Bidder.
- (b) On the Monthly Distribution Date, the surplus in the Operations and Maintenance Expense Account shall be withdrawn and deposited into the Revenue Account for the Priority Cashflow Application in accordance with Section 3.1.2.

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**7. INTEREST SERVICE ACCOUNT**

**7.1 Account**

The Interest Service Account shall be established in the name of the Successful Bidder and shall be denominated in Rupees. Any requests for transfer and withdrawal of funds from the Interest Service Account shall be in accordance with **Schedule - III**.

**7.2 Deposits**

On each Monthly Distribution Date, the Account Bank shall transfer amounts equivalent to the Interest Amount for the succeeding month to the Interest Service Account.

**7.3 Withdrawals**

On any date, the Account Bank may permit withdrawal of amounts from the Interest Service Account not exceeding the Interest Amount due to the Lenders in accordance with the Financing Documents. The Account Bank will transfer such amounts directly into the designated accounts of the respective Lenders as set out in **Schedule – I**.

**8. DEBT REPAYMENT ACCOUNT**

**8.1 Account**

The Debt Repayment Account shall be established in the name of the Successful Bidder and shall be denominated in Rupees. Any requests for transfer and withdrawal of funds from the Statutory Dues Account shall be in accordance with **Schedule - III**.

**8.2 Deposits**

On each Monthly Distribution Date, the Account Bank shall deposit amounts equivalent to the Debt Repayment Amount into the Debt Repayment Account.

**8.3 Withdrawals**

The Account Bank may permit withdrawal of amounts from the Debt Repayment Account to pay the Debt Repayment Amount due to the Lenders under the Financing Documents. This withdrawal shall be in accordance with the Successful Bidder's request together with a statement or certificate from the Lenders' Agent containing the details of the amounts to be paid to the Lenders. The Account Bank will transfer such amounts directly into the designated accounts of the respective Lenders as set out in **Schedule – I**.

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**9. SURPLUS ACCOUNT**

**9.1 Account**

The Surplus Account shall be established in the name of the Successful Bidder and shall be denominated in Rupees.

**9.2 Deposits**

At the end of the Relevant Period, the Account Bank shall transfer all balance amounts left in the Revenue Account after giving effect to the Priority Cashflow Application to the Surplus Account in accordance with Section 3.1.2.

**9.3 Withdrawals**

At the end of the Relevant Period, the Account Bank shall withdraw and transfer the balance amounts left in the Surplus Account to the PSDF Fund of the GOI in the manner instructed by the GOI.

**10. GENERAL RIGHT OF WITHDRAWAL**

The Account Bank shall not make any transfer or withdrawal from the Trust and Retention Account except as provided for in this Agreement.

**11. WITHDRAWALS FOLLOWING EVENT OF DEFAULT**

**11.1 Events of Default**

If any Secured Party notifies the Account Bank that an Event of Default or a TRA Default has occurred, and is continuing, then, until such time as the Secured Party has notified the Account Bank that the Event of Default or the TRA Default (as the case maybe) has been cured or waived under the relevant Financing Document, the Account Bank shall act only on the instructions of the Lenders' Agent and make withdrawals from the Accounts in accordance with the instructions of the Lenders' Agent but subject to the Priority Cashflow Application.

**11.2 Procedure following an Event of Default**

The Account Bank, at any time after the notification by any Secured Party of the occurrence and continuance of an Event of Default or a TRA Default and until such time as it is notified by the Secured Party that such Event of Default or TRA Default has been remedied, shall:

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- (a) not act on the instructions of the Successful Bidder pursuant to this Agreement in relation to any sums at such time standing to the credit of the Accounts except with the prior written consent of the Lenders' Agent;
- (b) be entitled to pay to the Lenders' Agent any sums standing to the credit of the Accounts for application by the Lenders' Agent in or towards the payment and discharge of any amounts owing to the Secured Parties under the Financing Documents; and
- (c) not honour any cheques (if there are any) or other payment instructions of the Successful Bidder without the prior written consent of the Lenders' Agent.

11.3 Upon the occurrence and during the continuance of an Event of Default or TRA Default, the Successful Bidder undertakes not to issue any cheque or payment instructions to the Account Bank without the prior written consent of the Lenders' Agent.

**12. ACCOUNT BANK PROVISIONS**

**12.1 The Account Bank and the Secured Parties**

The Successful Bidder hereby appoints the Account Bank to act as trustee for the Secured Parties, and the Successful Bidder in connection herewith, and authorizes the Account Bank to exercise such rights, powers, authorities and discretions as are specifically delegated to the Account Bank by the terms hereof together with all such rights, powers, authorities and discretions as are reasonably incidental hereto, and the Account Bank accepts such appointment pursuant to the terms hereof. The Account Bank shall act only upon either (i) the instructions of the Lenders' Agent, or (ii) instructions from the Successful Bidder, if the same have been confirmed by the Lenders' Agent, and make withdrawals from the Accounts upon receiving such instructions or confirmation, as the case may be, from the Lenders' Agent.

**12.2 Obligations of the Account Bank**

The Account Bank:

- (a) undertakes to perform only such duties as are specifically set forth to be performed in this Agreement and such other duties as are specifically directed by the Secured Parties, without gross negligence or willful default. In the absence of clear direction in this Agreement, the Account Bank shall take no action under this Agreement until it has received specific direction from the Lenders' Agent as provided in this Section;

Successful Bidder	Account Bank	Lenders' Agent
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- (b) may, in the absence of willful misconduct or gross negligence on its part, rely as to any matters of fact which might reasonably be expected to be within the knowledge of the Successful Bidder and are contained in a certificate signed by or on behalf of the Successful Bidder;
- (c) may, in the absence of willful misconduct or gross negligence on its part, rely upon the authenticity any communication or documents believed by it to be authentic;
- (d) shall, within 3 (three) Business Days after receipt, deliver a copy to the Secured Parties of any notice or document received by the Account Bank in its capacity as Account Bank from the Successful Bidder or any other person hereunder or in connection herewith; and,
- (e) shall, within 3 (three) Business Days after receipt, deliver a copy to the Successful Bidder of any notice or document received by the Account Bank from (a) any of the Secured Parties; and (b) any other Person at the discretion of the Lenders' Agent, in connection herewith.

**12.3 Segregation of Funds**

Monies and other property received by the Account Bank under this Agreement shall, until used or applied in accordance with this Agreement, be held in trust of the purposes for which they were received and shall be segregated from other funds and property of the Account Bank. The Account Bank agrees not to claim or exercise any right of set off, banker's lien or other right or remedy with respect to amounts standing to the credit of the Trust and Retention Account. For the avoidance of doubt, the monies and properties held by the Account Bank shall not be considered as part of the assets of the Account Bank, and, being trust property shall not, in the case of bankruptcy or liquidation of the Account Bank, be considered as its assets and shall not be available to the liquidator, bankruptcy trustee or other creditor of the Account Bank and such monies and properties shall be wholly excluded from the assets of the Account Bank in such bankruptcy.

**12.4 Termination**

- (a) This Agreement shall automatically terminate if the PSDF Support Agreement is terminated or, the Power Plant becomes ineligible to receive support from the PSDF Fund or, the Successful Bidder is otherwise disqualified or becomes disentitled to receive support from the PSDF Fund or, any other alternate support scheme formulated by the Ministry of Power. This Agreement may be terminated earlier by the mutual consent of the Parties provided that the Parties have agreed to replace this Agreement with another trust and retention account agreement complying with the Office Memorandum and the Tender Document.

Successful Bidder	Account Bank	Lenders' Agent
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- (b) The Successful Bidder may, by not less than 20 (Twenty) days prior notice to the Account Bank and with the prior written consent of the Lenders' Agent, terminate this Agreement and appoint one or more Account Bank(s), provided that the new Account Bank(s) is / are acceptable to the Lenders' Agent and arrangements are made satisfactory to the Lenders' Agent for transfer of the amounts deposited in the Account to new Accounts established, with the successor Account Bank(s).
- (c) The Lenders' Agent may, after consultation with the Secured Parties and the Successful Bidder (unless an Event of Default has occurred and is continuing, in which event no such consultation shall be required), after giving notice of 20 (Twenty) days at any time remove the Account Bank with or without cause or the Account Bank may after giving notice of 60 (sixty) days resign and the Lenders' Agent shall appoint a successor Account Bank by written notice of such action to the Successful Bidder, the Account Bank and the successor Account Bank within the aforesaid notice period, failing which the Account Bank shall be entitled to appoint the successor Account Bank. The successor Account Bank must be a scheduled commercial bank.
- (d) The Account Bank shall be entitled to terminate this Agreement if the Successful Bidder fails to comply with any of its material obligations to the Account Bank under this Agreement and fails to remedy the failure within 60 (sixty) days after receipt of notice thereof from the Account Bank to the Successful Bidder and the Lenders' Agent, provided the Successful Bidder has arranged for the appointment of a new Account Bank(s) acceptable to the Secured Parties and arrangements are made satisfactory to the Secured Parties for the transfer of amounts deposited in the Accounts to new Accounts established with successor Account Bank(s).
- (e)
  - (i) any successor Account Bank appointed as provided in this Section shall execute, acknowledge and deliver to the Secured Parties, the Successful Bidder and to its predecessor trustee Account Bank an instrument accepting such appointment, and thereupon the resignation or removal of the predecessor trustee Account Bank shall become effective and such successor Account Bank, without any further act, deed or conveyance, shall become vested with all the rights, powers, duties and obligations of its predecessor hereunder, as if it was originally named as Account Bank;
  - (ii) provided that on the written request of the Secured Parties or of the successor Account Bank, the Account Bank ceasing to act shall, upon payment of all amounts then due to it, execute and deliver an instrument or instruments transferring and assigning to such

Successful Bidder	Account Bank	Lenders' Agent
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successor Account Bank (without obligation to indemnify such successor Account Bank) all the rights and powers of the Account Bank so ceasing to act; and,

(iii) upon the request of any such successor Account Bank, the Successful Bidder shall execute any and all instruments in writing in order more fully and certainly to vest in and confirm to such successor Account Bank all such rights and powers.

(f) Any corporation into which the Account Bank may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Account Bank shall be a party, or any corporation succeeding to the corporate trust business of either, shall, subject to the consent of the Lenders' Agent, be the successor of the Account Bank.

(g) The Account Bank may resign from its duties at any time during the pendency of this Agreement by giving 60 (sixty) days notice in writing to the Successful Bidder. If the Account Bank resigns, the Successful Bidder, with the approval of the Lenders' Agent shall appoint a successor Account Bank. Provided, however, that if no successor Account Bank has been so appointed by the Successful Bidder within 30 (thirty) days after notice of resignation has been given, the Lenders' Agent may appoint a successor Account Bank account in consultation with the Successful Bidder.

**12.5 Fees**

(a) In consideration of the services to be rendered by the Account Bank, the Successful Bidder shall pay to the Account Bank fees in such amounts and at such times as may be agreed between the Account Bank and the Successful Bidder.

(b) The Successful Bidder shall promptly pay or put the, Account Bank in sufficient funds to meet and discharge all expenses, disbursements and advances incurred or to be incurred by the Account Bank under any action taken pursuant to this Agreement on any other Financing Documents, or any amendment, supplement, modification, re – negotiation, restructuring or "workout" thereof (including the compensation and the expenses of its sub-agents or employees and any other Person whose services are utilized by the Account Bank in the performance of their functions.

**12.6 Books and Records**

The Account Bank shall be responsible for maintaining a correct and complete record of all transactions, deposits, withdrawals or transfer of funds relating to each of the Accounts.

Successful Bidder	Account Bank	Lenders' Agent
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**12.7 Determination of Amount and Events**

- (a) The Account Bank shall be entitled to rely as to the following matters exclusively upon the following documents (insofar as the same are delivered to the Account Bank by the Lenders' Agent and / or the Successful Bidder, as the case may be):
  - (i) with respect to Debt Repayment Amount, a certificate or statement from the Lenders' Agent; and,
  - (ii) with respect to events, acts or occurrences (including, without limitation, with respect to a Event of Default), the relevant notice of Event of Default.
- (b) The Account Bank may for all purposes rely on a certificate, signed by an authorized officer of the Lenders' Agent or the Successful Bidder as to any fact or matter the manner of ascertainment of which is not specifically provided for therein.
- (c) Any determination made by the Account Bank in accordance with this Agreement shall in the absence of any apparent error on the face of the record be conclusive and binding upon the Parties.
- (d) The Account Bank shall, within 3 (three) Business Days after its receipt of any notice of an Event of Default or any other notice from the Lenders' Agent, send a copy thereof to each Secured Party.

**12.8 Notice of Breach**

The Account Bank undertakes to the Lenders' Agent that it shall notify the Lenders' Agent of any breach by the Successful Bidder (to the best of its knowledge) of any of the provisions of this Agreement.

**12.9 Indemnity**

The Successful Bidder shall indemnify and keep indemnified the Account Bank for any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses, claims or disbursements of any kind or nature whatsoever which may be imposed upon, incurred by or asserted against the Account Bank in any way in connection with or arising out of the negotiation, preservation or enforcement of any rights under, or in carrying out its duties under this Agreement or the Financing Documents (other than those arising as a result of the Account Bank's gross negligence or willful default).

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The Successful Bidder shall further indemnify and keep indemnified the Account Bank for any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses, claims or disbursements of any kind or nature whatsoever which may be imposed upon, incurred by or asserted against the Account Bank upon the Account Bank (a) acting upon any request sent by facsimile, if such facsimile was found to be sent in an unauthorized manner; or (b) not acting upon any request if such facsimile was sent but not received by the concerned person of the Account Bank.

The obligations of the Successful Bidder under this Section to indemnify and keep indemnified the Account Bank shall survive the satisfaction, discharge or other termination of this Agreement and the resignation or removal of the Account Bank under this Agreement.

**12.10 Not Acting in Individual Capacity**

In accepting the trusts hereby created, the Account Bank acts solely in its capacity as Account Bank and not in its individual capacity and all persons having any claim against the Account Bank by reason of the transactions contemplated by the Financing Documents shall look only to the Successful Bidder for payment or satisfaction thereof, save and except as provided in this Agreement, other than as a result of its willful, default or gross negligence.

**13. TRA DEFAULT**

If the Successful Bidder is in breach of any of the following obligations under this Agreement and fails to remedy the same:

- (a) in the case of a failure to deposit funds received by the Successful Bidder in the appropriate Account in accordance with this Agreement, by depositing the same in such appropriate Account;
- (b) in the case of a breach consisting of causing the Account Bank to transfer funds to any Account in breach of the terms of this Agreement, by depositing the relevant funds in the Account in which such transfer should have been made (or, in the case of a transfer to the Revenue Account, by requesting the Lenders' Agent to authorize the transfer of amounts incorrectly deposited in such Account to the Account to which the transfer should have been made); and,
- (c) any other breach by the Successful Bidder under this Agreement;

Such breach / default shall be deemed to be a "TRA Default", and the Lenders' Agent shall promptly authorize the Account Bank to make transfers required pursuant to paragraph (b) above. An Event of Default shall include a TRA Default.

Successful Bidder	Account Bank	Lenders' Agent
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**14. REPRESENTATION AND WARRANTIES OF THE ACCOUNT BANK AND THE SUCCESSFUL BIDDER**

Each of the Account Bank and the Successful Bidder represents and warrants that it is duly organized and validly existing under the laws of India with power to enter into this Agreement and to exercise its rights and perform its obligations hereunder and has taken all corporate and other actions required for the execution of this Agreement and the performance of its obligations hereunder and the Successful Bidder further represents and warrants that all the representations and warranties under the Financing Documents shall be valid for the purposes of this Agreement. The Successful Bidder represents and warrants that all Accounts shall have been opened in the name of the Successful Bidder and shall be maintained in accordance with the provisions of this Agreement. The Account Bank represents and warrants that it shall hold all funds in the Accounts on trust and in accordance with the provisions of the Agreement and further represents and warrants that it has obtained all approvals, permits and other clearances required for the execution of this Agreement and the performance of its obligations hereunder.

**15. CONFIDENTIALITY**

The Account Bank shall keep confidential all information furnished to it by or on behalf of the Successful Bidder, the Secured Parties or their Affiliates pursuant to or in connection with the Financing Documents, including without limitation, any information received by the Account Bank from a nominee director; provided, that the Account Bank may disclose such information (i) to its attorneys and auditors to the extent they have a bona fide need for such information; (ii) to regulatory authorities charged with the supervision and examination of the Account Bank; (iii) to any potential successor Account Bank or any, potential assignee of all or a portion of the Account Bank's rights under the Financing Documents so long as such potential successor Account Bank or any potential assignee covenants in writing to uphold this confidentiality provision; (iv) that was in the public domain at the time of the Account Bank's disclosure; (v) that subsequently comes into the public domain through no fault of the Account Bank; (vi) that is disclosed to the Account Bank by a third party who is under no obligation to any other party to keep such information confidential; (vii) to enable it to comply with any Applicable Law; (viii) in connection with the defence of any litigation or transactions contemplated by the Financing Documents to the extent necessary; (ix) to any other Secured Party or Lenders' Agent; and (x) in connection with the enforcement of the rights and remedies of any Secured Party under any Financing Documents to the extent necessary.

**16. RESTRICTION ON ASSIGNMENT**

Successful Bidder	Account Bank	Lenders' Agent
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Save as provided in Section, none of the Successful Bidder or the Account Bank shall assign or transfer any part of their respective rights or obligations under this Agreement without the prior consent of the Secured Parties and the Lenders' Agent, provided that this Section shall not prevent my Secured Party or the Lenders' Agent from assigning or transferring its rights under this Agreement.

**17. BENEFIT OF AGREEMENT**

Nothing in this Agreement shall give to any other Person (other than the Parties hereto and their successors and permitted assigns) any benefit or any legal or equitable right or remedy under this Agreement.

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

**18. NOTICES**

- (a) Except as otherwise expressly provided herein or in any Financing Document, all notices and other communications provided for hereunder or thereunder shall be (i) in writing (including telex and telecopier, except as noted below); and (ii) telexed, telecopier or sent by a Person, overnight courier (if for inland delivery) or international, courier (if for overseas delivery) to a Party hereto at its address and contact number specified herein or at such other address and contact number as is designated by such party in a written notice to the other parties hereto. The address for notices of the Successful Bidder, Lenders' Agent and Account Bank shall be as provided at (d) below.
- (b) All such notices and communications shall be effective only on actual receipt by the officer of the Secured Party or the Successful Bidder as the case may be for whose attention the notice or communication has been expressly marked. Provided however that any notice or communication to the Successful Bidder by the Secured Party with respect to Event of Default, TRA Event of Default, enforcement of any Security shall be effective if (i) if sent by telex, when sent (with the correct answerback); (ii) if sent by telecopier, when sent (on receipt of a confirmation to the correct telecopier number); (iii) if sent by Person, when delivered; (iv) if sent by courier, (a) 1 (one) Business Day after deposit with an overnight courier if for inland delivery; and (b) 5 (five) Business Days after deposit with an international courier if for overseas delivery; and (v) if sent by registered letter, when the registered letter would, in the ordinary course of post, be delivered whether actually delivered or not.
- (c) An original of each notice and communication sent by telex or telecopy shall be dispatched by person, overnight courier (if for inland delivery) or international courier (if for overseas delivery) and, if such Person or

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courier service is not available, by registered airmail (or, if for inland delivery, registered first class mail) with postage prepaid, *provided* that the effective date of any such notice shall be determined in accordance with this Section as the case may be, without regard to the dispatch of such original.

(d) Addresses:

The address for notices and communication in respect of this Agreement shall be as follows:

**For the Successful Bidder:**

[•]<sup>12</sup>

Attention: [•]<sup>13</sup>

Address: [•]<sup>14</sup>

Fax No.: [•]<sup>15</sup>

Tel No.: [•]<sup>16</sup>

**For the Lenders' Agent:**

[•]<sup>17</sup>

Attention: [•]<sup>18</sup>

Address: [•]<sup>19</sup>

Fax No.: [•]<sup>20</sup>

Tel No.: [•]<sup>21</sup>

**For the Account Bank:**

<sup>12</sup> Insert the name of the Successful Bidder.  
<sup>13</sup> Insert the name of the authorized person of the Successful Bidder.  
<sup>14</sup> Insert the address of the Successful Bidder.  
<sup>15</sup> Insert the fax number of the Successful Bidder.  
<sup>16</sup> Insert the telephone number of the Successful Bidder.  
<sup>17</sup> Insert the name of the Lenders' Agent.  
<sup>18</sup> Insert the name of the authorized person of the Lenders' Agent.  
<sup>19</sup> Insert the address of the Lenders' Agent.  
<sup>20</sup> Insert the fax number of the Lenders' Agent.  
<sup>21</sup> Insert the telephone number of the Lenders' Agent.

Successful Bidder	Account Bank	Lenders' Agent
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[•]<sup>22</sup>

Attention: [•]<sup>23</sup>

Address: [•]<sup>24</sup>

Fax No.: [•]<sup>25</sup>

Tel No.: [•]<sup>26</sup>

(e) Change of Address

Any Party may by notice change the addresses and / or addresses to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have written notice of it.

**19. WAIVER**

No failure or delay on the part of any of the Secured Party in exercising any right, power or privilege hereunder or under any other Financing Document and no course of dealing between the Successful Bidder, on the one hand, and the Secured Parties, on the other hand, shall impair any such right, power or privilege or operate as a waiver thereof nor shall any single or partial exercise of any right, power or privilege hereunder or under any other Financing Document preclude any other or further exercise thereof or the exercise of other right, power or privilege hereunder or thereunder. The rights, powers and remedies herein or in any other Financing Document or expressly provided are cumulative and not exclusive of any rights, powers or remedies which any of the Secured Parties would otherwise have. No notice to or demand on the Successful Bidder in any case shall entitle the Successful Bidder to any other or further notice or demand in similar or other circumstances or constitute a waiver of the rights of any of the Secured Parties to any other or further action in any circumstances without notice or demand.

**20. SEVERABILITY**

Any provision of this Agreement, which is prohibited or unenforceable in any jurisdiction, shall, as to such jurisdiction, be ineffective to the extent of

<sup>22</sup> Insert the name of the Account Bank.

<sup>23</sup> Insert the name of the authorized person of the Account Bank.

<sup>24</sup> Insert the address of the Account Bank.

<sup>25</sup> Insert the fax number of the Account Bank.

<sup>26</sup> Insert the telephone number of the Account Bank.

Successful Bidder	Account Bank	Lenders' Agent
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prohibition or unenforceability but shall not invalidate the remaining provisions of such Financing Document or affect such provision in any other jurisdiction.

**21. AMENDMENTS**

No amendment to this Agreement shall be binding unless in writing and signed by the duly authorized representatives of the Parties.

**22. GOVERNING LAW**

This Agreement shall be governed by and construed in accordance with Indian laws.

**23. JURISDICTION**

- (a) The Successful Bidder agrees that the courts and tribunals (including the debt recovery tribunals) in [●]<sup>27</sup> shall have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Agreement and that accordingly any suit, action or proceedings (together referred to as "**Proceedings**") arising out of or in connection with this Agreement may be brought in such courts or the tribunals and the Successful Bidder irrevocably submits to and accepts for itself and in respect of its property, generally and unconditionally, the jurisdiction of those courts or tribunals.
- (b) The Successful Bidder irrevocably waives any objection now or in future, to the laying of the venue of any Proceedings in the courts and tribunals at [●]<sup>28</sup> and any claim that any such. Proceedings have been brought in an inconvenient forum and further irrevocably agrees that a judgment in any Proceedings brought in the courts and tribunals at [●]<sup>29</sup> shall be conclusive and binding upon it and may be enforced in the courts of any other jurisdiction (subject to the laws of such jurisdiction) by a suit upon such judgment, a certified copy of which shall be conclusive evidence of such judgment, or in any other manner provided by Applicable Law.
- (c) The Successful Bidder hereby consents generally in respect of any Proceedings arising out of or in connection with this Agreement to the giving of any relief or the issue of any process in connection with such Proceedings including, without limitation, the making, enforcement or execution against any property whatsoever (irrespective of its use or intended use) of any order or judgment which may be made or given in such Proceedings.

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<sup>27</sup> Insert the place of jurisdiction.

<sup>28</sup> Insert the place of jurisdiction.

<sup>29</sup> Insert the place of jurisdiction.

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**24. REGULATORY APPROVALS**

The Successful Bidder shall procure and shall thereafter maintain and comply with all regulatory approvals required for the establishment and operation of the Accounts and the making of any deposits, transfers or withdrawals and for the performance of its obligations under this Agreement.

**25. NOTIFICATION OF BALANCES**

Within 7 (seven) days following the end of each calendar month, the Account Bank shall notify the Lenders' Agent and the Successful Bidder of the respective balances in the Accounts and furnish a statement of the deposits into and payment out of the Accounts as at the close of business of such calendar month.

**26. ADDITIONAL RIGHTS**

Any rights conferred on the Account Bank, the Lenders' Agent or any of them, by this Agreement shall be in addition to and not in substitution for or in derogation of any other rights and remedies which the lenders or Lenders' Agent or any of them, may at any time have under the Financing Documents or otherwise, including, without limitation, rights to seek and obtain from the Successful Bidder or any party to the Financing Documents reimbursement of or indemnification against payments made or liabilities incurred under the Financing Documents or otherwise.

**27. ACCOUNT BANK MAY CARRY ON OTHER BUSINESS**

Notwithstanding its appointment as an Account Bank, the Account Bank may carry on any business and other transactions with the lenders, its Affiliates or other entities so long as such business, in the opinion of the Lenders' Agent, do not conflict with its obligations under this Agreement and the other Financing Agreements.

**28. SUCCESSORS AND ASSIGNORS**

This Agreement shall be binding on and shall inure to the benefit of the Parties hereto and their respective successors in title and permitted assigns. Neither of the Parties shall assign or transfer any part of their respective rights or obligations under the Agreement without the prior consent of each of the other Parties.

**29. COUNTERPARTS**

This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

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**30. GENERAL**

Notwithstanding anything contained in this Agreement, the Account Bank shall not be responsible for calculating any amount to give effect to the provisions of this Agreement and the Account Bank shall act only as per the written instructions of the Successful Bidder or as may otherwise be specified in the Agreement.

Successful Bidder	Account Bank	Lenders' Agent
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**SCHEDULE – I**  
**PARTICULARS OF LOANS AVAILED BY THE SUCCESSFUL BIDDER**

<b><u>Sr.No.</u></b>	<b><u>Lenders</u></b>	<b><u>Outstanding amounts (in crores)</u></b>	<b><u>Particulars of the designated accounts of the Lenders</u></b>
1.	[●] <sup>30</sup>	[●] <sup>31</sup>	[●] <sup>32</sup>
2.	[●] <sup>33</sup>	[●] <sup>34</sup>	[●] <sup>35</sup>
3.	[●] <sup>36</sup>	[●] <sup>37</sup>	[●] <sup>38</sup>
	<b>Total:</b>	[●] <sup>39</sup>	

<sup>30</sup> Insert the name of the Lender.

<sup>31</sup> Insert the outstanding amount in crores for the respective Lender.

<sup>32</sup> Insert the particulars of the designated accounts of the respective Lender.

<sup>33</sup> Insert the name of the Lender.

<sup>34</sup> Insert the outstanding amount in crores for the respective Lender.

<sup>35</sup> Insert the particulars of the designated accounts of the respective Lender.

<sup>36</sup> Insert the name of the Lender.

<sup>37</sup> Insert the outstanding amount in crores for the respective Lender.

<sup>38</sup> Insert the particulars of the designated accounts of the respective Lender.

<sup>39</sup> Insert the aggregate outstanding amount in crores to the account of the Successful Bidder.

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**SCHEDULE – II**  
**DETAILS OF TRUST AND RETENTION ACCOUNT**

<b>Particulars and Address of the Branch Office of the Account Bank for the Trust and Retention Account</b>	[•] <sup>40</sup>
<b>IFSC Code</b>	[•] <sup>41</sup>
<b>Account Number of the Trust and Retention Account</b>	[•] <sup>42</sup>

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<sup>40</sup>Insert the particulars and address of the branch office for the Trust and Retention Account.

<sup>41</sup> Insert the name of IFSC Code of the Branch of the Account Bank.

<sup>42</sup> Insert the Account Number of TRA Account.

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**SCHEDULE – III  
OPERATING PROCEDURES**

**1. Interpretation**

1.1 This Schedule is divided into two Parts:

**Part A** provides details of the mechanics for transfers and / or withdrawals

**Part B** provides steps to be taken and / or documents to be reviewed before certain transfers or withdrawals are made.

1.2 If there is any conflict between the provisions of this Schedule and the Agreement then the provisions of the Agreement shall apply. Terms defined in the Agreement shall apply to this Schedule.

**2. BENEFIT OF PROVISIONS**

Each of the restrictions contained in this Agreement relating to the Accounts shall be for the benefit of the Secured Parties. Any such restrictions may accordingly be relaxed or waived, either:-

(A) by the Lenders' Agent, or

(B) if the Successful Bidder requests and the Lenders' Agent agrees, provided that the Lenders' Agent shall not be obliged to agree to such request,

and none of the restrictions shall limit the rights of the Secured Parties under the Financing Documents.

**PART – A**  
**GENERAL PROVISIONS RELATING TO TRANSFER AND WITHDRAWALS**

**3. WITHDRAWAL / TRANSFER PROCEDURES**

3.1 The Account Bank shall not make any transfer except as expressly provided in the Agreement.

3.2 All requests by the Successful Bidder to the Account Bank for a withdrawal from an Account to any third party:

3.2.1 shall be in writing, signed by an authorized officer of the Successful Bidder and sent to the Account Bank by facsimile to the facsimile number specified in this Agreement three (3) Business Days prior to the proposed date of withdrawal;

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- 3.2.2 shall specify the purpose of the transfer; and
- 3.2.3 shall be accompanied by such documents or other verifying evidence of the expenditure as the Account Bank may request.
- 3.2.4 Such request by the Successful Bidder shall be approved / confirmed by the Lenders' Agent.

**4. IMPLEMENTATION OF WITHDRAWAL / TRANSFER REQUEST**

- 4.1 Except as otherwise provided in this Agreement, and, subject to Clause 3.2 of Part A above in case of request from the Successful Bidder, upon the receipt from the Lenders' Agent or the Successful Bidder of a request ("**Request**") delivered pursuant to this Agreement, the Account Bank shall, provided (where required) it has received the documentary evidence set out in Part B of this Schedule pay or transfer the amount(s) requested in such Request or other written instructions of the Successful Bidder or Lenders' Agent (as the case may be).
- 4.2 Any transfer requested in accordance with paragraph 4.1 of this Schedule shall be made as follows.
  - 4.2.1 in the case of a Request requesting a withdrawal or transfer to another Account, directly to such Account, by initiating such transfer not later than [●]<sup>43</sup>, [●]<sup>44</sup> time on, or as soon as practicable after, the date set out in such Request; and
  - 4.2.2 in the case of any Request requesting a payment to any Person or the transfer to an account other than an Account, directly to such Person or account set out in such Request, by initiating such payment or transfer not later than [●]<sup>45</sup>, [●]<sup>46</sup> time on, or as soon as practicable after, the date set out in such Request.

**5. FAILURE OF SUCCESSFUL BIDDER TO SUBMIT WITHDRAWAL/ TRANSFER REQUEST**

- 5.1 Notwithstanding any other provision of this Agreement to the contrary, if the Successful Bidder fails to timely submit a Request to the Account Bank for the withdrawal, transfer, conversion or payment of amounts to any Account or Person (whether on a Monthly Distribution Date or otherwise), the Account Bank shall be authorized (and in each case, the Successful Bidder hereby authorizes the Lenders' Agent to so act) upon the receipt of a written direction by the Lenders' Agent.

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<sup>43</sup> Insert the time of day.

<sup>44</sup> Insert the place.

<sup>45</sup> Insert the time of day.

<sup>46</sup> Insert the place.

Successful Bidder	Account Bank	Lenders' Agent
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- 5.1.1 to effect any withdrawal, transfer, conversion or payment, as the case may be, of any amounts then due and payable or required to be transferred pursuant to the terms of any Financing Documents; or

**PART – B**  
**TRANSFERS FROM ANY ACCOUNT IN ANY MONTH**

**6. CALCULATIONS FOR MONTHLY TRANSFERS**

**6.1** Timing of Requests

At least 5 (five) Business Days prior to the first Business Day of each month, the Successful Bidder shall deliver to the Lenders’ Agent and the Account Bank a written Request specifying:

- A. the withdrawals for such month from each Account and transfers to the Accounts and / or Person(s);
- B. the amount requested to be withdrawn or transferred from such Account; and,
- C. the date upon which such withdrawal or transfer is to be made

**6.2** Implementation of Requests

- (A) Upon the receipt of a duly authorised Request from the Successful Bidder, and subject to Clause 3.2 of Part A above in case of request of request from the Successful Bidder, the Account Bank shall transfer/pay on each Monthly Distribution Date monies in deposit in the Accounts directly to the relevant Accounts set out in the Request or to the Persons or the account of Persons set out in the Request.
- (B) In the event that the Request furnished by the Successful Bidder is not in accordance with this Agreement, the Account Bank shall seek the approval of the Lenders’ Agent before implementing the Request.

**7. WITHDRAWALS DURING AN EVENT OF DEFAULT**

- 7.1 The Account Bank shall not, except with the prior written consent of the Lenders’ Agent, permit any withdrawal to be made from an Account:
  - 7.1.1 on or after receipt of a notice from any of the Secured Patties that an Event of Default has occurred unless and until such notice is subsequently withdrawn by the Lenders’ Agent,

Successful Bidder	Account Bank	Lenders’ Agent
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- 7.1.2 on or after receipt of notification from any of the Secured Parties that such withdrawal is not or would not be permitted under the Financing Documents
- 7.2 Upon the occurrence of an Event of Default
- 7.2.1 no withdrawals may be made from any of the Accounts without the prior written consent of the Secured Parties.

**IN WITNESS WHEREOF** the Successful Bidder has caused its Common Seal to be affixed hereto on the date first above written the Lenders' Agent, the Account Bank and the Successful Bidder have caused the same and the said counterparts to be executed by the hand of an authorized official.

**SIGNED AND DELIVERED BY [.]<sup>47</sup>,**  
 the within named **SUCCESSFUL BIDDER**, by the hand of ..... its Director.

**THE COMMON SEAL OF [.]<sup>48</sup>** has pursuant to the Resolutions of its Board of Directors passed in that behalf on ..... hereunto been affixed in the presence Mr. .... its Director who has signed these presents in token thereof

**SIGNED AND DELIVERED BY [.]<sup>49</sup>,**  
 the within named **ACCOUNT BANK**, by the hand of ..... its Authorised Representative.

**SIGNED AND DELIVERED BY [.]<sup>50</sup>,**  
 the within named **LENDERS' AGENT**, by the hand of ..... its Authorised Representative.

<sup>47</sup> Insert the name of the Successful Bidder.  
<sup>48</sup> Insert the name of the Successful Bidder.  
<sup>49</sup> Insert the name of the Account Bank.  
<sup>50</sup> Insert the name of the Lenders' Agent.

Successful Bidder	Account Bank	Lenders' Agent
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