

Annexure X – Format of Trust and Retention Account Agreement for DGPs

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**.

The Successful Bidder and the Account Bank 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 27th March 2015 ("**Office Memorandum**") has introduced the Scheme for 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.

Successful Bidder	Account Bank
-------------------	--------------

- C. Accordingly, the GOI invited bids from the DGPs under the Tender Document bearing no [●]¹ dated [●]² for grant of support from PSDF Fund ("**Tender Document**"). The Successful Bidder being the owner of a DGP 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 [●]³ bearing no. [●]⁴ ("**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. 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.

¹ Insert the number of the Tender Document.

² Insert the date of the Tender Document.

³ Insert the date of the Letter of Award.

⁴ Insert the number of the Letter of Award.

Successful Bidder	Account Bank
-------------------	--------------

- 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 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.
- Business Day** means a day on which banks are normally open for business in [●]⁵, India.
- Discom(s)** means [●]⁶ 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.
- E-bid RLNG** shall have the meaning as ascribed to it in the PSDF Support Agreement.
- E-bid RLNG Operator** means GAIL (India) Ltd.
- E-bid RLNG Sale** means the E-bid RLNG Sale Agreement executed / to be

⁵ Insert the place.

⁶ Insert the name of the Discom.

Successful Bidder	Account Bank
-------------------	--------------

Agreement	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.
Fuel Cost Account	means the sub – account so named established by the Successful Bidder with the Account Bank and maintained in accordance with Section 5.
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 [•] ⁷ 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.
Letter of Award	shall have the meaning as ascribed to it in Recital D.
Monthly Distribution Date	means [•] ⁸ of a month for the Relevant Period.
Office Memorandum	shall have the meaning as ascribed to it in Recital A.
Person	includes any company or association or individual or body of individuals, whether incorporated or not.

⁷ Insert the name of the Gas Transporter.

⁸ Insert the day of the month for the Monthly Distribution Date..

Successful Bidder	Account Bank
-------------------	--------------

PPA	means the power purchase agreement dated [●] ⁹ executed by the Successful Bidder with the Discom for supply of the Total Incremental Electricity.
Power Plant	means [●] ¹⁰ MW gas fired power plant of the Successful Bidder located at [●] ¹¹ .
Priority Cashflow Application	shall have the meaning as set forth in Section 3.1.2.
Proceedings	shall have the meaning as set forth in Section 18.
PSDF Fund	shall have the meaning as ascribed to it in the PSDF Support Agreement.
PSDF Support Agreement	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 Annexure – XI of the Tender Document.
RLNG	means re – gasified liquefied natural gas.
Relevant Period	shall have the meaning as ascribed to it in the PSDF Support Agreement.
Revenue Account	means the sub – account so named established and maintained by the Successful Bidder with the Account Bank In accordance with Section 3.
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.
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.

⁹ Insert the date of the PPA.

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

¹¹ Insert the address.

Successful Bidder	Account Bank
-------------------	--------------

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 6.

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.

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:

- (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;

Successful Bidder	Account Bank
-------------------	--------------

- (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;
- (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;

Successful Bidder	Account Bank
-------------------	--------------

- (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.

2. THE ACCOUNTS

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 – I** 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"**; and
- (iv) 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 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

Successful Bidder	Account Bank
-------------------	--------------

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 and the Successful Bidder shall have any rights hereunder as the beneficiaries of or as third party beneficiaries under this Agreement.

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 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 – II**), 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 GOI (on demand) 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 GOI shall be entitled to verify the usage of funds withdrawn from the Trust and Retention Account.

At any time the GOI shall be 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 GOI.

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.

3. REVENUE ACCOUNT

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

Successful Bidder	Account Bank
-------------------	--------------

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; and
- (c) all amounts remaining after the transfer required pursuant to Sections 3.1.2 (a) – to – (b) 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 – II**.

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

Successful Bidder	Account Bank
-------------------	--------------

- (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 – II**.

5.2 Deposits

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. SURPLUS ACCOUNT

6.1 Account

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

Successful Bidder	Account Bank
-------------------	--------------

6.2 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.

6.3 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.

7. 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.

8. ACCOUNT BANK PROVISIONS

8.1 The Account Bank Authorisation

The Successful Bidder hereby 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. The Account Bank shall act only as per the procedure set out in this Agreement.

8.2 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 Successful Bidder as per the provisions of this Agreement, without gross negligence or willful default;
- (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.

8.3 Segregation of Funds

Successful Bidder	Account Bank
-------------------	--------------

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.

8.4 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.
- (b) The Successful Bidder may, by not less than 20 (Twenty) days prior notice to the Account Bank, terminate this Agreement and appoint one or more Account Bank(s).
- (c) 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, provided the Successful Bidder has arranged for the appointment of a new Account Bank(s) and arrangements are made for the transfer of amounts deposited in the Accounts to new Accounts established with successor Account Bank(s).
- (d)
 - (i) any successor Account Bank appointed as provided in this Section shall execute, acknowledge and deliver to 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

Successful Bidder	Account Bank
-------------------	--------------

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 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 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.

(e) 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 be the successor of the Account Bank.

(f) 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 shall appoint a successor Account Bank.

8.5 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, 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.

8.6 Books and Records

Successful Bidder	Account Bank
-------------------	--------------

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.

8.7 Determination of Amount and Events

- (a) The Account Bank may for all purposes rely on a certificate, signed by an authorized officer of the Successful Bidder as to any fact or matter the manner of ascertainment of which is not specifically provided for therein.
- (b) 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.

8.8 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 (other than those arising as a result of the Account Bank's gross negligence or willful default).

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.

8.9 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 this Agreement shall look only to the Successful Bidder for payment or

Successful Bidder	Account Bank
-------------------	--------------

satisfaction thereof, save and except as provided in this Agreement, other than as a result of its willful, default or gross negligence.

9. REPRESENTATION AND WARRANTIES OF THE ACCOUNT BANK AND THE SUCCESSFUL BIDDER

Each of the Account Bank and the Successful Bidder represents and warrants to each other 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. 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.

10. CONFIDENTIALITY

The Account Bank shall keep confidential all information furnished to it by or on behalf of the Successful Bidder; 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 this Agreement 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) to any lender or creditor to the extent necessary.

11. RESTRICTION ON ASSIGNMENT

Save as provided in Section 8.4, 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 other Party.

12. BENEFIT OF AGREEMENT

Successful Bidder	Account Bank
-------------------	--------------

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.

13. NOTICES

- (a) Except as otherwise expressly provided herein, 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 and the 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 Successful Bidder and the Account Bank as the case may be for whose attention the notice or communication has been expressly marked.
- (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 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:

[•]¹²

Attention: [•]¹³

¹² Insert the name of the Successful Bidder.

¹³ Insert the name of the authorized person of the Successful Bidder.

Successful Bidder	Account Bank
-------------------	--------------

Address: [●]¹⁴

Fax No.: [●]¹⁵

Tel No.: [●]¹⁶

For the Account Bank:

[●]¹⁷

Attention: [●]¹⁸

Address: [●]¹⁹

Fax No.: [●]²⁰

Tel No.: [●]²¹

(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.

14. WAIVER

No failure or delay on the part of any of the Party in exercising any right, power or privilege hereunder or under this Agreement and no course of dealing between the Successful Bidder, on the one hand, and the Account Bank, 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 preclude any other or further exercise thereof or the exercise of other right, power or privilege hereunder or thereunder.

15. SEVERABILITY

¹⁴ Insert the address of the Successful Bidder.

¹⁵ Insert the fax number of the Successful Bidder.

¹⁶ Insert the telephone number of the Successful Bidder.

¹⁷ Insert the name of the Account Bank.

¹⁸ Insert the name of the authorized person of the Account Bank.

¹⁹ Insert the address of the Account Bank.

²⁰ Insert the fax number of the Account Bank.

²¹ Insert the telephone number of the Account Bank.

Successful Bidder	Account Bank
-------------------	--------------

Any provision of this Agreement, which is prohibited or unenforceable in any jurisdiction, shall, as to such jurisdiction, be ineffective to the extent of prohibition or unenforceability but shall not invalidate the remaining provisions of this Agreement or affect such provision in any other jurisdiction.

16. AMENDMENTS

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

17. GOVERNING LAW

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

18. JURISDICTION

- (a) The Successful Bidder agrees that the courts and tribunals in [●]²² 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 [●]²³ 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 [●]²⁴ 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

²² Insert the place of jurisdiction.

²³ Insert the place of jurisdiction.

²⁴ Insert the place of jurisdiction.

Successful Bidder	Account Bank
-------------------	--------------

intended use) of any order or judgment which may be made or given in such Proceedings.

19. 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.

20. NOTIFICATION OF BALANCES

Within 7 (seven) days following the end of each calendar month, the Account Bank shall notify 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.

21. 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 Successful Bidder or other entities so long as such business do not conflict with its obligations under this Agreement.

22. 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.

23. 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.

24. 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
-------------------	--------------

SCHEDULE – I
DETAILS OF TRUST AND RETENTION ACCOUNT

Particulars and Address of the Branch Office of the Account Bank for the Trust and Retention Account	[•] ²⁵
IFSC Code	[•] ²⁶
Account Number of the Trust and Retention Account	[•] ²⁷

²⁵Insert the particulars and address of the branch office for the Trust and Retention Account.

²⁶ Insert the name of IFSC Code of the Branch of the Account Bank.

²⁷ Insert the Account Number of TRA Account.

Successful Bidder	Account Bank
-------------------	--------------

**SCHEDULE – II
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 GOI and the Successful Bidder.

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;

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.

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 ("**Request**")

Successful Bidder	Account Bank
-------------------	--------------

delivered pursuant to this Agreement, the Account Dank 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.

- 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 [●]²⁸, [●]²⁹ 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 [●]³⁰, [●]³¹ time on, or as soon as practicable after, the date set out in such Request.

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 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

²⁸ Insert the time of day.

²⁹ Insert the place.

³⁰ Insert the time of day.

³¹ Insert the place.

Successful Bidder	Account Bank
-------------------	--------------

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 reject the Request.

Successful Bidder	Account Bank
-------------------	--------------

IN WITNESS WHEREOF the Successful Bidder has caused its Common Seal to be affixed hereto on the date first above written 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 [.]³²,
the within named **SUCCESSFUL
BIDDER,** by the hand of
..... its Director.

THE COMMON SEAL OF [.]³³ 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 [.]³⁴,
the within named **ACCOUNT BANK,** by
the hand of its
Authorised Representative.

³² Insert the name of the Successful Bidder.

³³ Insert the name of the Successful Bidder.

³⁴ Insert the name of the Account Bank.

Successful Bidder	Account Bank
-------------------	--------------