

CONCESSION AGREEMENT

BY AND BETWEEN

MINISTRY OF NEW AND RENEWABLE ENERGY, GOVERNMENT OF INDIA

(the “Concessions authority”)

AND

[insert name of the Successful Bidder]

(the “Concessionaire”)

DATED: _____

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SEABED LEASE DEED AGREEMENT

This concession agreement (the “**Concession agreement**”) is made as of the _____ day of _____, 20__ at _____:

BY AND BETWEEN

1. Ministry of New and Renewable Energy, having its office at _____ (hereinafter referred to as the “**Concessioneing Authority**”, which expression shall, unless repugnant to the context or meaning thereof, include its successors and assigns) of one part;

AND

2. M/s _____, a company incorporated under the provisions of the Companies Act, 2013 and having its registered office at _____, (hereinafter referred to as the “**Concessionaire**”, which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns and substitutes) of the other part.

The Concessioneing Authority and the Concessionaire are hereinafter individually referred to as a “**Party**” and collectively as the “**Parties**”.

WHEREAS:

- A. Solar Energy Corporation of India (SECI) had invited proposals by its request for selection document dated _____ for construction, operation and maintenance of an offshore wind power project, including transmission system to deliver the power at the offshore substation, at the seabed (the “**Seabed**”) more particularly detailed and described in the SEABED Lease Deed (as defined hereinafter), on design, build, finance, operate and own basis (the “**Project**”);
- B. After evaluation of the proposals received, SECI had accepted the proposal of _____ (the “**Successful Bidder**”), and had issued a letter of award dated _____ bearing ref. no. _____ to the Successful Bidder. The Successful Bidder thereafter incorporated a Special Purpose Vehicle, namely M/s _____, for setting up the Project, which shall hereafter, be referred to as Concessionaire (to be removed if not applicable).
- C. The Ministry of New and Renewable Energy, Government of India and the Successful Bidder had thereafter entered into a Seabed lease Dees dated _____ (the “**Seabed lease Deed**”) wherein certain stipulations for grant of a lease in respect of undertaking development of the Project on the Seabed were set forth;
- D. Pursuant to the said stipulations having been complied with, the Successful Bidder has promoted and incorporated the Concessionaire as a limited liability company under the Companies Act 2013, and has requested the Concessioneing Authority to accept the Concessionaire as the entity which shall undertake and perform the obligations and exercise the rights of the Successful Bidder, including the obligation to enter into this Concession Agreement pursuant for executing the Project;
- E. By its letter dated_, the Concessionaire has also joined in the said request of the Successful Bidder to the Concessioneing Authority to accept it as the entity which shall undertake and perform the obligations and exercise the rights of the Successful Bidder, including the obligation to enter into this Concession

Agreement. The Concessionaire has further represented to the effect that it has been promoted by the Successful Bidder for the purposes hereof;

- F. The Parties are now entering into this Concession Agreement for execution of the Project on subject to and on the terms and conditions set forth hereinafter.
- G. The Parties agree and acknowledge that the objective of this Concession Agreement is to enable and oblige the Concessionaire to undertake and execute the development of the Project.

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

**ARTICLE 1:
DEFINITIONS AND INTERPRETATION**

1.1 Definitions

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

“**Accounting Year**” shall mean the financial year commencing from the 1st (first) day of April of any calendar year and ending on the 31st (thirty first) day of March of the next calendar year. It is clarified that first Accounting Year shall be the period commencing from the COD and ending on the 31st (thirty first) day of March of the next calendar year, and the last Accounting Year shall end on the Expiry Date;

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

- (i) on or before COD, the Adjusted Equity shall be a sum equal to the Equity funded in Indian Rupees and expended on the Project, revised to the extent of one half of the variation in WPI occurring between the first day of the month of Appointed Date and the Reference Date;
- (ii) from COD and until the 4th (fourth) anniversary thereof, an amount equal to the Adjusted Equity as on COD shall be deemed to be the base (the “**Base Adjusted Equity**”) and the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, revised at the commencement of each month following COD to the extent of variation in WPI occurring between COD and the Reference Date;
- (iii) after the 4th (fourth) anniversary of COD, the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, reduced by 0.24% (zero point two four percent) thereof at the commencement of each month following the 4th (fourth) anniversary of COD and the amount so arrived at shall be revised to the extent of variation in WPI occurring between COD and the Reference Date;

For the avoidance of doubt, the Adjusted Equity shall, in the event of Termination, be computed as on the Reference Date immediately preceding the Expiry Date; provided that no reduction in the Adjusted Equity shall be made for a period equal to the duration, if any, for which this Agreement is extended, but the revision on account of WPI shall continue to be made;

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

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

Applicable Permits” shall mean all clearances, licences, permits, authorizations, no objection certificates, consents, approvals and exemptions required to be obtained or maintained under Applicable Laws in connection with the implementation of the Project during the subsistence of this Agreement;

“**Appointed Date**” shall mean the date on which Financial Close is achieved or an earlier date that the Parties may by mutual consent determine. For the avoidance of doubt, every Condition Precedent shall have

been satisfied or waived prior to the Appointed Date and in the event all Conditions Precedent are not satisfied or waived, as the case may be, the Appointed Date shall be deemed to occur only when each and every Condition Precedent is either satisfied or waived, as the case may be;

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

“**Asset Value**” wherever applicable shall mean the cost incurred by the OWPD towards supply and services only for the Project concerned, up to the actual date of commencement of power supply from the last part capacity or up to the Scheduled Commission of Supply Date or extended Scheduled Commission of Supply Date, whichever is earlier.

“**Bank**” shall mean a Scheduled Commercial Bank listed on the website of Reserve Bank of India (RBI);

“**Change in Ownership**” shall mean transfer of the direct and/or indirect legal or beneficial ownership of any shares, or securities convertible into shares that causes the aggregate holding of the Successful Bidder, together with (its/ their) Associates, in the total Equity to decline below 26% (fifty one percent) thereof from the date of signing of this Agreement until 1 (one) year after the COD:

Provided that any material variation (as compared to the representations made by the Successful Bidder during the bidding process for the purposes of meeting the minimum conditions of eligibility or for evaluation of its bid) in the proportion of the Equity holding of {the Successful Bidder/ any consortium member} to the total Equity, if it occurs prior to completion of a period 1 (one) year after COD, shall constitute a Change in Ownership;

“**Change in Law**” means the occurrence of any of the following events after the date of execution of this Agreement:

- (i) the enactment of any new Applicable Law; or
- (ii) the repeal, modification or re-enactment of any existing Applicable Law; or
- (iii) change in the interpretation or application of any Indian law by a judgment of a court of record which has become final, conclusive and binding as compared to such interpretation or application by a court of record prior to the date of this Agreement; or
- (d) any changes in the rates of any of the Taxes that have a direct effect on the Project.

“**COD**” or “**Commercial Operation Date**” shall have the meaning ascribed to the said term in Clause 14.4;

“**Completion Certificate**” shall mean the certificate issued by the Concessing authority certifying, that;

- (i) the Concessionaire has constructed the Project Facilities in accordance with the Construction Requirements; and
- (ii) the Concessionaire has obtained all Applicable Permits necessary for commercial operations of the Project Facilities;

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

“**Concession**” shall have the meaning ascribed to the said term in Clause 3.1.1;

“**Concession Period**” shall have the meaning ascribed to the said term in Clause 3.2;

“**Concessioneaire**” shall have the meaning attributed thereto in the array of Parties;

“**Concessione Authority**” shall have the meaning attributed thereto in the array of Parties;

“**Concessione Authority Default**” shall have the meaning ascribed to the said term in Clause 27.2.1;

“**Concessione Authority Indemnified Persons**” shall have the meaning ascribed to the said term Clause 31.1.1;

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

“**Concessioneaire Event of Default**” shall have the meaning ascribed to the said term in Clause 27.1.1;

“**Conditions Precedent**” shall have the meaning ascribed to the said term in Clause 4.1.1;

“**Construction Period**” shall mean the period during which the Project Facilities will be constructed by the Concessioneaire, beginning from the Appointed Date and ending on the COD;

“**Construction Requirements**” shall mean such specifications as set out in **Schedule 1**;

“**Construction Works**” shall mean all works and things required to be constructed by the Concessioneaire as part of the Project Facilities in accordance with this Agreement;

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

“**Competing Facility**” means either an existing offshore wind energy project or any other construction at a distance as specified in Clause 6.2 of this Agreement.

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

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

- (ii) not relieve any party from liability to pay Damages or compensation under the provisions of this Agreement; and
- (iii) not in any way be extended by any period of Suspension under this Agreement; provided that if the cure of any breach by the Concessionaire requires any reasonable action by the Concessionaire that must be approved by the Concessioneing authority hereunder, the applicable Cure Period shall be extended by the period taken by the Concessioneing authority to accord their approval;

“**Debt Due**” means the aggregate of the following sums expressed in Indian Rupees outstanding on the Expiry Date:

- (i) the principal amount of the debt provided by the Senior Lenders under the Financing Agreements for financing the Total Project Cost (the “**principal**”) but excluding any part of the principal that had fallen due for repayment 2 (two) years prior to the Expiry Date;
- (ii) all accrued interest, financing fees and charges payable under the Financing Agreements on, or in respect of, the debt referred to in Sub-clause (i) above until the Expiry Date but excluding (a) any interest, fees or charges that had fallen due 1 (one) year prior to the Expiry Date, (b) any penal interest or charges payable under the Financing Agreements to any Senior Lender, and (c) any pre-payment charges in relation to accelerated repayment of debt except where such charges have arisen due to Concessioneing authority Default; and
- (iii) any Subordinated Debt which is included in the Financial Package and disbursed by lenders for financing the Total Project Cost:

provided that if all or any part of the Debt Due is convertible into Equity at the option of Senior Lenders and/or the Concessionaire, it shall for the purposes of this Agreement be deemed to be Debt Due even after such conversion and the principal thereof shall be dealt with as if such conversion had not been undertaken;

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

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

“**Drawings**” shall mean the conceptual and detailed designs and drawings, backup technical information required for the Project and all calculations, samples, patterns, models, specifications, standards and other technical information submitted by the Concessionaire from time to time and reviewed in accordance with the provisions of this Agreement;

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

“**Encumbrance**” shall mean, in relation to the Seabed/ Project, any encumbrances such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations, and shall include any designation of loss payees or

beneficiaries or any similar arrangement under any insurance policy pertaining to the Seabed/ Project;

“**EPC Contract**” shall mean the engineering, procurement and construction contract or contracts entered into by the Concessionaire with Contractor for, *inter alia*, engineering and construction of the Project in accordance with the provisions of this Agreement;

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

“**Expiry Date**” shall mean the date on which this Agreement and the Seabed Lease hereunder expires pursuant to the provisions of this Agreement;

“**Financing Agreements**” shall mean the agreements executed by the Concessionaire in respect of financial assistance to be provided by the Senior Lenders by way of loans, guarantees, subscription to non-convertible debentures and other debt instruments including loan agreements, guarantees, notes, debentures, bonds and other debt instruments, security agreements, and other Documents relating to the financing (including refinancing) of the Total Project Cost, and includes amendments or modifications made in accordance with Clause 5.3.2.;

“**Financial Close**” means the fulfillment of all conditions precedent for the initial availability of funds under the Financing Agreements;

“**Financial Package**” shall mean the financing package indicating the total capital cost of the Project and the means of financing thereof, as approved by the Senior Lenders, and includes Equity, all financial assistance specified in the Financing Agreements, and Subordinated Debt, if any; “**Good Industry Practice**” shall mean the exercise of that degree of skill, diligence, prudence and foresight in compliance with the undertakings and obligations under this Agreement which would reasonably and ordinarily be expected of a skilled and an experienced person engaged in the implementation, operation and maintenance or supervision or monitoring thereof or any facilities similar to the Project Facilities;

“**Government Instrumentality**” shall mean any department, division or sub-division of the Government of India or any State Government and includes any commission, board, authority, autonomous bodies, Public Sector Undertakings (PSUs), agency or municipal and other local authority or statutory body including Panchayat under the control of the Government of India or any State Government, as the case may be, and having jurisdiction over all or any part of the Project, Seabed and/ or the performance of all or any of the services or obligations of the Concessionaire under or pursuant to this Agreement;

“**INR**” or “**Indian Rupees**” or “**Rupees**” or “**Rs.**” shall mean Indian Rupees, the lawful currency of the Republic of India.

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

“**Intellectual Property**” shall mean all patents, trademarks, service marks, logos, get-up, trade names, internet domain names, rights in designs, blue prints, programmes and manuals, drawings, copyright (including rights in computer software), database rights, semi-conductor, topography rights, utility models, rights in know-how and other intellectual property rights, in each case whether registered or unregistered and

including applications for registration, and all rights or forms of protection having equivalent or similar effect anywhere in the world;

“**Lenders’ Representative**” shall mean the person duly authorized by the Senior Lenders to act for and on behalf of the Senior Lenders with regard to matters arising out of or in relation to this Agreement, and includes its successors, assigns and substitutes;

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

“**Material Breach**” shall mean a breach by either Party of any of its obligations under this Agreement which has or is likely to have a Material Adverse Effect on the Project and which such Party shall have failed to cure;

“**O&M**” shall mean the operation and maintenance of the Project and includes all matters connected with or incidental to such operation and maintenance and provision of facilities in accordance with the provisions of this Agreement, set forth in Article 17;

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

“**O&M Expenses**” shall mean expenses incurred by or on behalf of the Concessionaire, as the case may be, for all O&M obligations including (a) cost of salaries and other compensation to employees, (b) cost of materials, supplies, utilities and other services, (c) premia for insurance, (d) all taxes, duties, cess and fees due and payable for O&M, (e) all repair, replacement, reconstruction, reinstatement, improvement and maintenance costs, (f) payments required to be made under the O&M Contract or any other contract in connection with or incidental to O&M, and (g) all other expenditure required to be incurred under Applicable Laws, Applicable Permits or this Agreement;

“**Operation Period**” shall mean the period commencing from COD and ending on the Expiry Date;

“**Permitted Activities**” shall have the meaning ascribed to it in Clause 3.1.1;

“**Project**” shall have the meaning ascribed to it in Recital A;

“**Project Agreements**” shall mean this Agreement, the Financing Agreements, and any other agreements or material contracts that may be entered into by the Concessionaire with any person in connection with matters relating to, arising out of or incidental to the Project, but does not include the Substitution Agreement;

“**Project Assets**” shall mean all physical and other assets relating to and forming part of the Seabed including (a) rights over the Seabed in the form of lease, right of way or otherwise; (b) tangible assets such as civil works and equipment including foundations, electrical systems, communication systems and administrative offices; (c) Project Facilities situated on the Seabed; (d) all rights of the Concessionaire under the Project Agreements; (e) financial assets, such as receivables, security deposits, etc.; (f) insurance proceeds; (g) Applicable Permits relating to or in respect of the Project; and (h) all design, operation and maintenance documents;

“**Project Facilities**” shall mean, as the context may require, either all or one or more of the individual facilities comprising the wind power plant and includes all plant, machinery and equipment forming part thereof (including, but not limited to, the wind turbine generators capable of producing power, the transmission

facilities for transmission of power onwards to the offshore substation);

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

“**Scheduled Completion Date**” shall have the meaning ascribed to the said term in Clause 14.1.1;

“**Security Deposit**” shall have the meaning ascribed to it in Recital C;

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

“**Standards and Specifications**” shall mean the standards, specifications, terms and conditions which must be strictly adhered to by the Concessionaire in relation to the implementation of the Project and shall include the following: (i) Construction Requirements; (ii) Safety Requirements, and (iii) any other condition that may be specified by Concessioneing authority necessary for the effective implementation of the Project;

“**State**” shall mean the State of _____ and “**State Government**” means the government of that State;

“**Statutory Auditors**” shall mean a reputable firm of chartered accountants acting as the statutory auditors of the Concessionaire under the provisions of the Companies Act, 2013;

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

- (i) the principal amount of debt provided by lenders or the Concessionaire’s shareholders for meeting the Total Project Cost and subordinated to the financial assistance provided by the Senior Lenders; and
- (ii) all accrued interest on the debt referred to in Sub-clause (i) above but restricted to the lesser of actual interest rate and a rate equal to 5% (five percent) above the Bank Rate in case of loans expressed in Indian Rupees and lesser of the actual interest rate and six-month LIBOR (London Inter Bank Offer Rate) plus 2% (two percent) in case of loans expressed in foreign currency, but does not include any interest that had fallen due one year prior to the Expiry Date;

provided that if all or any part of the Subordinated Debt is convertible into Equity at the option of the lenders and/or the Concessionaire's shareholders, it shall for the purposes of this Agreement be deemed to be Subordinated Debt even after such conversion and the principal thereof shall be dealt with as if such conversion had not been undertaken;

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

“**Termination**” shall mean expiry or termination of this Agreement and the Seabed Lease hereunder, as the case maybe;

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

“**Termination Payment**” means the amount payable by the Concessioneing authority to the Concessionaire upon Termination and may consist of payments on account of and restricted to the Debt Due and Adjusted Equity, as the case may be, which form part of the Total Project Cost in accordance with the provisions of this Agreement; provided that the amount payable in respect of any Debt Due expressed in foreign currency shall be computed at the Reference Exchange Rate for conversion into the relevant foreign currency as on the date of Termination Payment. For the avoidance of doubt, it is agreed that within a period of 60 (sixty) days from COD, the Concessionaire shall notify to the Authority, the Total Project Cost as on COD and its disaggregation between Debt Due and Equity, and only the amounts so conveyed shall form the basis of computing Termination Payment, and it is further agreed that in the event such disaggregation is not notified to the Authority, Equity shall be deemed to be the amount arrived at by subtracting Debt Due from Total Project Cost;

“**Tests**” shall mean the tests to determine the completion of the Project in accordance with the provisions of this Agreement;

“**Total Project Cost**” means the lowest of:

- (i) the capital cost of the Project as set forth in the Financial Package;
- (ii) the actual capital cost of the Project upon achieving COD; and
- (iii) the sum set forth as the cost of construction in the detailed project report finalized in terms of this Agreement;

provided that in the event of Termination, the Total Project Cost shall be deemed to be modified to the extent of variation in WPI or Reference Exchange Rate occurring in respect of Adjusted Equity and Debt Due, as the case may be, in accordance with the provisions of this Agreement;

provided further that in the event WPI increases, on an average, by more than 6% (six percent) per annum for the period between the date hereof and COD, the Parties shall meet, as soon as reasonably practicable, and agree upon revision of the amount hereinbefore specified such that the effect of increase in WPI, in excess of such 6% (six percent), is reflected in the Total Project Cost;

“**WPI**” means the Wholesale Price Index for all commodities as published by the Ministry of Industry, Government of India and shall include any index which substitutes the WPI, and any reference to WPI shall, unless the context otherwise requires, be construed as a reference to the latest monthly WPI published no later than 30 (thirty) days prior to the date of consideration hereunder.

Terms that are used but not defined herein shall, unless repugnant to their context, have the same meaning ascribed to them in the request for selection document dated 02.02.2024.

1.2 Interpretation

1.2.1 In this CONCESSION AGREEMENT, unless the context otherwise requires,

- (a) references to any legislation or any provision thereof shall include amendment or re-enactment

or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;

- (b) references to laws of India or Indian Law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications which have the force of law in the territory of India and as from time to time may be amended, modified, supplemented, extended or re-enacted;
- (c) references to a “person” and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of 2 (two) or more of the above and shall include successors and assigns;
- (d) the table of contents, headings or sub-headings in this CONCESSION AGREEMENT are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this CONCESSION AGREEMENT;
- (e) the words “include” and “including” are to be construed without limitation and shall be deemed to be followed by “without limitation” or “but not limited to” whether or not they are followed by such phrases;
- (f) any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- (g) any reference to day shall mean a reference to a calendar day;
- (h) any reference to month and quarter shall mean a reference to a calendar month and calendar quarter as per the Gregorian calendar;
- (i) references to any date or period shall mean and include such date or period as may be extended pursuant to this CONCESSION AGREEMENT;
- (j) the words importing singular shall include plural and *vice versa*;
- (k) save and except as otherwise provided in this CONCESSION AGREEMENT, any reference, at any time, to any agreement, deed, instrument, licence or document of any description shall be construed as reference to that agreement, deed, instrument, licence or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this sub-clause shall not operate so as to increase liabilities or obligations of the Concessioning authority hereunder or pursuant hereto in any manner whatsoever;
- (l) any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this CONCESSION AGREEMENT from or by any Party shall be valid and effective only if it is in writing under the hand of a duly authorised representative of such Party in this behalf and not otherwise;
- (m) the schedules and recitals to this CONCESSION AGREEMENT form an integral part of this CONCESSION AGREEMENT and will be in full force and effect as though they were expressly set out in the body of this CONCESSION AGREEMENT;
- (n) references to recitals, clauses, sub-clauses or schedules in this CONCESSION AGREEMENT

shall, except where the context otherwise requires, mean references to recitals, articles, clauses, sub-clauses and schedules of or to this CONCESSION AGREEMENT, and references to a paragraph shall, subject to any contrary indication, be construed as a reference to a paragraph of this CONCESSION AGREEMENT or of the schedule in which such reference appears;

- (o) the damages payable by either Party to the other of them, as set forth in this Agreement, whether on *per diem* basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the “**Damages**”); and
 - (o) time shall be of the essence in the performance of the Parties’ respective obligations. If any time period specified herein is extended, such extended time shall also be of the essence.
- 1.2.2 Unless expressly provided otherwise in this Agreement, any Documentation required to be provided or furnished by the Concessionaire to the Concessions Authority or any authorized representative of the Concessions Authority shall be provided free of cost and in 3 (three) copies, and if the Concessions Authority or any authorized representative of the Concessions Authority is required to return any such Documentation with their comments and/or approval, they shall be entitled to retain 2 (two) copies thereof.
- 1.2.3 The rule of construction, if any, that a contract should be interpreted against the parties responsible for the drafting and preparation thereof, shall not apply.
- 1.2.4 Any word or expression used in this CONCESSION AGREEMENT shall, unless otherwise defined or construed in this CONCESSION AGREEMENT, bear its ordinary English meaning and, for these purposes, the General Clauses Act, 1897 shall not apply.

1.3 Measurements and arithmetic conventions

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

1.4. Priority of agreement clauses and schedules

1.4.1 This Agreement and the Schedules forming part of or referred to in this Agreement are to be taken as mutually explanatory and, unless otherwise expressly provided elsewhere in this Agreement, the priority of this Agreement and the Schedules forming part hereof or referred to herein shall, in the event of any conflict between them, be in the following order:

- (i) this Agreement; and
- (ii) Schedules forming part hereof or referred to herein;

i.e., the Agreement at (i) above shall prevail over the Schedules at (ii) above.

1.4.2 Subject to the provisions of Clause 1.4.1, in case of ambiguities or discrepancies within this Agreement, the following shall apply:

- (i) between two or more Clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in other Clauses;
- (ii) between the Clauses of this Agreement and the Schedules, the Clauses shall prevail and between Schedules and Annexes the Schedules shall prevail;
- (iii) between any two Schedules, the Schedule relevant to the issue shall prevail; and
- (iv) between any value written in numerals and that in words, the later shall prevail.

**ARTICLE 2:
SCOPE OF PROJECT**

2.1 Scope of the Project

2.1.1 The scope of the Project (the “**Scope of the Project**”) shall mean and include the following, during the Concession Period:

- (i) design, build, finance, construct, and commission the Project on the Seabed and in accordance with the provisions of this Agreement;
- (ii) O&M in accordance with the provisions of this Agreement; and
- (iii) performance and fulfilment of all other obligations of the Concessionaire in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Concessionaire under this Agreement.

2.1.2 The Scope of the Project shall also include any and all other activities that are ancillary to the above-mentioned Scope of the Project.

**ARTICLE 3:
GRANT OF CONCESSION**

3.1 Concession

3.1.1 Subject to and in accordance with the provisions of this Agreement, the Applicable Laws and the Applicable Permits, the Concessions Authority hereby grants to the Concessionaire, the concession set forth herein including the exclusive right and authority to design, build, finance, construct, operate, and maintain the Project (the “Concession”) for the Concession Period, and the Concessionaire hereby accepts the Concession and agrees to implement the Project subject to and in accordance with the terms and conditions set forth herein.

3.1.2 Subject to and in accordance with the provisions of this Agreement, Applicable Laws, Applicable Permits and Good Industry Practice, the Concession hereby granted shall oblige or entitle (as the case may be) the Concessionaire to:

- (i) perform and fulfill all of the Concessionaire’s obligations under and in accordance with this Agreement;
- (ii) design, engineer, finance, procure, construct, install, commission, operate and maintain each of the Project Facilities either itself or through such person as may be selected by it;
- (iii) bear and pay all costs, expenses and charges in connection with or incidental to the performance of the obligations of the Concessionaire under this Agreement;
- (iv) upon commissioning of the Project Facilities, to manage, operate and maintain the same either itself or through such person as may be selected by it, provided that the ultimate obligation and responsibility for the performance of this Agreement shall continue to vest with the Concessionaire;
- (v) exclusively hold, possess, and control the Seabed, in accordance with the terms of the SEABED Lease Deed, for the purposes of the due implementation of this Project in accordance with the terms of this Concession Agreement;
- (vi) borrow or raise money or funding required for the due implementation of the Project and create Encumbrance on the whole or part of the Project Facilities except the Seabed;
- (vii) neither assign, transfer or sublet or create any Encumbrance on this Agreement, or the Concession hereby granted or on the whole or any part of the Project or Seabed nor transfer, lease or part possession thereof; save and except as expressly permitted by this Agreement or the Substitution Agreement; and
- (viii) set all standards and frame and apply all internal policies, guidelines and procedures as may be appropriate for the safety, security, development, management, operations or maintenance of the Project Facilities, subject only to the terms of this Agreement and in accordance with Applicable Laws and Good Industry Practice.

3.2 Concession Period

Subject to early Termination of this Agreement in accordance with its terms, the Concession is granted for a period comprising the Construction Period and Operation Period (“Concession Period”). The

Concession Period may be extended by the Concessioneing Authority at its sole discretion having regard to the functional viability and safety of the Project.

**ARTICLE 4:
CONDITIONS PRECEDENT**

4.1 Conditions Precedent

4.1.1 Save and except as expressly provided in this agreement, or unless the context otherwise requires, the respective rights and obligations of the Parties under this Clause Agreement shall be subject to the satisfaction in full of the Conditions Precedent specified in this 4.1 (the “Conditions Precedent”).

4.1.2 The Concessionaire may, upon providing the Performance Security to the Concessions Authority by notice require the Concessions Authority to satisfy the Conditions Precedent set forth in this Clause 4.1.2 within a period of 90 days (ninety) or such longer period not exceeding 30 (thirty) days as may be specified therein, and the Conditions Precedent required to be satisfied by the Concessions Authority shall be deemed to have been fulfilled when the Concessions Authority shall have caused the Ministry of New and Renewable Energy, Government of India to enter into the lease deed (the “SEABED Lease Deed”) with the Concessionaire for grant of a lease of the Seabed for undertaking the installation, testing, commissioning, operation and maintenance of the Project on the Seabed.

Provided that upon request in writing by the Concessions Authority, the Concessionaire may, in its discretion, waive any of the Conditions Precedent set forth in this Clause 4.1.2. For the avoidance of doubt, the Concessionaire may, in its sole discretion, grant any waiver hereunder with such conditions as it may deem fit.

4.1.3 The Conditions Precedent required to be satisfied by the Concessionaire prior to the Appointed Date shall be deemed to have been fulfilled when the Concessionaire shall have:

- (i) executed and procured execution of the SEABED Lease Deed, and, simultaneous with the execution of the SEABED Lease Deed furnished in favour of the Concessions authority a refundable security deposit for an amount of INR 1,00,000 per MW (Rupees One Lakh per Mega Watt) of capacity proposed to be developed as part of the Project based on the Survey (and as mentioned in the DPR) in form of an irrevocable and unconditional guarantee from a bank incorporated in India and having a minimum net worth of INR 1,000,00,00,000 (Rupees One Thousand Crore) in the form set forth in Schedule II of the Seabed Deed;
- (ii) executed and procured execution of the Substitution Agreement, if required, as mutually agreed by the Concessionaire and the Senior Lenders;
- (iii) executed the Financing Agreements and delivered to the Concessions Authority 3 (three) true copies thereof, duly attested by a director of the Concessionaire;
- (iv) delivered to the Concessions Authority from the Successful Bidder, confirmation in original, of the correctness of their representations and warranties set forth in Sub clauses (xi), (xii) and (xiii) of Clause 7.1 of this Agreement;
- (v) delivered to the Concessions Authority a legal opinion from the legal counsel of the Concessionaire with respect to the authority of the Concessionaire to enter into this Agreement and the enforceability of the provisions thereof;

Provided that upon request in writing by the Concessionaire, the Concessions Authority may, in its discretion waive any of the Conditions Precedent set forth in this Clause 4.1.3. For the avoidance of doubt, the Concessions Authority may, in its sole discretion, grant any waiver hereunder with such conditions as it may deem fit.

- 4.1.4 Each Party shall make all reasonable endeavours to satisfy the Conditions Precedent within the time stipulated and shall provide the other Party with such reasonable cooperation as may be required to assist that Party in satisfying the Conditions Precedent for which that Party is responsible.
- 4.1.5 The Parties shall notify each other in writing at least once a month on the progress made in satisfying the Conditions Precedent. Each Party shall promptly inform the other Party, in any event, not later than 5 (five) days, when any Condition Precedent for which it is responsible has been satisfied.

4.2 Delay by the Concessing Authority

In the event that the Concessing Authority does not procure fulfillment of the Conditions Precedent set forth in Clause 4.1.2 within 12 (twelve) months from the date of the Concession Agreement, and the delay has not occurred as a result of breach of this Agreement by the Concessionaire or due to Force Majeure, the Concessionaire shall be entitled to terminate this Agreement by issuing a 15 (fifteen) days' notice to the Concessing Authority and in such case the Performance Security shall be returned to the Concessionaire after recovery of all amounts payable by the Concessionaire to the Concessing Authority.

4.3 Damages for delay by the Concessionaire

- 4.3.1 In the event that (i) the Concessionaire does not procure fulfillment of any or all of the Conditions Precedent set forth in Clause 4.1.3 within a period of 180 (one hundred and eighty) days from the date of this Agreement, and (ii) the delay has not occurred as a result of failure of the Concessing Authority to fulfill the obligations under Clause 4.1.2 or other breach of this Agreement by the Concessing Authority, or due to Force Majeure, the Concessionaire shall pay to the Concessing Authority, Damages in an amount calculated at the rate of 0.1% (zero point one percent) of the Performance Security for each day's delay until the fulfillment of such Conditions Precedent, subject to a maximum of 20% (twenty percent) of the Performance Security.
- 4.3.2 Upon levy of Damages equivalent to 20% (twenty percent) of the Performance Security or non-fulfillment of Conditions Precedent by the Concessionaire within 12 (twelve) months from the date of Concession Agreement, whichever is earlier, the Concessing Authority shall be entitled to terminate this Agreement by issuing a 15 (fifteen) days' notice to the Concessionaire.
- 4.3.3 On such Termination, the Concessing Authority shall be entitled to forfeit the Performance Security of the Concessionaire in its entirety, as a genuine pre-estimate of and reasonable compensation for loss and damages caused to the Concessing Authority as a result of the Concessionaire's failure to fulfill the Conditions Precedent and implement the Project in accordance with the terms of this Agreement.

4.4 Non-Achievement of Conditions Precedent

Without prejudice to the provisions of Clause 4.2 and 4.3, the Parties expressly agree that in the event the Appointed Date does not occur, for any reason whatsoever, before the 1st (first) anniversary of the date of this Agreement or the extended period provided in accordance with this Agreement, all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to be waived by the Concessionaire, and the Concession Agreement shall be deemed to have been terminated by mutual agreement of the Parties.

**ARTICLE 5:
OBLIGATIONS OF THE CONCESSIONAIRE**

5.1 Obligations of the Concessionaire

- 5.1.1 Subject to and on the terms and conditions of this Agreement, the Concessionaire shall, at its own cost and expense, procure finance for and undertake the design, engineering, procurement, construction, operation, and maintenance of the Project Facilities and observe, fulfil, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 5.1.2 The Concessionaire shall comply with all Applicable Laws and Applicable Permits (including renewals as required) in the performance of its obligations under this Agreement.
- 5.1.3 Subject to the provisions of Clauses 5.1.1 and 5.1.2, the Concessionaire shall discharge its obligations in accordance with Good Industry Practice and as a reasonable and prudent person.
- 5.1.4 The Concessionaire shall, at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out in this Agreement:
- (i) make, or cause to be made, necessary applications to the relevant Government Instrumentalities with such particulars and details as may be required for obtaining Applicable Permits, and obtain and keep in force and effect such Applicable Permits in conformity with the Applicable Laws;
 - (ii) procure, as required, the appropriate licences, agreements and permissions for materials, methods, processes and systems used or incorporated into the Project;
 - (iii) perform and fulfil its obligations under the Financing Agreements;
 - (iv) make reasonable efforts to maintain harmony and good industrial relations among the personnel employed by it or its Contractors in connection with the performance of its obligations under this Agreement;
 - (v) ensure and procure that its Contractors comply with all Applicable Permits and Applicable Laws in the performance by them of any of the Concessionaire's obligations under this Agreement;
 - (vi) not do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement;
 - (vii) support, cooperate with and facilitate the Concessions Authority in the implementation and operation of the Project accordance with the provisions of this Agreement; and
 - (viii) transfer the Seabed to the Concessions Authority on the Expiry Date, in accordance with the provisions of the SEABED Lease Deed.

5.2 Obligation relating to compliance with Applicable Laws and Environment Laws

The Concessionaire shall construct, operate and maintain the Project in accordance with Applicable Laws, including all the Applicable Laws relating to protection and safeguard of the environment, laws for preventing and monitoring pollution of environment, laws relating to health and safety aspects,

policies and guidelines related thereto, and obtain and maintain the Applicable Permits required for the same.

5.3 Obligation relating to Project Agreements

5.3.1 It is expressly agreed that the Concessionaire shall, at all times, be responsible and liable for all its obligations under this Agreement notwithstanding anything contained in the Project Agreements, and no default under any Project Agreement shall excuse the Concessionaire from its obligations or liability hereunder.

5.3.2 The Concessionaire shall not make any addition, replacement or amendments to any of the Financing Agreements without the prior written consent of the Concessioneing Authority if such addition, replacement or amendment has, or may have, the effect of imposing or increasing any financial liability or obligation on the Concessioneing Authority, and in the event that any replacement or amendment is made without such consent, the Concessionaire shall not enforce such replacement or amendment nor permit enforcement thereof against the Concessioneing Authority.

5.4 Obligations relating to Change in Ownership

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

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

- (i) all acquisitions of Equity by an acquirer, either by himself or with any person acting in concert, directly or indirectly, including by transfer of the direct or indirect legal or beneficial ownership or control of any Equity, in aggregate of not less than 15% (fifteen percent) of the total Equity of the Concessionaire; or
- (ii) acquisition of any control directly or indirectly of the board of directors of the Concessionaire by any person either by himself or together with any person or persons acting in concert with him;

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

For the purposes of this Clause 5.4.2:

- (i) the expression “**acquirer**”, “**control**” and “**person acting in concert**” shall have the meaning ascribed thereto in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeover) Regulations, 2011 or any statutory re-enactment thereof as in force as on the date of acquisition of Equity, or the control of the board of directors, as the case may

be, of the Concessionaire;

- (ii) the indirect transfer or control of legal or beneficial ownership of Equity shall mean transfer of the direct or indirect beneficial ownership or control of any company or companies whether in India or abroad which results in the acquirer acquiring control over the shares or voting rights of shares of the Concessionaire; and
- (iii) power to appoint, whether by contract or by virtue of control or acquisition of shares of any company holding directly or through one or more companies (whether situated in India or abroad) the Equity of the Concessionaire, not less than half of the directors on the board of directors of the Concessionaire or of any company, directly or indirectly whether situated in India or abroad, having ultimate control of not less than 15% (fifteen percent) of the Equity of the Concessionaire shall constitute acquisition of control, directly or indirectly, of the board of directors of the Concessionaire.

5.5 Employment of foreign nationals

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

5.6 Employment of trained personnel

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

5.7 Sole purpose of the Concessionaire

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

5.8 Branding of Project

The Project or any part thereof may be branded in any manner to advertise, display or reflect the name or identity of the Concessionaire or its shareholders. The Concessionaire shall be entitled to use the name or entity of the Project to advertise or display its own identity, brand equity or business interests, including those of its shareholders.

**ARTICLE 6:
OBLIGATIONS OF THE CONCESSIONING AUTHORITY**

6.1 Obligations of the Concessioning Authority

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

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

- (i) provide reasonable support and assistance to the Concessionaire in procuring Applicable Permits;
- (ii) not do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement; and
- (iii) support, cooperate with and facilitate the Concessionaire in the implementation and operation of the Project in accordance with the provisions of this Agreement.
- (iv) grant and authorize the Concessionaire to have access to seabed for carrying out of activities as provided for under the Seabed Lease Deed Agreement dated _____.
- (v) provide Viability Gap Funding for the Project as specified in Clause 5.10 of the Power Purchase Agreement signed between the Parties dated _____.

6.2 Obligations relating to Competing Facilities

The Concessioning Authority shall procure that during the subsistence of this Agreement, neither the Concessioning Authority nor any Government Instrumentality shall construct or cause to be constructed any Competing Facility; provided that the restriction herein shall not apply if the Competing Facility is located at a distance of 5D (D – Rotor Diameter) distance, if turbine is in perpendicular to the predominant wind direction and 7D distance if turbine is in the predominant wind direction from any turbine of the Concessionaire.

**ARTICLE 7:
REPRESENTATIONS AND WARRANTIES**

7.1 Representations and warranties of the Concessionaire

The Concessionaire represents and warrants to the Concessioneing Authority that:

- (i) it is duly organized and validly existing under the laws of India, and has full power and authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (ii) it has taken all necessary corporate and other actions under Applicable Laws to authorize the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- (iii) it has the financial standing and capacity to undertake the Project in accordance with the terms of this Agreement;
- (iv) this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement will be legally valid, binding and enforceable obligations against it in accordance with the terms hereof;
- (v) it is subject to the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising thereunder including any obligation, liability or responsibility hereunder;
- (vi) the information furnished in the Application and as updated on or before the date of this Agreement is true and accurate in all respects as on the date of this Agreement;
- (vii) the execution, delivery and performance of this Agreement will not conflict with, result in the breach or constitute a default under, or accelerate performance required by any of the terms of its Memorandum and Articles of Association or any Applicable Laws, or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- (viii) there are no actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its obligations under this Agreement;
- (ix) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any Government Instrumentality which may result in any Material Adverse Effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;
- (x) it has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a Material Adverse Effect;

- (xi) it shall at no time undertake or permit any Change in Ownership except in accordance with the provisions of Clause 5.4;
- (xii) all its rights and interests in the Seabed shall pass to and vest in the Concessioneing Authority on the Expiry Date, free and clear of all claims and Encumbrances, without any further act or deed on its part or that of the Concessioneing Authority, and that none of the Project Assets including the Seabed shall be acquired by it, subject to any agreement under which a security interest or other Encumbrance is retained by any person, save and except as expressly provided in this Agreement;
- (xiii) no representation or warranty by it contained herein or in any other Document furnished by it to the Concessioneing Authority or to any Government Instrumentality in relation to Applicable Permits contains or will contain any untrue or misleading statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;
- (xiv) no sums, in cash or kind, have been paid or will be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for securing the Concession or entering into this Agreement or for influencing or attempting to influence any officer or employee of the Concessioneing Authority in connection therewith;
- (xv) all information provided by the Successful Bidder for the purpose of its selection or otherwise, is to the best of its knowledge and belief, true and accurate in all material respects;
- (xvi) agrees that the execution, delivery and performance by it of this Agreement and all other agreements, contracts, Documents and writings relating to this Agreement constitute private and commercial acts and not public or government acts; and
- (xvii) as of date, as regards it there is no applicable bankruptcy, insolvency, reorganisation, moratorium or similar laws affecting creditors' rights generally.

7.2 Representations and warranties of the Concessioneing Authority

The Concessioneing Authority represents and warrants to the Concessioneaire that:

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

(vi) it has complied with Applicable Laws in all material respects.

7.3 Disclosure

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

ARTICLE 8:

DISCLAIMER

8.1 Disclaimer

- 8.1.1 The Concessionaire acknowledges that prior to the execution of this Agreement, the Concessionaire has, after a complete and careful examination, made an independent evaluation of the Seabed, Standards and Specifications, local conditions, and all information provided by the Concessions Authority or obtained, procured or gathered otherwise, and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder. The Concessions Authority makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy, adequacy, correctness, reliability and/ or completeness of any assessment, assumptions, statement or information provided by it and the Concessionaire confirms that it shall have no claim whatsoever against the Concessions Authority in this regard.
- 8.1.2 The Concessionaire acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Clause 8.1.1 above and hereby acknowledges and agrees that the Concessions Authority shall not be liable for the same in any manner whatsoever to the Concessionaire, and its Associates or any person claiming through or under any of them.
- 8.1.3 The Parties agree that any mistake or error in or relating to any of the matters set forth in Clause 8.1.1 above shall not vitiate this Agreement, or render it voidable.
- 8.1.4 In the event that either Party becomes aware of any mistake or error relating to any of the matters set forth in Clause 8.1.1 above, that Party shall immediately notify the other Party, specifying the mistake or error; provided, however, that a failure on part of the Concessions Authority to give any notice pursuant to this Clause 8.1.4 shall not prejudice the disclaimer of the Concessions Authority contained in Clause 8.1.1 and shall not in any manner shift to the Concessions Authority any risks assumed by the Concessionaire pursuant to this Agreement.
- 8.1.5 Except as otherwise provided in this Agreement, all risks relating to the Project shall be borne by the Concessionaire and the Concessions Authority shall not be liable in any manner for such risks or the consequences thereof.

**ARTICLE 9:
SECURITY DEPOSIT**

9.1 Appropriation of Security Deposit

- 9.1.1 Before signing Seabed Lease Deed Agreement, the Concessionaire has to furnish to the Concessioneing authority a refundable security deposit of INR 1,00,000 per MW (Rupees One Lakh per Mega Watt) of capacity proposed to be developed as part of the Project.
- 9.1.2 The applicant shall pay a yearly lease fee at a rate of rupees one lakh per square kilometre per year in advance, calculated for each square kilometre or part thereof covered by the lease. The fee is required to be deposited within one month from the letter of demand from the Lease Issuing Authority.
- 9.1.3 Upon occurrence of a default on the part of the Concessionaire, the Concessioneing authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the relevant amounts from the Security Deposit as damages for such default. Upon such encashment and appropriation from the Security Deposit, the Concessionaire shall, within 30 (thirty) days thereof, replenish the Security Deposit, in case of partial appropriation, to its original level, and in case of appropriation of the entire Security Deposit, provide a fresh Security Deposit. In case the damages are higher than the Security Deposit, the Concessionaire shall also be liable to pay the same.
- 9.1.4 In the event of termination of this Seabed lease deed agreement on account of an event of default on the part of the Concessionaire, the Concessioneing authority shall be entitled to forfeit and appropriate the Security Deposit.

**ARTICLE 10:
SEABED**

10.1 Rights of the Concessionaire

10.1.1 Pursuant to grant of lease of the Seabed in accordance with this Agreement, the Concessionaire shall have the right to regulate the entry into and use of the Seabed in accordance with this Agreement.

10.1.2 The Concessionaire accepts the Seabed on an “as is where is” basis and undertakes to bear all risk arising out of the inadequacy or physical condition of the Seabed and confirms having inspected the Seabed and:

- (i) satisfied itself of the Seabed conditions and the nature of the design, work and material necessary for the performance of its obligations under this Agreement;
- (ii) satisfied itself as to the means of communication with, access to and accommodation on the Seabed that it may require or as may otherwise be necessary for the performance of its obligations under this Agreement;
- (iii) obtained for itself all necessary information as to the risks, contingencies and all other circumstances which may influence or affect the Concessionaire and its rights and obligations under or pursuant to this Agreement;
- (iv) after a complete and careful examination, made an independent evaluation of the Seabed as a whole and has determined the nature and extent of the difficulties, upgradations, inputs, costs, time and resources, risks and hazards that are likely to arise or may be faced by it in the course of the performance of its obligations under this Agreement. The Concessionaire further acknowledges that it shall have no recourse to the Concessioneing authority if it is, at a later date, found that the Seabed is deficient in any manner that prevents the discharge of Concessionaire’s obligations under this Agreement (“**Deficiency**”). If a Deficiency is found, the Concessionaire hereby acknowledges that it shall, at its own cost and expense take all appropriate measures to remedy the same. It is hereby clarified that the Concessioneing authority shall not bear any expenses in relation to any Deficiency.

10.1.3 The Concessionaire acknowledges that it shall have no recourse against the Concessioneing authority in the event of any mistake made or misapprehension harboured by the Concessionaire in relation to any of the foregoing provisions in this Clause and the Concessioneing authority hereby expressly disclaims any liability in respect thereof.

10.1.4 The Parties hereto agree that on or prior to the Appointed Date, the Concessioneing authority shall have granted vacant possession of the entire Seabed to the Concessionaire.

**ARTICLE 11:
UTILITIES**

11.1 Shifting of obstructing utilities

The Concessionaire shall, subject to Applicable Laws and with assistance of the Concessions authority, undertake shifting of any utility including electric lines, water pipes and telephone cables, to an appropriate location or alignment within or outside the Seabed if and only if such utility causes or shall cause a Material Adverse Effect on the construction and O&M of the Project. The cost of such shifting shall be borne by the Concessionaire, if the Concessions authority so directs.

**ARTICLE 12:
DEVELOPMENT OF THE PROJECT**

12.1 Obligations prior to commencement of construction

Prior to commencement of Construction Works, the Concessionaire shall:

- (i) have requisite organization and designate and appoint suitable officers/ representatives as it may deem appropriate to supervise the Construction Works of Project, to interact with the Concessioneing authority and to be responsible for all necessary exchange of information required pursuant to this Agreement;
- (ii) undertake, do and perform all such acts, deeds and things as may be necessary or required before commencement of construction under and in accordance with this Agreement, the Applicable Laws and Applicable Permits; and
- (iii) make its own arrangements for procuring materials needed for the Construction Works in accordance with the Applicable Laws and Applicable Permits.

12.2 Construction of Project Facilities

12.2.1 The Concessionaire shall construct the Project Facilities in line with provisions of this Agreement, Applicable Law, Applicable Permits, Good Industry Practice, Construction Requirements, and the detailed project report finalised in terms of this Agreement.

12.2.2 The Concessionaire may undertake Construction Works by itself or through a Contractor possessing requisite technical, financial and managerial expertise/ capability; but in either case, the Concessionaire shall be solely responsible to meet the Construction Requirements.

12.2.3 The Concessionaire shall complete the construction and achieve the COD in a manner that is safe and reliable for performance of the O&M during the Operation Period, subject to normal wear and tear and Force Majeure, and free from all defects in design and workmanship.

12.3 Tests

For the purposes of determining that Construction Works are being undertaken in accordance with the requirements, the Concessionaire shall with due diligence carry out all necessary and periodical Tests with advance intimation to the Concessioneing authority who either in person or through his representative may choose to be present during the conduct of such Tests. The Concessionaire shall maintain proper record of such Tests and the remedial measures taken to cure the defects or deficiencies, if any, indicated by the Test results and keep the Concessioneing authority informed.

12.4 Suspension

The Concessioneing authority, may, by written notice, require the Concessionaire to suspend forthwith the whole or any part of the Construction Works, if in its reasonable opinion the same is being carried on in a manner that is not in conformity with the Construction Requirements, in case the same is not rectified within 7 (seven) days of such notice.

12.5 Project Monitoring Committee

In line with the VGF scheme implementation Guidelines, A Scheme Monitoring Committee (SMC) under the Chairmanship of Secretary, MNRE and comprising representative from MNRE, MoP, MoPSW, SECI, CTU, NIWE, State Energy departments, Managing Directors of concerned State Nodal Agencies, and experts from other organizations shall be formed, which shall periodically review the status of implementation/development of offshore wind energy project and facilitate to ease the interdependencies between the other entities for developments of necessary infrastructure such as ports, evacuation system etc.

The functions of the Project Monitoring Committee shall be as follows: -

- (a) Coordination between transmission developer and project developer
- (b) Reviewal of the Offshore power and transmission project
- (c) Recommend extension of timelines for commissioning of Wind Power Projects, transmission infrastructure.
- (d) Sensitise identified port authorities for suitable upgradation
- (e) Any other concern, that may arise, in process of the implementation of the Offshore Wind Project.

**ARTICLE 13:
MONITORING OF CONSTRUCTION**

13.1 Quarterly progress reports

During the Construction Period, the Concessionaire shall, no later than 7 (seven) days after the close of each quarter, furnish to the Concessions authority a report on progress of the Construction Works and shall promptly give such other relevant information as may be required by the Concessions authority.

13.2 Inspection

13.2.1 During the Construction Period, the Concessions authority may inspect the Construction Works at any time in a month and make a report of such inspection stating in reasonable detail the defects or deficiencies, if any, with particular reference to the Scope of the Project and Standards and Specifications. It shall send a copy of the report to the Concessionaire within 7 (seven) days of such inspection and upon receipt thereof, the Concessionaire shall rectify and remedy the defects or deficiencies, if any, stated in the report. Such inspection or submission of the report by the Concessions authority shall not relieve or absolve the Concessionaire of its obligations and liabilities hereunder in any manner whatsoever.

13.2.2 The Construction Works shall be monitored by such autonomous organizations as may be appointed by the Ministry of New and Renewable Energy, Government of India.

13.3 Livestream of Construction Work

During the Construction Period, the Concessionaire shall provide to the Concessions authority for every calendar quarter, SCADA access of the site containing livestream of the construction work, which will be compiled into a 3 (three) hour compact disc or digital video disc, as the case may be, covering the status and progress of Construction Works in that quarter. The first such recording shall be provided to the Concessions authority within 7 (seven) days of Appointed Date and thereafter, no later than 15 (fifteen) days after the close of each quarter.

**ARTICLE 14:
ENTRY INTO COMMERCIAL SERVICE**

14.1 Delay in Construction

- 14.1.1 _____¹ shall be the scheduled date for completion of construction of the Project Facilities (the “**Scheduled Completion Date**”).
- 14.1.2 In the event that the construction of the Project Facilities is not completed by the Scheduled Completion Date, unless such failure has occurred due to Force Majeure or for reasons solely attributable to the Concessioneing authority, the Concessionaire shall pay Damages to the Concessioneing authority in line with the Power Purchase Agreement (PPA).
- 14.1.3 In the event that construction of the Project Facilities is not completed within 365 (three hundred and sixty five) days from the Scheduled Completion Date (or such longer period as the Concessioneing authority at its sole discretion may grant), unless the delay is on account of reasons solely attributable to the Concessioneing authority or due to Force Majeure, the Concessioneing authority shall be entitled to forthwith terminate this Agreement.

14.2 Tests

- 14.2.1 At least 60 (sixty) days prior to the likely commissioning of the Project Facilities, the Concessionaire shall notify the Concessioneing authority and M/s Grid Controller of India Limited of its intent to subject the Project Facilities to Tests. The date and time of each of the Tests shall be determined by the Concessioneing authority in consultation with the Concessionaire. The Concessionaire shall provide such assistance as the Concessioneing authority may reasonably require for conducting the Tests. In the event of the Concessionaire and the Concessioneing authority failing to mutually agree on the dates for conducting the Tests, the Concessionaire shall fix the dates by not less than 10 (ten) days’ notice to the Concessioneing authority.
- 14.2.2 Necessary tests shall be conducted in accordance with applicable standards and in line with the Indian Electricity Grid Code. The Concessioneing authority or an agency as authorized by it shall observe, monitor and review the results of the Tests to determine compliance of the Project Facilities with Standards and Specifications and if it is reasonably anticipated or determined by the Concessioneing authority during the course of any Test that the performance of the Project Facilities or any part thereof does not meet the Standards and Specifications, it shall have the right to suspend or delay such Test and require the Concessionaire to remedy and rectify the defects or deficiencies. Upon completion of each Test, the Concessioneing authority and/or any agency as authorized by the Concessioneing authority, shall provide to the Concessionaire copies of all Test data including detailed Test results. For the avoidance of doubt, it is expressly agreed that the Concessioneing authority may require the Concessionaire to carry out or cause to be carried out additional Tests, in accordance with Good Industry Practice, for determining the compliance of the Project Facilities with Standards and Specifications.

14.3 Commissioning / Commencement of Commercial Operation

The Concessionaire shall submit the documents required for commissioning / commencement of commercial operation as mentioned in the Power Purchase Agreement to the Independent Engineer, at least 60 days prior to the likely commissioning of the Project Facilities. On the basis of above documents, the Concessionaire shall be required to obtain a No-Objection Certificate (NOC) from the

¹ Insert scheduled completion date as per finalised detailed project report.

Concessions Authority prior to declaration of Commissioning / Commencement of Commercial Operation of the Project.

14.4 Commercial Operation Date

The Project Facilities shall be deemed to have been commissioned on the date of issuance of commissioning certificate (“**Commercial Operation Date**” or “**COD**”) by the Concessions Authority as per the Indian Electricity Grid Code and the National Offshore Wind Energy Policy, 2015. The Project Facilities shall enter into commercial service on COD whereupon the Concessionaire shall operate and maintain the Project Facilities in accordance with the provisions of this Agreement.

14.5 Part Commissioning

14.5.1 The part commissioning of the Project shall be accepted by the Concessions Authority subject to the following conditions:

- (i) The minimum capacity for acceptance of first part commissioning shall be 50 MW or 50% (fifty percent) of the allocated Project capacity, whichever is lower.
- (ii) Subsequent part capacities shall also be accepted in multiples of 50 MW, with the last part capacity being the balance remaining capacity.

14.5.2 However, the Scheduled Completion Date, which is 04 (four) years from the date of signing the PPA, shall not get altered due to part commissioning. Irrespective of dates of part commissioning, the terms of this Agreement shall be as set forth in Clause 3.1.2.

**ARTICLE 15:
OPERATION AND MAINTENANCE**

15.1 O&M obligations of the Concessionaire

- 15.1.1 The Concessionaire may undertake O&M of the Project Facilities by itself or through a Contractor possessing requisite technical, financial and managerial expertise/capability, but in either case, the Concessionaire shall remain solely responsible to meet the requirements as per this Agreement.
- 15.1.2 The Concessionaire may, if required, modify, repair or otherwise make improvements to the Project Facilities to comply with the provisions of this Agreement, Applicable Laws and Applicable Permits, and conform to Standards and Specifications and Good Industry Practice.

15.2 Maintenance Programme

On or before COD and no later than 45 (forty-five) days prior to the beginning of each Accounting Year during the Operation Period, as the case may be, the Concessionaire shall provide to the Concessions authority its proposed annual programme of preventive and other scheduled maintenance (the “**Maintenance Programme**”). Such Maintenance Programme shall include:

- (i) preventive maintenance schedule;
- (ii) arrangements and procedures for carrying out urgent repairs;
- (iii) intervals and procedures for carrying out inspection of all elements of the Project Facilities;
- (iv) intervals at which the Concessionaire shall carry out periodic maintenance;
- (v) arrangements and procedures for carrying out safety related measures; and
- (vi) intervals for major maintenance works and the scope thereof.

15.3 Concessions authority’s right to take remedial measures

- 15.3.1 In the event the Concessionaire does not maintain and/ or repair the Project Facilities or part thereof in conformity with the provisions of this Agreement, and fails to commence the remedial works within 6 months of receipt of the O&M Inspection Report or notice on this behalf from the Concessions authority, as the case may be, the Concessions authority shall, without prejudice to its rights under this Agreement including Termination thereof, be entitled to undertake such remedial measures at the risk and cost of the Concessionaire, and to recover its cost from the Concessionaire. For avoidance of doubt, the right of the Concessions authority under this Clause 15.3 shall be without prejudice to its rights and remedies provided under Clause 15.4.
- 15.3.2 The Concessions authority shall have right, and the Concessionaire hereby expressly grants to the Concessions authority the right, to appropriate and recover the costs and Damages specified in Clause 15.4.2, directly from the Performance Security.

15.4 Overriding powers of the Concessions authority

- 15.4.1 If in the reasonable opinion of the Concessions authority, the Concessionaire is in Material Breach of its obligations under this Agreement, and such breach is causing or likely to cause the Project to violate applicable environmental laws, the Concessions authority may, without prejudice to any of

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

- 15.4.2 If the Concessionaire fails to rectify or remove such hardship or danger, the Concessioneing authority may, without prejudice to any other rights or remedy available to it under this Agreement, remove such hardship at the risk and costs of the Concessionaire. The cost incurred by the Concessioneing authority in rectifying such default of the Concessionaire, as certified by the Concessioneing authority, shall be reimbursed by the Concessionaire to the Concessioneing authority within 7 (seven) days from the date of receipt of a claim in respect thereof from the Concessioneing authority, failing which the Concessioneing authority shall have right to appropriate and recover from the Seabed Security/PBG.

**ARTICLE 16:
SAFETY REQUIREMENTS**

16.1 Safety Requirements

16.1.1 The Concessionaire shall comply with the provisions of this Agreement, Applicable Laws and Applicable Permits and conform to Good Industry Practice for securing the safety in and around the Seabed. In particular, the Concessionaire shall develop, implement and administer a surveillance and safety programme for providing a safe environment on or about the Project, and shall comply, with the safety requirements set forth as per Applicable Laws in **Schedule 2** (the “**Safety Requirements**”).

16.1.2 The Concessioneing authority may appoint an experienced and qualified firm or organisation (the “**Safety Consultant**”) for carrying out safety audit of the Project in accordance with the Safety Requirements, and taking all other actions necessary for securing compliance with the Safety Requirements. The Concessionaire shall provide necessary access to visit the Project site during the Term of this Agreement, to any agency/authority as authorized by the Concessioneing authority.

16.2 Expenditure on Safety Requirements

All costs and expenses arising out of or relating to Safety Requirements shall be borne by the Concessionaire to the extent such costs and expenses form part of the works and services included in the Scope of the Project.

**ARTICLE 17:
MONITORING OF OPERATION AND MAINTENANCE**

17.1 Reporting

17.1.1 During Operation Period, the Concessionaire shall, no later than 21 (twenty-one) days after the close of each quarter, furnish to the Concessions authority a report stating in reasonable detail the condition of the Project Facilities, including its compliance or otherwise with the O&M Manual, Maintenance Programme and Safety Requirements, and shall promptly give such other relevant information as may be required by the Concessions authority. In particular, such report shall separately identify and state in reasonable detail the defects and deficiencies that require rectification.

17.1.2 The Concessionaire shall deliver the following to the Concessions authority within the time specified below:

- (i) reports relating to any activity, problem, incident or circumstance that threatens or may threaten public health, safety, the environment or the welfare of the Project Facilities or the general public, as soon as reasonably practicable but no later than 12 (twelve) hours after the occurrence of such event or circumstance;
- (ii) reports relating to the action taken to mitigate any disruptions to the O&M as a result of the events or circumstances mentioned in Sub-clause (i) above, within 12 (twelve) hours of the occurrence of such event or circumstance;
- (iii) reports on any critical breakdowns or failures in the Project Facilities, within 12 (twelve) hours of such occurrence;
- (iv) reports on accidents or other incidents in relation to the personnel, any third party or the Project Facilities, together with statements on actions taken to minimize recurrence, within 2 (two) days of such occurrence;
- (v) copies of any reports, notices or responses submitted for the purposes of compliance with Applicable Laws or Applicable Permits, within 2 (two) days of making such submissions to the relevant Government Instrumentality; and
- (vi) reports on any material litigation, including any winding-up proceedings or notice to commence winding-up proceedings or material disputes to which the Concessionaire is a party, appointment of a receiver or administrator in relation to the business or assets of the Concessionaire and any adverse orders or judgments passed by any court or Government Instrumentality that affects or is likely to affect the performance of the Project Facilities, as soon as reasonably possible after the occurrence of such events.

17.1.3 In case of an accident or incident, the Concessionaire shall, prior to the close of each day, send to the Concessions authority, by facsimile or e-mail, a report stating accidents and unusual occurrences on the Project relating to the safety and security till the time the same is resolved. A weekly and monthly summary of such reports shall also be sent within 3 (three) days of the closing of each week and month, as the case may be. For the purposes of this Clause 17.1.3, accidents and unusual occurrences on the Project shall include:

- (i) death or injury to any Person;
- (ii) damaged or dislodged fixed equipment;

- (iii) disablement of any equipment during operation;
- (iv) communication failure affecting the operation of Project Facilities;
- (v) smoke or fire;
- (vi) flooding of Project Facilities; and
- (vii) such other relevant information as may be required by the Concessions authority.

17.2 Inspection

The Concessions authority or its authorized agency may inspect the Project Facilities at any time. It shall make a report of such inspection (the “**O&M Inspection Report**”) stating in reasonable detail the defects or deficiencies, if any, with particular reference to the Maintenance Programme and Safety Requirements, and send a copy thereof to the Concessionaire within 7 (seven) days of such inspection.

17.3 Remedial measures

- 17.3.1 The Concessionaire shall repair or rectify the defects or deficiencies, if any, set forth in the O&M Inspection Report referred to in Clause 17.2 and furnish a report in respect thereof to the Concessions authority within 15 (fifteen) days of receiving the O&M Inspection Report, as the case may be; provided that where the remedying of such defects or deficiencies is likely to take more than 15 (fifteen) days, the Concessionaire shall submit progress reports of the repair works once every week until such works are completed in conformity with this Agreement.
- 17.3.2 The Concessions authority shall require the Concessionaire to carry out or cause to be carried out tests, at its own cost, to determine that such remedial measures have brought the Project Facilities into compliance with the Safety Requirements and the procedure set forth in this Clause 17.4 shall be repeated until the Project Facilities conform to the Safety Requirements. In the event that remedial measures are not completed by the Concessionaire in conformity with the provisions of this Agreement, the Concessions authority shall be entitled to recover Damages from the Concessionaire under and in accordance with the provisions of Clause 15.3.2.
- 17.3.3 Notwithstanding anything to the contrary in this Agreement, the Parties may, with respect to the last [*insert period*] years of the Operation Period, mutually agree to reduce or revise the obligations of the Concessionaire hereunder to the extent that such reduction or revision is necessitated by the non-availability of requisite spare parts.

**ARTICLE 18:
EMERGENCY MEDICAL AID**

18.1 Medical Aid Posts

For providing emergency medical aid during the Operation Period, the Concessionaire shall maintain a first aid kit with adequate medical items at the Seabed for victims of accidents on the Project.

**ARTICLE 19:
FINANCIAL CLOSE**

19.1 Financial Close

19.1.1 The Concessionaire hereby agrees and undertakes that it shall achieve Financial Close within 24 months from the date of PPA and in the event of delay, it shall be entitled to a further extension in line with the PPA.

19.1.2 The Concessionaire shall, upon occurrence of Financial Close, notify the Concessioneing authority forthwith, and shall have provided to the Concessioneing authority, at least 2 (two) working days prior to Financial Close, 3 (three) true copies of the Financial Package, duly attested by a director of the Concessionaire and accepted by the Senior Lenders.

19.2 Termination due to failure to achieve Financial Close

19.2.1 Notwithstanding anything to the contrary contained in this Agreement, in the event that Financial Close does not occur, for any reason whatsoever, within the period set forth in Clause 19.1.1 or the extended period provided thereunder, all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, and this Agreement shall be deemed to have been terminated by mutual agreement of the Parties. For the avoidance of doubt, it is agreed that in the event the Parties hereto have, by mutual consent, determined the Appointed Date to precede the Financial Close, the provisions of this Clause 19.2.1 shall not apply.

ARTICLE 20: INSURANCE

20.1 Insurance during the Term of the Agreement

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

20.2 Notice to the Concessioneing authority

No later than 45 (forty five) days prior to commencement of the Construction Period or the Operation Period, as the case may be, the Concessionaire shall by notice furnish to the Concessioneing authority, in reasonable detail, information in respect of the insurances that it proposes to effect and maintain in accordance with this Article 20. Within 30 (thirty) days of receipt of such notice, the Concessioneing authority may require the Concessionaire to effect and maintain such other insurances as may be necessary pursuant hereto, and in the event of any difference or disagreement relating to any such insurance, such dispute shall be resolved in accordance with this Agreement.

20.3 Remedy for failure to insure

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

20.4 Waiver of subrogation

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

20.5 Concessionaire's waiver

The Concessionaire hereby further releases, assigns and waives any and all rights of subrogation or recovery against, *inter alia*, the Concessioneing authority and its assigns, undertakings and their subsidiaries, affiliates, employees, successors, insurers and underwriters, which the Concessionaire may otherwise have or acquire in or from or in any way connected with any loss, liability or obligation covered by policies of insurance maintained or required to be maintained by the Concessionaire

pursuant to this Agreement (other than third party liability insurance policies) or because of deductible clauses in or inadequacy of limits of any such policies of insurance.

20.6 Application of insurance proceeds

The proceeds from all insurance claims, except life and injury, shall be applied by the Concessionaire for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or installation of the Project Facilities, and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Agreements.

20.7 No Breach of Insurance Obligation

If during the Term of this Agreement, any risk which has been previously insured becomes un-insurable due to the fact that the insurers have ceased to insure such a risk and therefore insurance cannot be maintained/ re-instated in respect of such risk, the Concessionaire shall not be in breach of its obligations regarding insurance under this Agreement.

**ARTICLE 21:
ACCOUNTS AND AUDIT**

21.1 Audited Accounts

The Concessionaire shall maintain books of accounts recording all its receipts (including revenue derived by it from or on account of the Project and/or its use), income, expenditure, payments, assets and liabilities, in accordance with this Agreement, Good Industry Practice, Applicable Laws and Applicable Permits. The Concessionaire shall provide 2 (two) copies of its balance sheet, cash flow statement and profit and loss account, along with a report thereon by its Statutory Auditors, within 90 (ninety) days of the close of the Accounting Year to which they pertain and such audited accounts, save and except where expressly provided to the contrary, shall form the basis of payments by either Party under this Agreement.

21.2 Certification of claims by Statutory Auditors

Any claim or Document provided by the Concessionaire to the Concessioneing authority in connection with or relating to receipts, income, payments, costs, expenses, accounts or audit, and any matter incidental thereto shall be valid and effective only if certified by its Statutory Auditors.

21.3 Set-off

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

ARTICLE 22
INDEPENDENT ENGINEER

22.1 Appointment of Independent Engineer

As per the National Offshore Wind Energy Policy, 2015, the National Institute of Wind Energy (NIWE) will act as the Nodal Agency for the development of offshore wind energy in the country. Further, NIWE has been entrusted with the responsibility to coordinate and monitor technical activities of the on-going projects, and carry out technical and financial evaluation and review of development of such projects. Accordingly, National Institute of Wind Energy (NIWE) shall be appointed as the independent consultant under this Agreement (the "Independent Engineer").

22.2 Duties and functions

22.2.1 The Independent Engineer shall discharge its duties and functions substantially in accordance with the terms of reference set forth by the Concessions Authority.

22.2.2 The Independent Engineer shall submit regular periodic reports (at least once every month) to the Concessions Authority in respect of its duties and functions.

22.2.3 A true copy of all communications sent by the Concessions Authority to the Independent Engineer and by the Independent Engineer to the Concessions Authority shall be sent forthwith by the Independent Engineer to the Concessionaire.

22.2.4 A true copy of all communications sent by the Independent Engineer to the Concessionaire and by the Concessionaire to the Independent Engineer shall be sent forthwith by the Independent Engineer to the Concessions Authority.

22.3 Remuneration

For meeting the remuneration, cost and expenses of the Independent Engineer, the Concessionaire shall pay an amount of Rs. 1,00,00,000 (Rupees One Crore) to the Independent Engineer within thirty (30) days of signing of this Agreement.

22.4 Authorised signatories

The Concessions Authority shall require the Independent Engineer to designate and notify to the Concessions Authority and the Concessionaire up to 2 (two) persons employed in its firm to sign for and on behalf of the Independent Engineer, and any communication or document required to be signed by the Independent Engineer shall be valid and effective only if signed by any of the designated persons; provided that the Independent Engineer may by notice in writing substitute any of the designated persons by any of its employees.

22.5 Dispute resolution

If either Party disputes any advice, instruction, decision, direction or award of the Independent Engineer, or, as the case may be, the assertion or failure to assert jurisdiction, the Dispute shall be resolved in accordance with Article 32 of this Agreement.

**ARTICLE 23:
FORCE MAJEURE**

23.1 Definition of Force Majeure

A 'Force Majeure' (FM) would mean one or more of the following acts, events or circumstances or a combination of acts, events or circumstances or the consequence(s) thereof, that wholly or partly prevents or unavoidably delays the performance by the Party (the Affected Party) of its obligations under this Agreement, but only if and to the extent that such events or circumstances are not within the reasonable control, directly or indirectly, of the Affected Party and could not have been avoided if the Affected Party had taken reasonable care or complied with Prudent Utility Practices:

- a) Act of God, including, but not limited to lightning, fire and explosion (to the extent originating from a source external to the site), earthquake, volcanic eruption, landslide, flood, pandemic, cyclone, typhoon or tornado if it is declared / notified by the competent state / central authority / agency (as applicable), or verified to the satisfaction of the other Party.
- b) Radioactive contamination or ionising radiation originating from a source in India or resulting from another Force Majeure Event mentioned above excluding circumstances where the source or cause of contamination or radiation is brought or has been brought into or near the Project by the Affected Party or those employed or engaged by the Affected Party.
- c) The discovery of geological conditions, toxic contamination or archaeological remains on the Project site that could not reasonably have been expected to be discovered through an inspection of the Project site and/or as per prudent industry practices.
- d) Exceptionally adverse weather condition which are in excess of the statistical measure of the last hundred (100) years.
- e) Any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, terrorist or military action, political and indirect political events with associated costs.
- f) Nation/state-wide strike, lockout, boycotts or other industrial disputes which are not directly and solely attributable to the actions of the Affected Party, but does not include strike or labour unrest limited to the Affected Party or its Contractor.
- g) Nationalisation or any compulsory acquisition by any Indian Governmental Instrumentality/ State Government in national interest or expropriation of any material Project assets or rights of the Generator, as a result of which the Concessionaire or its shareholders are deprived (wholly or partly) of their rights or entitlements under this Agreement. Provided that such action does not constitute remedies or sanctions lawfully exercised by the Concessions authority or any other Government Authority as a result of any breach of any of the Applicable Laws or the Applicable Permits by the Concessionaire or its related parties.
- h) Any requirement, action or omission to act pursuant to any judgment or order of any court or judicial authority in India (provided such requirement, action or omission to act is not due to the breach by the Affected Party of any Law or any of their respective obligations under this Agreement).

- i) Any unlawful or unauthorised or without jurisdiction revocation of, or delay in, or refusal, or failure to renew or grant without valid cause, any Permits of the Concessionaire or any of the clearance, licence, authorization to be obtained by the Concessionaire to perform its respective obligations under this Agreement and/or the Project documents; provided that such delay, modification, denial, refusal or revocation did not result from the Concessionaire's or any Contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such Permits or clearance, licence, authorization, as the case may be.

23.2 Force Majeure Exclusions

Force Majeure shall not include (i) any event or circumstance which is within the reasonable control of the Parties and (ii) the following conditions, except to the extent that they are consequences of an event of Force Majeure:

- a. Unavailability, late delivery, or changes in cost of the plant, machinery, equipment, materials, spare parts or consumables for the Project;
- b. Delay in the performance of any contractor, sub-contractor or their agents;
- c. Non-performance resulting from normal wear and tear typically experienced in power generation materials and equipment;
- d. Strikes or labour disturbances at the facilities of the Affected Party;
- e. Insufficiency of finances or funds or the agreement becoming onerous to perform; and
- f. Non-performance caused by, or connected with, the Affected Party's: (i) Negligent or intentional acts, errors or omissions, or lack of due diligence expected from any prudent and rational human being; (ii) Failure to comply with an Indian Law; or (iii) Breach of, or default under this Agreement.

23.3 Notice of Force Majeure Event

23.3.1 As soon as practicable and in any case within 7 (seven) days of the date of occurrence of a Force Majeure Event or the date of knowledge thereof, the Party affected thereby shall notify the other Party of the same setting out, *inter alia*, the following in reasonable detail:

- (i) the nature and extent of the Force Majeure Event which is subject of any claim for relief under this Article 23 with evidence in support thereof;
- (ii) the estimated duration and effect or probable effect which such Force Majeure Event is having or will have on such Party's performance of any of its obligations under this Agreement;
- (iii) the measures which the Party affected thereby has taken, is taking or proposes to take to alleviate/ mitigate the impact of such Force Majeure Event and to resume performance of such of its obligations affected thereby; and
- (iv) any other relevant information concerning the Force Majeure Event, and/ or the rights and obligations of the Parties under this Agreement.

23.3.2 For so long as such Party continues to claim to be materially affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) reports containing information as required by Clause 23.1., and such other information as the other Party may reasonably request such Party to provide.

23.4 Performance of Obligations

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

- (i) due notice of the Force Majeure event has been given as required by the preceding Clause 23.3;
- (ii) the excuse from performance shall be of no greater scope or no longer duration than is necessitated by the Force Majeure Event;
- (iii) such Party has taken all reasonable efforts to avoid, prevent, mitigate and limit damage, if any, caused or is likely to be caused to the Project as a result of the Force Majeure Event and to restore the Project Facilities, in accordance with the Good Industry Practice and its relative obligations under this Agreement;
- (iv) when such Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party written notice to that effect and shall promptly resume performance of its obligations hereunder, the non-issue of such notice being no excuse for any delay for resuming such performance;
- (v) such Party shall continue to perform such of its obligations which are not affected by the Force Majeure and which are capable of being performed in accordance with this Agreement; and
- (vi) any insurance proceeds received shall be, subject to the provisions of the Financing Agreements, entirely applied to repair, replace or restore the assets damaged on account of the Force Majeure or in accordance with Good Industry Practice.
- (vii) Provided further that, nothing shall absolve the Affected Party from any payment obligations accrued prior to the occurrence of the underlying Force Majeure Event.

23.5 Effect of Force Majeure event on the timeline of Financial Close and Term of this Agreement

23.5.1 Upon the occurrence of any Force Majeure Event prior to the Appointed Date, the period set forth in Clause 19.1.1 for achieving Financial Close shall be extended by a period equal in length to the duration of the Force Majeure Event.

23.5.2 At any time after the Appointed Date, if any Force Majeure Event occurs, the Term of this Agreement shall be extended by a period equal in length to the duration for which such Force Majeure Event subsists.

23.6 Allocation of costs arising out of Force Majeure

23.6.1 Upon occurrence of any Force Majeure Event, the Parties shall bear their respective costs and no Party shall be required to pay to the other Party any costs thereof.

23.7 Termination due to Force Majeure event

- 23.7.1 If a Force Majeure Event subsists for a period of 270 (two hundred and seventy) days or more within a continuous period of 365 (three hundred and sixty five) days, and in case the above deadline is not extended on mutually agreed basis, either Party may in its discretion terminate this Agreement by issuing a Termination Notice to the other Party without being liable in any manner whatsoever, save as provided in this Article 23, and upon issue of such Termination Notice, this Agreement shall, notwithstanding anything to the contrary contained herein, stand terminated forthwith:
- 23.7.2 Provided that before issuing such Termination Notice, the Party intending to issue the Termination Notice shall inform the other Party of such intention and grant 15 (fifteen) days' time to make a representation, and may after the expiry of such 15 (fifteen) days period, whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice.
- 23.7.3 On termination of this Agreement pursuant to this Article 23.6:
- i. In case of termination on account of an event listed as Force Majeure as per Articles 23.1 (a), (b), (c) and (d) above, no Termination Compensation shall be payable to the Affected Party.
 - ii. In case of termination at the instance of the Concessionaire on account of an event listed as Force Majeure as per Articles 23.1. (e), (f), (g), (h) and (i) above, the Concessioneing authority will have the option to (but will not be obliged to) take-over the Project assets by paying the Debt Due. In case the Concessioneing authority chooses not to exercise the above option, and the same is not agreed to by the Concessionaire, it will result in a dispute as per this Agreement, and will be resolved as per the Dispute Resolution Mechanism under this Agreement.

23.8 Liability for other losses, damages etc.

Save and except as expressly provided in this Article 23, neither Party hereto shall be liable in any manner whatsoever to the other Party in respect of any loss, damage cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure event or exercise of any right pursuant hereto.

23.9 Dispute resolution

In the event that the Parties are unable to agree in good faith about the occurrence or existence of a Force Majeure Event, such dispute shall be resolved in accordance with this Agreement; provided that the burden of proof as to the occurrence or existence of such Force Majeure Event shall be upon the Party claiming relief and/ or excuse on account of such Force Majeure.

**ARTICLE 24:
ESCROW ACCOUNT**

24.1 Escrow Account

24.1.1 The Concessionaire shall, prior to Appointed Date, open and establish an Escrow Account with a Bank (the "Escrow Bank") in accordance with this Agreement read with the Escrow Agreement.

24.1.2 The nature and scope of the Escrow Account are fully described in the agreement (the "Escrow Agreement") to be entered into amongst the Concessionaire, the Concessioneing Authority, the Escrow Bank the Lenders through the Lenders' Representative.

24.1.3 Deposits into Escrow Account

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

- (a) all funds constituting the Financial Package;
- (b) all Fee and any other revenues from or in respect of the Project, including the proceeds of any rentals, deposits, capital receipts or insurance claims;
- (c) all payments by the Concessioneing Authority including, if any, in relation to the change of scope in the Project;

24.1.4 Withdrawals during Concession Period

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

- (a) all taxes due and payable by the Concessionaire for and in respect of the Project;
- (b) all payments relating to construction of the Project, subject to and in accordance with the conditions, if any, set forth in the Financing Agreements;
- (c) O&M Expenses
- (d) O&M Expenses and other costs and expenses incurred by the Concessioneing Authority in accordance with the provisions of this Agreement, and certified by the Concessioneing Authority as due and payable to it

**ARTICLE 25:
COMPENSATION FOR BREACH OF AGREEMENT**

25.1 Compensation for default by the Concessionaire

Subject to the provisions of Clause 25.4, in the event of the Concessionaire being in material default or breach of this Agreement, the Concessioneing authority shall issue a notice to the Concessionaire to remedy the breach or the default in the Cure Period, which shall be 90 days from the date of issue of notice. Upon expiry of the Cure Period, if the Concessionaire has not remedied/ cured the default or breach and the period given to remedy/ cure the breach or the default has not been mutually extended, the Concessionaire shall pay to the Concessioneing authority by way of compensation, all direct costs suffered or incurred by the Concessioneing authority as a consequence of such material default or breach, within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof; provided that no compensation shall be payable under this Clause 25.1 for any Material Breach or default in respect of which Damages are expressly specified and payable under this Agreement or for any consequential losses incurred by the Concessioneing authority.

25.2 Remedy for default by the Concessioneing authority

Subject to the provisions of Clause 25.4, in the event of the Concessioneing authority being in material default or breach of this Agreement, the Concessionaire shall issue a notice to the Concessioneing authority giving 90 (ninety) days to remedy the breach or the default. Upon expiry of the said 90 (ninety) days, if the Concessioneing authority has not remedied/ cured the default or breach and the period given to remedy/ cure the breach or the default has not been mutually extended, the Concessionaire may terminate this Agreement under and in accordance with Article 27.

25.3 Extension of Term of this Agreement

Subject to the provisions of Clause 25.4, in the event that a material default or breach of this Agreement by the Concessioneing authority causes delay in achieving COD or leads to suspension of operation of Project Facilities, as the case may be, the Concessioneing authority shall extend the Term of this Agreement, such extension being equal in duration to the period by which COD was delayed or the operation of the Project Facilities remained suspended on account thereof, as the case may be.

25.4 Mitigation of costs and damage

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

**ARTICLE 26:
SUSPENSION OF CONCESSIONAIRE'S RIGHTS**

26.1 Suspension

- 26.1.1 Upon occurrence of a Concessionaire Event of Default, the Concessions authority shall be entitled, without prejudice to its other rights and remedies under this Agreement including its rights of Termination hereunder, to (i) suspend all rights of the Concessionaire under this Agreement, and (ii) exercise such rights itself and perform the obligations hereunder or authorise any other person to exercise or perform the same on its behalf during such suspension (the “**Suspension**”). Suspension hereunder shall be effective forthwith upon issue of notice by the Concessions authority to the Concessionaire and may extend up to a period not exceeding 180 (one hundred and eighty) days from the date of issue of such notice; provided that upon written request from the Concessionaire and the Lenders’ Representative, the Concessions authority shall extend the aforesaid period of 180 (one hundred and eighty) days by a further period not exceeding 90 (ninety) days.
- 26.1.2 The Concessionaire acknowledges that Suspension shall not entitle the Concessionaire to an extension of the Term of this Agreement.

26.2 Concessions authority to act on behalf of the Concessionaire

During the period of Suspension, the Concessions authority shall be entitled to discharge the obligations of the Concessionaire, including remedying and rectifying the cause of Suspension. During the period of Suspension hereunder, all rights and liabilities vested in the Concessionaire in accordance with the provisions of this Agreement shall continue to vest therein and all things done or actions taken, including expenditure incurred by the Concessions authority for discharging the obligations of the Concessionaire under and in accordance with this Agreement and the Project Agreements, shall be deemed to have been done or taken for and on behalf of the Concessionaire and the Concessionaire undertakes to indemnify the Concessions authority for all costs incurred during such period. The Concessionaire hereby licences and sub-licences respectively, the Concessions authority or any other person authorised by it to use during Suspension, all Intellectual Property belonging to or licenced to the Concessionaire with respect to the Project Facilities and its design, engineering, construction, operation and maintenance, and which is used or created by the Concessionaire in performing its obligations under the Agreement.

26.3 Revocation of Suspension

- 26.3.1 In the event that the Concessions authority shall have rectified or removed the cause of Suspension within a period not exceeding 90 (ninety) days from the date of Suspension, it shall revoke the Suspension forthwith and restore all rights of the Concessionaire under this Agreement. For the avoidance of doubt, the Parties expressly agree that the Concessions authority may, in its discretion, revoke the Suspension at any time, whether or not the cause of Suspension has been rectified or removed hereunder.
- 26.3.2 Upon the Concessionaire having cured the Concessionaire Event of Default within a period not exceeding 90 (ninety) days from the date of Suspension, the Concessions authority shall revoke the Suspension forthwith and restore all rights of the Concessionaire under this Agreement.

26.4 Substitution

At any time during the period of Suspension, the Lenders’ Representative, on behalf of Senior Lenders, shall be entitled to substitute the Concessionaire under and in accordance with the Substitution

Agreement, and upon receipt of notice thereunder from the Lenders' Representative, the Concessioneing authority shall withhold Termination for a period not exceeding 180 (one hundred and eighty) days from the date of Suspension, and any extension thereof under Clause 26.1, for enabling the Lenders' Representative to exercise its rights of substitution on behalf of Senior Lenders.

26.5 Termination

- 26.5.1 At any time during the period of Suspension under this Article 26, the Concessionaire may by notice require the Concessioneing authority to revoke the Suspension and issue a Termination Notice. Subject to the rights of the Lenders' Representative to undertake substitution in accordance with the provisions of this Agreement and within the period specified in Clause 26.4, the Concessioneing authority shall, within 15 (fifteen) days of receipt of such notice, terminate this Agreement under and in accordance with Article 27.
- 26.5.2 Notwithstanding anything to the contrary contained in this Agreement, in the event that Suspension is not revoked within 180 (one hundred and eighty) days from the date of Suspension hereunder or within the extended period, if any, set forth in Clause 26.1, this Agreement shall, upon expiry of the aforesaid period, be deemed to have been terminated by mutual agreement of the Parties and all the provisions of this Agreement shall apply, *mutatis mutandis*, to such Termination as if a Termination Notice had been issued by the Concessioneing authority upon occurrence of a Concessionaire Event of Default.

**ARTICLE 27:
EVENTS OF DEFAULT AND TERMINATION (PROJECT)**

27.1 Termination for Concessionaire Event of Default

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

- (a) The Security Deposit/ PBG has been encashed and appropriated and the Concessionaire fails to replenish or provide fresh Security Deposit/ PBG within a Cure Period of 30 (thirty) days;
- (b) The Concessionaire fails to make any payment to the Concessing authority within the period specified in this Agreement;
- (c) The Concessionaire fails to use the Seabed for the purposes for which it has been granted, within the stipulated time period, or uses the Seabed for purposes other than that for which the lease has been granted;
- (d) The Concessionaire repudiates this Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by this Agreement;
- (e) Any representation or warranty of the Concessionaire is, as of the date of the Agreement, found to be materially false, incorrect or misleading or the Concessionaire is at any time thereafter found to be in breach thereof;
- (f) The Concessionaire violates terms and conditions of this Agreement or fails to fulfill or contravenes any of the terms or covenants or conditions contained herein;
- (g) The Concessionaire fails to produce requisite documents pertaining to the Survey to the concerned Government Instrumentalities;
- (h) The Concessionaire does not commence activity with respect to the Survey within 6 (six) months from the Lease Commencement Date;
- (i) The Concessionaire causes irreparable environmental damage to flora and fauna.
- (j) the Concessionaire abandons or manifests intention to abandon the construction or O&M of the Project Facilities without the prior written consent of the Concessing authority;
- (k) the COD does not occur within the period specified in Clause 14.1.3;
- (l) upon occurrence of a financial default, the Lenders’ Representative has by notice required the Concessing authority to undertake Suspension or Termination, as the case may be, in accordance with the Substitution Agreement and the Concessionaire fails to cure the default within the Cure Period specified hereinabove;
- (m) a breach of any of the Project Agreements by the Concessionaire has caused a Material Adverse Effect;

- (n) the Concessionaire is non-compliant with the Standards and Specifications and has failed to remedy the same within 14 (fourteen) days;
- (o) the Concessionaire creates any Encumbrance in breach of this Agreement;
- (p) a Change in Ownership has occurred in breach of the provisions of Clause 5.7;
- (q) there is a transfer, pursuant to law either of (a) the rights and/or obligations of the Concessionaire under any of the Project Agreements, or of (b) all or part of the assets or undertaking of the Concessionaire, and such transfer causes a Material Adverse Effect;
- (r) an execution levied on any of the assets of the Concessionaire has caused a Material Adverse Effect;
- (s) the Concessionaire is adjudged bankrupt or insolvent, or if a trustee or receiver is appointed for the Concessionaire or for the whole or material parts of its assets that has a material bearing on the Project;
- (t) the Concessionaire has been, or is in the process of being liquidated, dissolved, wound-up, amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of the Concessioning authority, a Material Adverse Effect;
- (u) a resolution for winding up of the Concessionaire is passed, or any petition for winding up of the Concessionaire is admitted by a court of competent jurisdiction and a provisional liquidator or receiver is appointed and such order has not been set aside within 90 (ninety) days of the date thereof or the Concessionaire is ordered to be wound up by Court except for the purpose of amalgamation or reconstruction; provided that, as part of such amalgamation or reconstruction, the entire property, assets and undertaking of the Concessionaire are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Concessionaire under this Agreement and the Project Agreements; and provided that:
 - (a) the amalgamated or reconstructed entity has the capability and operating experience necessary for the performance of its obligations under this Agreement and the Project Agreements;
 - (b) the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and the Project Agreements and has a credit worthiness at least as good as that of the Concessionaire as at the Appointed Date; and
 - (c) each of the Project Agreements remains in full force and effect;
- (v) the Concessionaire submits to the Concessioning authority any statement, notice or other Document, in written or electronic form, which has a material effect on the Concessioning authority's rights, obligations or interests and which is false in material particulars;
- (w) the Concessionaire fails to fulfil the Conditions Precedent as set out in Article 4 within the period specified therein;
- (x) the Concessionaire has failed to fulfil any obligation, for which Termination has been specified in this Agreement;

- (y) the Concessionaire commits a default in complying with any other provision if such a default causes a Material Adverse Effect on the Concessions authority;
 - (z) the Concessionaire is in Material Breach of any of its obligations under this Agreement and the same has not been remedied for more than 30 (thirty) days.
- 27.1.2 Without prejudice to any other rights or remedies which the Concessions authority may have under this Agreement, upon occurrence of a Concessionaire Event of Default, the Concessions authority shall be entitled to terminate this Agreement by issuing a Termination Notice to the Concessionaire; provided that before issuing the Termination Notice, the Concessions authority shall by a notice inform the Concessionaire of its intention to issue such Termination Notice and grant 15 (fifteen) days to the Concessionaire to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice, subject to the provisions of Clause 27.1.3.
- 27.1.3 The Concessions authority shall, if there be Senior Lenders, send a copy of its notice of intention to issue a Termination Notice referred to in Clause 27.1.2 to inform the Lenders' Representative and grant 15 (fifteen) days to the Lenders' Representative, for making a representation on behalf of the Senior Lenders stating the intention to substitute the Concessionaire in accordance with the Substitution Agreement. In the event the Concessions authority receives such representation on behalf of Senior Lenders, it shall, in its discretion, either withhold Termination for a period not exceeding 180 (one hundred and eighty) days from the date of such representation or exercise its right of Suspension, as the case may be, for enabling the Lenders' Representative to exercise the Senior Lenders' right of substitution in accordance with the Substitution Agreement.
- 27.1.4 Provided that the Lenders' Representative may, instead of exercising the Senior Lenders' right of substitution, procure that the default specified in the notice is cured within the aforesaid period of 180 (one hundred and eighty) days, and upon such curing thereof, the Concessions authority shall withdraw its notice referred to above and restore all the rights of the Concessionaire.
- 27.1.5 Provided further that upon written request from the Lenders' Representative and the Concessionaire, the Concessions authority may extend the aforesaid period of 180 (one hundred and eighty) days by such further period not exceeding 90 (ninety) days, as the Concessions authority may deem appropriate.

27.2 Termination for Concessions authority Default

- 27.2.1 In the event that any of the defaults specified below shall have occurred, and the Concessions authority fails to cure such default within a Cure Period of 90 (ninety) days or such longer period as has been expressly provided in this Agreement, the Concessions authority shall be deemed to be in default of this Agreement (the "**Concessions authority Default**") unless the default has occurred as a result of any breach of this Agreement by the Concessionaire or due to Force Majeure. The defaults referred to herein shall include:
- (i) the Concessions authority commits a Material Breach or default in complying with any of the provisions of this Agreement and such default has a Material Adverse Effect on the Concessionaire;
 - (ii) the Concessions authority has failed to make any payment to the Concessionaire within the period specified in this Agreement;

- (iii) the Concessioneing authority repudiates this Agreement or otherwise takes any action that amounts to or manifests an irrevocable intention not to be bound by this Agreement.

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

27.3 Consequences of Termination

27.3.1 On expiry or earlier termination of this Agreement:

- (a) the Concessionaire shall forthwith comply with and conform to the following requirements:
 - (i) deliver the actual or constructive possession of the Seabed, free and clear of all Encumbrances;
 - (ii) execute such deeds of conveyance, documents and other writings as the Concessioneing authority may reasonably require for conveying, delivering, divesting and assigning all the rights, title and interest of the Concessionaire in the Seabed in favour of the Concessioneing authority;
 - (iii) comply with all other requirements as may be prescribed or required under Applicable Laws for completing the divestment and assignment of all rights, title and interest of the Concessionaire in the Seabed, free from all Encumbrances, absolutely unto the Concessioneing authority or to its nominee;
 - (iv) furnish to the Concessioneing authority complete records of all the Data (but excluding the information covered under intellectual property rights of the Concessionaire). It is clarified that the Concessionaire shall not be permitted to use the Data for any other purpose whatsoever upon termination of expiry or termination of this Agreement (save in relation to the Project).
 - (v) decommission the Project within a period of 2 (two) years in accordance with prevalent international best practice, the decommissioning and site restoration programme furnished by the Concessionaire pursuant to this Agreement, Applicable Laws, including the Offshore Wind Energy Lease Rules, 2023, and such guidelines and norms as may be issued in this regard from time to time. In particular, this obligation shall include:
 - a. decommissioning the wind turbines, installations, machinery, and used cables;
 - b. clearing the seabed of all obstructions created by the Project;
 - c. uprooting and demolishing the foundation structures;
 - d. removing the debris and returning the seabed to its original configuration;

- e. removing or disposing off all the components of the Project such as wind turbines or its parts, equipment, machinery, cables, electrical infrastructures and civil infrastructure existing during the Term;
- f. reusing, recycling or responsibly disposing off all materials removed;
- g. undertaking all activities required to return the Seabed to its predevelopment state or to render the Seabed compatible with its intended after-use after cessation of the Project-related operations in relation thereto (including, as appropriate, removal of equipment, structures and debris, replacement of topsoil, re-vegetation, slope stabilisation, in-filling of excavations or any other appropriate actions in the circumstances);
- h. furnishing to the Concessioning authority, no later than 7 (seven) days after the close of each quarter, a report on physical and financial progress of the decommissioning of the Project (including any health and safety incidents that may have occurred) and promptly giving such other relevant information as may be required by the Concessioning authority.

It is clarified that, for the purpose of discharging its obligations under this sub-clause, the Concessionaire shall be deemed to be a licensee to the Seabed, and shall have no obligation to make payment of lease rentals to the Concessioning authority.

- (b) the Parties shall cooperate on a best effort basis and take all necessary measures, in good faith, to achieve a smooth transfer of the Seabed in accordance with the provisions of this Agreement.

27.3.2 The Concessionaire hereby irrevocably appoints the Concessioning authority (or its nominee) to be its true and lawful attorney, to execute and sign in the name of the Concessioning authority a transfer or surrender of the Lease granted hereunder at any time after the expiry or earlier termination of this Agreement, a sufficient proof of which will be the declaration of any duly authorised officer of the Concessioning authority, and the Concessionaire consents to it being registered for this purpose.

27.3.3 The Concessionaire shall bear and pay all costs incidental to divestment of all of the rights, title and interest of the Seabed in favour of the Concessioning authority upon expiry or termination of this Agreement, save and except that all stamp duties payable on any deeds or documents executed by the Concessionaire in connection with such divestment shall be borne by the Concessioning authority.

27.4 Obligation of Parties

Following issue of Termination Notice by either Party, the Parties shall, subject to the provisions of Financing Agreements and the rights of the Senior Lenders provided therein, promptly take all such steps as may be necessary or required to ensure that:

- (i) until Termination the Parties shall, to the fullest extent possible, discharge their respective obligations so as to maintain the continued operation of the Project Facilities;
- (ii) the Seabed is handed back to the Concessioning authority by Concessionaire on the Expiry Date free from any Encumbrance along with any payment that may be due by Concessionaire to the Concessioning authority.

27.5 Withdrawal of Termination Notice

- 27.5.1 Notwithstanding anything inconsistent contained in this Agreement, if the Party who has been served with the Termination Notice cures the underlying event of default to the satisfaction of the other Party at any time before the actual Termination occurs, the Termination Notice shall be withdrawn by the Party which had issued the same.
- 27.5.2 Provided that the Party in breach shall compensate the other Party for any direct costs suffered by the non-defaulting Party due to the event of default which led to the issue of Termination Notice or such costs as mutually agreed upon by both Parties.

27.6 Termination Payment

- 27.6.1 Upon Termination on account of a Concessioneing authority Default, the Concessioneing authority shall pay to the Concessionaire, by way of Termination Payment, an amount equal to:
- (i) Debt Due/ Asset value – VGF Disbursed- Insurance cover; and
 - (ii) 105% (one hundred and five percent) of the Adjusted Equity.
- 27.6.2 Upon Termination on account of a Concessionaire Default, the Concessioneing authority shall pay to the Concessionaire, by way of Termination Payment, an amount equal to Debt Due after deducting the VGF disbursed and Insurance cover and Concessioneing authority or designated agency (SECI/NIWE) shall take-over the Project assets on behalf of Concessioneing authority.
- 27.6.3 Termination Payment shall become due and payable to the Concessionaire within 30 (thirty) days of a demand being made by the Concessionaire to the Authority with the necessary particulars, and in the event of any delay, the Authority shall be liable in terms of Rule 22 of the Offshore Wind Energy Lease Rules, 2023; provided that such delay shall not exceed 90 (ninety) days. For the avoidance of doubt, it is expressly agreed that Termination Payment shall constitute full discharge by the Concessioneing authority of its payment obligations in respect thereof hereunder.
- 27.6.3 The Concessionaire expressly agrees that Termination Payment under this Article 27 shall constitute a full and final settlement of all claims of the Concessionaire on account of Termination of this Agreement for any reason whatsoever and that the Concessionaire or any shareholder thereof shall not have any further right or claim under any law, treaty, convention, contract or otherwise.

27.7 Other rights and obligations of the Concessioneing authority

- 27.7.1 Upon Termination of this Agreement on account of Concessionaire Event of Default, the Concessioneing authority shall succeed upon election by the Concessioneing authority, without the necessity of any further action by the Concessionaire, to the interests of the Concessionaire under such of the Project Agreements as the Concessioneing authority may in its discretion deem appropriate, and shall upon such election be liable to the Contractor only for compensation accruing and becoming due and payable to them under the terms of their respective Project Agreements from and after the date the Concessioneing authority elects to succeed to the interests of the Concessionaire. For the avoidance of doubt, the Concessionaire acknowledges and agrees that all sums claimed by such Contractor as being due and owing for works and services performed or accruing on account of any act, omission or event prior to such date shall constitute debt between the Concessionaire and such Contractor, and the Concessioneing authority shall not in any manner be liable for such sums. It is further agreed that in the event the Concessioneing authority elects to cure any outstanding defaults under such Project Agreements, the amount expended by the Concessioneing authority for this purpose shall be recovered

from the Concessionaire or deducted from the Termination Payment, as the case may be.

27.7.2 Notwithstanding anything contained in this Agreement, the Concessions authority shall not, as a consequence of Termination or otherwise, have any obligation whatsoever including obligations as to compensation for loss of employment, continuance or regularization of employment, absorption or re-employment on any ground, in relation to any person in the employment of or engaged by Concessionaire in connection with the Project, and the handover of the Project Facilities by Concessionaire to the Concessions authority shall be free from any such obligation.

27.7.3 Since the Seabed Lease Deed is co-terminus with this Agreement, upon Termination of this Agreement, either Party reserves the right to enter into a fresh Seabed Lease Deed by the Concessionaire as defined in the said Deed, through appropriate mechanism as outlined by the Concessionaire.

27.8 Survival of rights

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

**ARTICLE 28:
ASSIGNMENT AND CHARGES**

28.1 Restrictions on assignment and charges

- 28.1.1 Subject to Clauses 28.2 and 28.3, this Agreement shall not be assigned by the Concessionaire to any person, save and except with the prior consent in writing of the Concessioneing authority, which consent the Concessioneing authority shall not be entitled to decline without assigning any reason.
- 28.1.2. Encumbrance, or otherwise transfer or dispose of all or any of its rights and benefits under this Agreement or any Project Agreement to which the Concessionaire is a party except with prior consent in writing of the Concessioneing authority, which consent the Concessioneing authority shall not be entitled to decline without assigning any reason.

28.2 Permitted assignment and charges

The restraints set forth in Clause 28.1 shall not apply to:

- (i) liens arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the Project;
- (ii) mortgages/ pledges/ hypothecation of goods/ assets other than Seabed and their related Documents of title, arising or created in the ordinary course of business of the Project, and as security only for indebtedness the Senior Lenders under the Financing Agreements and/or for working capital arrangements for the Project;
- (iii) assignment of rights, interest and obligations of the Concessionaire to or in favour of the Lenders' Representative as nominee and for the benefit of the Senior Lenders, to the extent covered by and in accordance with the Substitution Agreement as security for financing provided by Senior Lenders under the Financing Agreements; and
- (iv) Encumbrances required by any Applicable Law.

28.3 Substitution Agreement

- 28.3.1 The Lenders' Representative, on behalf of Senior Lenders, may exercise the right to substitute the Concessionaire pursuant to the agreement for substitution of the Concessionaire (the "**Substitution Agreement**") to be entered into amongst the Concessionaire, the Concessioneing authority and the Lenders' Representative, on behalf of Senior Lenders, substantially in the form set forth in **Schedule 3**.
- 28.3.2 Upon substitution of the Concessionaire under and in accordance with the Substitution Agreement, the nominated company substituting the Concessionaire shall be deemed to be the Concessionaire under this Agreement and shall enjoy all rights and be responsible for all obligations of the Concessionaire under this Agreement as if it were the Concessionaire.

28.4 Assignment by the Concessioneing authority

Notwithstanding anything to the contrary contained in this Agreement, the Concessioneing authority may, after giving 15 (fifteen) days' notice to the Concessionaire, assign and/ or transfer any of its rights and benefits and/or obligations under this Agreement to an assignee who is, in the reasonable opinion of the Concessioneing authority, capable of fulfilling all of the Concessioneing authority's then

outstanding obligations under this Agreement.

**ARTICLE 29:
CHANGE IN LAW**

29.1 Increase in Cost

- 29.1.1 If as a result of Change in Law, the Concessionaire is obliged to incur additional capital expenditure and/or the additional operating costs or both, as the case may be, for operation, management and/ or implementation of the Project in excess of Rs. [*insert amount*] (Rupees [*insert amount*]) the Concessionaire may so notify the Concessions authority and upon notice by the Concessionaire, the Parties shall meet, as soon as reasonably practicable but no later than 30 (thirty) days from the date of notice and mutually agree on an arrangement that would restore the Concessionaire to the same economic position as if such Change in Law has not occurred. In case the Parties do not mutually agree on an arrangement, a committee of 3 (three) members will be found (1 (one) member from the Concessions authority, 1 (one) member from Concessionaire, and 1 (one) member to be mutually agreed by the Parties) and the decision of this committee on this matter shall be final and binding on both the Parties.
- 29.1.2 For the avoidance of doubt, it is agreed that this Clause 29.1.1 shall be restricted to Changes in Law directly affecting the Concessionaire's costs of performing its obligations under this Agreement.

ARTICLE 30
CHANGE OF SCOPE

30.1 Change of Scope

30.1.1 The Concessing Authority may, notwithstanding anything to the contrary contained in this Agreement but subject to Clause 30.4.1, require the Concessionaire to make alterations/modifications in the Scope of the Project (the "Change of Scope"). Any such Change of Scope shall be made in accordance with the provisions of this Article 30 and the costs thereof shall be expended by the Concessionaire and reimbursed to it by the Concessing Authority in accordance with Clause 30.3.

30.1.2 Change of Scope shall mean:

- (a) any change in the Standards and Specifications; and/or
- (b) omission of any work from the Scope of the Project as defined in Article 2 of this Agreement; provided that the Concessing Authority shall not omit any work under this Clause in order to get it executed by any other person; and / or
- (c) any additional works or services which are not included in the Scope of the Project as defined in Article 2 of this Agreement, including any associated Tests as per this Agreement.

30.1.3 Any works or services done pursuant to Change of Scope of the Project in accordance with this Article 30 shall form part of the Project and the provisions of this Agreement shall apply mutatis mutandis to such works or services.

30.2 Procedure for Change of Scope

30.2.1 In the event of the Concessing Authority determining that a Change of Scope is necessary, it shall issue to the Concessionaire a notice specifying in reasonable detail the works and services contemplated thereunder.

30.2.2 If the Concessionaire determines at any time that a Change of Scope is necessary, it shall by notice in writing require the Concessing Authority to consider such Change of Scope (the "Change of Scope Request"). The Concessing Authority shall, within 60 (sixty) days of receipt of such notice, either accept such Change of Scope with modifications, if any, and initiate proceedings therefor in accordance with this Article 30 or inform the Concessionaire in writing of its reasons for not accepting such Change of Scope Request.

30.2.3 The notice issued by the Concessing Authority under Clause 30.2.1 or the acceptance by the Concessing Authority under Clause 30.2.2, as the case may be, shall be considered as the notice of change of Scope (the "Change of Scope Notice").

30.2.4 Upon receipt of a Change of Scope Notice, the Concessionaire shall, with due diligence, provide to the Concessing Authority such information as is necessary, together with detailed documentation in support of the impact, if any, which the Change of Scope is likely to have on the Project and the cost and time thereof provided that the cost incurred by the Concessionaire in providing such information shall be reimbursed by the Concessing Authority to the extent such cost is certified by the Independent Engineer as reasonable.

30.2.5 Upon receipt of information set forth in Clause 30.2.4, if the Concessing Authority decides to proceed with the Change of Scope, it shall convey its preferred option to the Concessionaire, and the

Parties shall, with assistance of the Independent Engineer, thereupon make good faith efforts to agree upon the time and costs for implementation thereof. Upon reaching an agreement, the Concessioneing Authority shall issue an order (the "Change of Scope Order") requiring the Concessionaire to proceed with the performance thereof.

- 30.2.6 The Concessioneing Authority shall, on receipt of a Change of Scope Request from the Concessionaire, within 30 (thirty) days of receipt of such proposal require the Concessionaire to provide all such information within (.....) days as would be required by the Concessioneing Authority to finalize its decision with regard to the approval or rejection to the Change of Scope Request and upon consideration of the same, either accept such Change of Scope Request with modifications, if any, as deemed necessary by the Concessioneing Authority (the "Change of Scope Acceptance") or reject the Change of Scope Request and inform the Concessionaire of its decision. It is also agreed between the Parties that the Concessioneing Authority shall not be liable, in any manner whatsoever, on account of grant or rejection of such Change of Scope Request.
- 30.2.7 It is agreed by and between the Parties that in the event the Change of Scope Order entails construction on any part of the Project, the Concessionaire, with the approval of the Concessioneing Authority, or the Concessioneing Authority as the case may be, can get such work undertaken through a sub-contractor; provided however that the said subcontractor has the requisite experience in executing such works and the Concessionaire has obtained the approval of the Concessioneing Authority for engagement of such sub-contractor.

30.3 Power of the Authority to undertake works

- 30.3.1 Notwithstanding anything to the contrary contained in Clauses 30.1, 30.2 and 30.3 but subject to the conditions provided in Clause 30.4, the Concessioneing Authority may award any works or services, contemplated under Clause 30.1.1, to any person on the basis of open competitive bidding and the Concessionaire shall be entitled to take part in such competitive bidding. It is also agreed that the Concessionaire shall provide access, assistance and cooperation to the person who undertakes the works or services hereunder as per good industry practice.
- 30.3.2 The Concessionaire shall have the option of matching the first ranked bid in terms of the selection criteria either by itself or through another company where such work requires construction on any part of the Project securing the award of such works or services. For the avoidance of doubt, it is agreed that the Concessionaire shall be entitled to exercise such option only if the Selected Bidder or the Concessionaire, as the case may be, has participated in the bidding process either individually or as a consortium or JV with another company and fulfils the eligibility criteria to undertake such work without compromising with its overall liability.
- 30.3.3 For the avoidance of doubt, the Parties agree that no Change of Scope shall be executed unless the Concessioneing Authority has issued the Change of Scope Order or a Change of Scope Acceptance, as the case may be, save and except any works necessary for meeting any Emergency.
- 30.3.4 The works undertaken in accordance with this Clause 30.3 shall be carried out in a manner that minimizes the disruption in operation of the Project.

**ARTICLE 31:
LIABILITY AND INDEMNITY**

31.1 General indemnity

- 31.1.1 The Concessionaire will indemnify, defend, save and hold harmless the Concessioneing authority and its officers, servants, agents and Government Instrumentalities (the “**Concessioneing authority Indemnified Persons**”) against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature, whether arising out of any breach by the Concessionaire of any of its obligations under this Agreement or any related agreement or from any negligence of the Concessionaire under contract or tort or on any other ground whatsoever, except to the extent that any such suits, proceedings, actions, demands and claims have arisen due to any negligent act or omission, or breach or default of this Agreement on the part of the Concessioneing authority Indemnified Persons.
- 31.1.2 For the purpose of this indemnification, claims shall mean and include all obligations, penalties/compensation paid, actual damages and direct costs reasonably incurred in the defense of any claim, including, reasonable accountants’, attorneys’ and expert witness’ fees, costs of investigation and proof of facts, court costs, other litigation expenses and travel and living expenses. The Concessioneing authority shall have the right to defend any such claim against it.
- 31.1.3 In no event shall the Concessionaire indemnify the Concessioneing authority, whether in contract, tort (including negligence) or otherwise, for any exemplary, indirect, incidental, special, remote, punitive, or consequential damages (including loss of use, loss of data, cost of cover, business interruption, or loss of profits arising out of or pertaining to this Agreement).
- 31.1.4 The Concessioneing authority will indemnify, defend, save and hold harmless the Concessionaire against any and all suits, proceedings, actions, demands’ and claims from third parties for any loss, damage, cost and expense of whatever kind and nature arising out of breach by the Concessioneing authority of any of its obligations under this Agreement or any related agreement, which materially and adversely affect the performance by the Concessionaire of its obligations under this Agreement, save and except that where any such claim, suit, proceeding, action, and/or demand has arisen due to a negligent act or omission, or breach of any of its obligations under any provision of this Agreement or any related agreement and/or breach of its statutory duty on the part of the Concessionaire, its subsidiaries, affiliates, contractors, servants or agents, the same shall be the liability of the Concessionaire.

31.2 Indemnity by the Concessionaire

- 31.2.1 Without limiting the generality of Clause 31.1, the Concessionaire shall fully indemnify, hold harmless and defend the Concessioneing authority and the Concessioneing authority Indemnified Persons from and against any and all loss and/or damages arising out of or with respect to:
- (i) failure of the Concessionaire to comply with Applicable Laws and Applicable Permits;
 - (ii) payment of Taxes required to be made by the Concessionaire in respect of the income or other taxes of the Concessionaire’s contractors, suppliers and representatives; or
 - (iii) non-payment of amounts due as a result of materials or services furnished to the Concessionaire or any of its Contractor which are payable by the Concessionaire or any of its Contractors.

31.2.2 Without limiting the generality of the provisions of this Article 31, the Concessionaire shall fully indemnify, hold harmless and defend the Concessioning authority Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which the Concessioning authority Indemnified Persons may hereafter suffer, or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other intellectual Property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the Concessionaire or by the Concessionaire's Contractor in performing the Concessionaire's obligations or in any way incorporated in or related to the Project. If in any such suit, action, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the Concessionaire shall make every reasonable effort, by giving a satisfactory bond or of otherwise to secure the revocation or suspension of the injunction or restraint order if, in any such suit, action, claim or proceedings, the Project, or any part thereof or comprised therein, is held to constitute an infringement and its use is permanently enjoined, the Concessionaire shall promptly make every reasonable effort to secure for the Concessioning authority a licence, at no cost to the Concessioning authority, authorising continued use of the infringing work. If the Concessionaire is unable to secure such licence within a reasonable time, the Concessionaire shall, at its own expense, and without impairing the Standards and Specifications, either replace the affected work, or part, or process thereof with non-infringing work or part or process or modify the same so that it becomes non-infringing.

31.3 Notice and contest of claims

In the event that either Party receives a claim or demand from a third party in respect of which it is entitled to the benefit of an indemnity under this Article 31 (the "**Indemnified Party**") it shall notify the other Party (the "**Indemnifying Party**") within 15 (fifteen) days of receipt of the claim or demand and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim or demand, it may conduct the proceedings in the name of the Indemnified Party, subject to the Indemnified Party being secured against any costs involved, to its reasonable satisfaction.

31.4 Defence of claims

31.4.1 The Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to indemnified hereunder, and reasonable costs and expenses thereof shall be indemnified by the Indemnifying Party. If the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party in respect of loss to the full extent provided by this Article 31, the Indemnifying Party shall be entitled, at its option, to assume and control the defence of such claim, action, suit or proceeding, liabilities, payments and obligations at its expense and through the counsel of its choice; provided it gives prompt notice of its intention to do so to the Indemnified Party and reimburses the Indemnified Party for the reasonable cost and expenses incurred by the Indemnified Party prior to the assumption by the Indemnifying Party of such defence. The Indemnifying Party shall not be entitled to settle or compromise any claim, demand action, suit or proceeding without the prior written consent of the Indemnified Party, unless the Indemnifying Party provides such security to the Indemnified Party as shall be reasonably required by the Indemnified Party to secure the loss to be indemnified hereunder to the extent so compromised or settled.

31.4.2 If the Indemnifying Party has exercised its rights under Clause 31.3, the Indemnified Party shall not be entitled to settle or compromise any claim, action, suit or proceeding without the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

31.4.3 If the Indemnifying Party exercises its rights under Clause 31.3, the Indemnified Party shall nevertheless have the right to employ its own counsel, and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party, when and as incurred, unless:

- (i) the employment of counsel by such Party has been authorised in writing by the Indemnifying Party; or
- (ii) the Indemnified Party shall have reasonably concluded that there may be a conflict of interest between the Indemnifying Party and the Indemnified Party in the conduct of the defence of such action; or
- (iii) the Indemnifying Party shall not in fact, have employed independent counsel reasonably satisfactory to the Indemnified Party, to assume the defence of such action and shall have been so notified by the Indemnified Party; or
- (iv) the Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party either:
 - (a) that there may be specific defences available to it which are different from or additional to those available to the Indemnifying Party; or
 - (b) that such claim, action, suit or proceeding involves or could have a Material Adverse Effect upon it beyond the scope of this Agreement:

Provided that if Sub-clauses (ii), (iii) or (iv) of this Clause 31.4.3 shall be applicable, the counsel for the Indemnified Party shall have the right to direct the defence of such claim, demand, action, suit or proceeding on behalf of the Indemnified Party, and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder.

31.5 No consequential claims

31.5.1 Notwithstanding anything to the contrary contained in this Article 31, the indemnities herein provided shall not include any claim or recovery in respect of any cost, expense, loss or damage of an indirect, incidental or consequential nature, including loss of profit, except as expressly provided in this Agreement.

31.5.2 The aggregate liability of either Party, under or in connection with the Agreement other than those provided under Clause 27.6 of this Agreement, shall not exceed the total Security Deposit/PBG submitted under PPA.

31.6 No Waiver

No failure or delay by the Concessioneing authority in exercising or enforcing any right, remedy or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise or enforcement of any right, remedy or power preclude any further exercise or enforcement thereof or the exercise or enforcement of any other right, remedy or power.

31.7 Survival on Termination

The provisions of this Article 31 shall survive Termination.

**ARTICLE 32:
UNFORESEEN EVENTS**

32.1 Relief for Unforeseen Events

32.1.1 Upon occurrence and continuance of an unforeseen event, situation or similar circumstances not contemplated or referred to in this Agreement, and which could not have been foreseen by a prudent and diligent person (“Unforeseen Event”), any Party may by notice inform the other Party of the occurrence of such Unforeseen Event with the particulars thereof and its effects on the costs, expense and revenues of the Project. Within 15 (fifteen) days of such notice, the Parties shall meet and make efforts in good faith to determine if such Unforeseen Event has occurred and is continuing, and upon reaching agreement on occurrence thereof deal with it in accordance with the provisions of this Article 32.

32.1.2 Upon determination of the occurrence and continuation of an Unforeseen Event, the Parties shall make a reference to a conciliation tribunal which shall comprise 1 (one) member each to be nominated by both Parties from among persons who have been Judges of a High Court and the conciliators so nominated shall choose a chairperson who has been a Judge of the Supreme Court or Chief Justice of a High Court.

32.1.3 The conciliation tribunal referred to in this Clause 32.1.2 shall conduct preliminary proceedings to satisfy itself that:

- (i) an Unforeseen Event has occurred;
- (ii) the effects of such Unforeseen Event cannot be mitigated without a remedy or relief which is not contemplated in the Agreement; and
- (iii) the Unforeseen Event or its effects have not been caused by any Party by any act or omission on its part,

and if the conciliation tribunal is satisfied that each of the conditions specified hereinabove is fulfilled, it shall issue an order to this effect and conduct further proceedings under this Clause 32.1.

32.1.4 Upon completion of the conciliation proceedings referred to in this Clause 32.1, the conciliation tribunal may by a reasoned order, make recommendations and setting out the terms of reference, which shall be:

- (a) based on a fair and transparent justification;
- (b) no greater in scope than is necessary for mitigating the effects of the Unforeseen Event;
- (c) of no greater duration than is necessary for mitigating the effects of the Unforeseen Event; and
- (d) quantified and restricted in terms of relief or remedy.

32.1.5 Within 15 (fifteen) days of receiving the order and terms of reference referred to in Clause 32.1.4, the Parties shall meet and make efforts in good faith to accept, in whole or in part, the relief or remedy recommended by the conciliation tribunal for mitigating the effects of the Unforeseen Event and to procure implementation of the Project in accordance with the provisions of this Agreement, by way of entering into a settlement agreement setting forth the agreement reached hereunder. The terms of such

settlement agreement shall have force and effect as if they form part of this Agreement, and would deem to have modified the concerned terms of this Agreement, if any.

**ARTICLE 33:
DISPUTE RESOLUTION**

33.1 Dispute resolution

33.1.1 Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified by either Party shall, in the first instance, be attempted to be resolved amicably, failing which the same shall be resolved in accordance with the Offshore Wind Energy Lease Rules, 2023.

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

33.2 Performance during the dispute

Pending resolution of the dispute, the Parties shall continue to perform their respective obligations under this Agreement without prejudice to the outcome of the dispute.

**ARTICLE 34:
DISCLOSURE**

34.1 Disclosure of specified Documents

The Concessionaire shall make available for inspection by any authorized person of the Concessioneing authority, copies of this Agreement, free of charge, during normal business hours on all working days at the Seabed and at the Concessionaire's registered office.

34.2 Disclosure of Documents relating to safety

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

34.2.2 Notwithstanding the provisions of Clauses 34.1 and 34.2.1, the Concessioneing authority shall be entitled to direct the Concessionaire, from time to time, to withhold the disclosure of Protected Documents (as defined hereinbelow) to any person in pursuance of the aforesaid Clauses.

Explanation:

The expression "**Protected Documents**" shall mean such of the Documents referred to in Clauses 34.1 and 34.2, or portions thereof, the disclosure of which the Concessioneing authority is entitled to withhold under the provisions of the Right to Information Act, 2005.

**ARTICLE 35:
MISCELLANEOUS**

35.1 Dispute Resolution, Governing Law and Jurisdiction

- 35.1.1 Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Seabed lease deed agreement (including its interpretation) between the Parties, and so notified by either Party shall be resolved in accordance with the procedure set forth in the Offshore Wind Energy Lease Rules, 2023.
- 35.1.2 Pending resolution of the dispute, the Parties shall continue to perform their respective obligations under this Seabed lease deed agreement without prejudice to the outcome of the dispute.
- 35.1.3 This Seabed lease deed agreement shall be construed and interpreted in accordance with and governed by the law of India, and the courts at New Delhi, India shall have exclusive jurisdiction over matters arising out of or relating to this Seabed lease deed agreement.

35.2 Waiver of Immunity

Each Party unconditionally and irrevocably:

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

35.3 Depreciation and Interest

- 35.3.1 For the purposes of depreciation under the Applicable Laws, the property representing the capital investment made by the Concessionaire in the Project shall be deemed to be acquired and owned by the Concessionaire. For the avoidance of doubt, the Concessioning authority shall not in any manner be liable in respect of any claims for depreciation to be made by the Concessionaire under the Applicable Laws.
- 35.3.2 Unless otherwise specified, any interest payable under this Agreement shall accrue on a daily outstanding basis and shall be compounded on the basis of quarterly rests.

35.4 Delayed Payments

The Parties hereto agree that payments due from the Concessionaire to the Concessions authority under the provisions of this Seabed lease deed agreement shall be made within the period set forth therein, and if no such period is specified, within 30 (thirty) days of receiving a demand along with the necessary particulars. In the event of delay beyond such period, the Concessionaire shall be liable in terms of Rule 22 of the Offshore Wind Energy Lease Rules, 2023, and recovery thereof shall be without prejudice to the rights of the Concessions authority under this Seabed lease deed agreement including termination thereof.

35.5 Waiver

35.5.1 Waiver, including partial or conditional waiver, by either Party of any default by the other Party in the observance and performance of any provision of or obligations under this Seabed lease deed agreement:

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

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

35.6 Liability for review of Documents and Drawings

Except to the extent expressly provided in this Agreement:

- (i) no review, comment or approval by the Concessions authority of any Project Agreement, Document or Drawing submitted by the Concessionaire nor any observation or inspection of the construction and O&M of the Project nor the failure to review, approve, comment, observe or inspect hereunder shall relieve or absolve the Concessionaire from its obligations, duties and liabilities under this Agreement, the Applicable Laws and Applicable Permits; and
- (ii) the Concessions authority shall not be liable to the Concessionaire by reason of any review, comment, approval, observation or inspection referred to in Sub-clause (i) above.

35.7 Exclusion of implied warranties etc.

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

35.8 Survival

Termination shall:

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

35.9 Entire Agreement

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

35.10 Severability

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

35.11 No partnership

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

35.12 Third parties

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

35.13 Successors and assigns

- 35.13.1 The Concessionaire shall not assign this Seabed lease deed agreement, or any right, title and/ or interest in respect of the lease granted hereunder and/ or in respect of the area within the territorial waters or the continental shelf of India covered by such lease to any person, save and except with the prior consent in writing of the Concessioneing authority, which consent the Concessioneing authority shall be entitled to decline without assigning any reason.

35.13.2 This Seabed lease deed agreement shall be binding upon, and inure to the benefit of the Parties and their respective successors and permitted assigns.

35.14 Notices

35.14.1 Any notice or other communication to be given by any Party to the other Party under or in connection with the matters contemplated by this Seabed lease deed agreement shall be in writing and shall be given by hand delivery, recognized international courier, mail or facsimile transmission and delivered or transmitted to the Parties at their respective addresses set out below:

(a) If to the Concessing authority:

Kind Attention: _____
Address: _____
Telephone No.: _____
Fax: _____
Email: _____

(b) If to Concessionaire:

Kind Attention: _____
Address: _____
Telephone No.: _____
Fax: _____
Email: _____

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

35.14.3 In the case of the Concessing authority, be given by facsimile or e-mail and by letter delivered by hand and be addressed to the [insert designation] of the Concessing authority with a copy delivered to the Concessing authority Representative or such other person as the Concessing authority may from time to time designate by notice to the Concessionaire; provided that if the Concessionaire does not have an office in New Delhi it may send such notice by facsimile or e-mail and by registered acknowledgement due, air mail or by courier.

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

35.15 Language

All notices required to be given by one Party to the other Party and all other communications,

documentation and proceedings which are in any way relevant to this Seabed lease deed agreement shall be in writing and in English language.

35.16 Counterparts

This Seabed lease deed agreement may be executed in 2 (two) counterparts, each of which, when executed and delivered, shall constitute an original of this Seabed lease deed agreement.

IN WITNESS WHEREOF the Parties have executed and delivered this Seabed lease deed agreement as of the date first above written.

For and on behalf of Concessioneing authority by For and on behalf of Concessionaire by

(Signature) _____ (Signature) _____
Name: _____ Name: _____
Designation: _____ Designation: _____

IN PRESENCE OF _____ IN PRESENCE OF _____

(Signature) _____ (Signature) _____
Name: _____ Name: _____
Address: _____ Address: _____

SCHEDULE- 1 CONSTRUCTION REQUIREMENTS

DEFINITIONS AND INTERPRETATION

1.1 Terms and Definitions

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

1.1.1 Certification

Procedure by which an accredited Certification body gives written assurance that a product, process, or service conforms to specified requirements, also known as conformity assessment.

1.1.2 Certification body

Accredited body that conducts certification of conformity for wind turbines. Certification Body (CB) shall be NIWE, or any CB accredited by NABCB as per ISO/IEC 17065 or recognized as RECB under IECRE.

1.1.3 Commissioning

Process that encompasses functional safety checks, connecting the wind turbine to the grid and putting it into commercial operation.

1.1.4 Inspection

Systematic examination of the extent to which a product, process or service fulfils specified requirements by means of measuring, observing, testing, or gauging the relevant characteristics.

1.1.5 Installation

Process that encompasses site fabrication, assembly, and erection

1.1.6 Project Certification

Project Certification is procedure by which a certification body gives written assurance that one or more specific wind turbines including support structure and possibly other installations are in conformity with requirements for a specific site. The project certification includes Pre-commissioning, Installation & Commissioning and Post commissioning evaluation of the project.

1.1.7 Project certificate

Document issued upon successful completion of project certification.

1.1.8 Type Certification

Type Certification of wind turbines confirms that the wind turbine is designed, documented, and manufactured in conformity with design assumption, specific standards and other technical requirements.

1.1.9 Type certificate

Document issued upon the successful completion of type certification.

1.2 Symbols and abbreviations

1.2.1 Symbols

The relevant symbols contained in IS/IEC are applicable.

1.2.2 Abbreviations

The following abbreviations are used in Schedule.

Short form	In Full
BIS / IS	Bureau of Indian Standards / Indian Standards

CB	Certification Body
IEC	International Electro technical commission
IECRE	International Electro technical commission for Renewable Energy
MNRE	Ministry of New and Renewable Energy
NIWE	National Institute of Wind Energy
WT	Wind Turbine
IEGC	The Indian Electricity Grid Code
REMC	Renewable Energy Management Center
SLDC/RLDC	State / Regional Load Dispatch Centre

1.3 Interpretation

All IS/IEC/IECRE, and other standards specified are to be complied (all but not limited to) with as amended and revised. CONCESSIONAIRE must ensure that all the requirements specified conform to the best industry standards and good practices.

Nothing in this schedule shall release the CONCESSIONAIRE from its obligation to always comply with the Laws of the Country.

Construction requirements

An OWT installation is an activity during which multiple parts of a wind turbine are assembled, erected, and finally connected to the grid. The CONCESSIONAIRE must undertake planning, installation, erection, commissioning, operation, and maintenance of an offshore wind turbine.

The following list of requirements are to be met during Offshore Wind Turbine construction.

2.2 Permits and Regulatory approvals:

CONCESSIONAIRE must ensure approval from various regulatory agencies authorized by the Central and State Governments, in the form of Licenses, Permits, or Authorizations, are acquired for the establishment and operation of the Offshore Wind Farm. CONCESSIONAIRE must comply with all requisites from the regulatory bodies for the approval process and provide relevant documentation wherein necessary.

In addition, CONCESSIONAIRE must ensure other key permits and licenses that may be applicable to the Project are acquired such as

- Permits and approvals for all aspects of transportation vessels.
- Helicopter operations relevant to the structural safety of landing platforms
- Marking complies with relevant national / international regulations and codes.

CONCESSIONAIRE must make sure that all relevant permits and other regulatory approvals are completed before the concession agreement is signed.

2.3 Environmental Impact assessments and management

In addition to Site preparation and feasibility studies, environmental assessments, environmental management plan are to be completed by CONCESSIONAIRE in the stipulated period and included in the Detail Project Report (DPR). The Concessionaire shall develop and maintain an environmental impact monitoring program for the Offshore Wind Farm pursuant to requirements set out in the relevant approvals, licenses, and permits, pursuant to relevant legislation. CONCESSIONAIRE must comply towards key environmental and social laws and regulations that would be applicable to implementation of the construction of Offshore farm.

2.4 Reference Standards

CONCESSIONAIRE must ensure that all the requirements of OWT (Offshore Wind Turbines) conform to the best industry standards suitable to site specific conditions (all but not limited to) as amended and revised. CONCESSIONAIRE can also refer to equivalent international standards as applicable.

IS/IEC, ISO, IECRE Standards

- IS/IEC 61400-1 Design requirements for structural integrity of wind turbines.
- IEC 61400-3-1 Fixed offshore wind turbines.
- IEC 61400-3-2 Floating offshore wind turbines.
- IS/IEC 61400-22 Conformity testing and certification.
- IS/IEC 61400-25 (Series) Communications for monitoring and control of wind power plants
- IEC TS 61400-29 Marking and lighting of wind turbines
- IEC TS 61400-30 Safety of Wind Turbine Generator Systems
- IECRE OD-502 (Project Certification Scheme)
- IECRE OD-501 (Type and Component Certification Scheme)
- IEC 61000-6 (Series) Electromagnetic compatibility (EMC)
- ISO 29400 Ships and marine technology — Offshore wind energy — Port and marine operations

2.5 Project Certification requirements

The CONCESSIONAIRE should obtain project certification for the offshore wind farm as per IECRE – OD-502 or IS/IEC 61400-22 by an Internationally Accredited Certification Body. This should include all optional modules mentioned in the Standard/Operating Document.

Project Certification should be maintained throughout the lifetime of the wind farm. CONCESSIONAIRE shall submit the project certificate, evaluation reports and conformity statements to the Concessions authority.

2.6 Grid connectivity requirements

CONCESSIONAIRE shall enter into Grid Connection Agreement with Central Transmission Utility for evacuation of Power from the Offshore Wind Farm. The CONCESSIONAIRE is responsible for evacuation of power from the offshore wind farm to the offshore substation. The Central Transmission Utility (or CTU), through its identified Transmission Licensee, shall be responsible for developing the offshore pooling substation and the evacuation infrastructure from offshore substation to the onshore pooling substation, including the export cables.

CONCESSIONAIRE must ensure that the Offshore Project fulfills the requirements of Technical standards for connectivity to the grid issued by CEA (Central Electricity Authority) and Technical requirements stipulated by CTU, SLDC/RLDC, IEGC, REMC.

2.7 Management of SCADA Systems

CONCESSIONAIRE must ensure that the SCADA system installed on Offshore WTs, records parameters that may show signs of operational issues in WT. All SCADA data from the offshore Wind farm shall be shared with CONCESSION Authority. The CONCESSIONAIRE shall provide on recurrent basis, monthly performance report (including Operating and Maintenance) on Offshore WTs to the Concessions authority throughout the operation of the Offshore Wind farm. Furthermore, CONCESSIONAIRE shall share the requisite details such for the online registry of Wind Turbines, managed by Concessions authority. In addition, any Met-Ocean measurements carried out during the operation of the Offshore Wind Farm shall be shared with Concessions authority.

CONCESSIONAIRE must adhere to the terms and conditions from Ministry of Defense to WTG Operators, towards providing SCADA based remote control system at nearest Air Force Station.

2.8 Interference with other signals

CONCESSIONAIRE must ensure all signals for telecommunication and data transmission are not affected due to the construction and operation of the windfarm. Furthermore, CONCESSIONAIRE must also assess potential impacts any signal interference caused by the presence of wind turbines and possible mitigation measures if necessary.

2.9 Logistics and execution

CONCESSIONAIRE must exercise caution while planning logistics and commissioning of the offshore wind turbine under unusual conditions, such as hail, lightning, high winds, earthquake, high waves, extreme tidal conditions, etc.

CONCESSIONAIRE should hire trained personnel for offshore wind turbines installation. The personnel should be instructed as per the installation manual clearly describing installation requirements for the wind turbine structure and equipment.

Detailed engineering installation should be carried out by CONCESSIONAIRE. CONCESSIONAIRE should follow ISO 29400 as guidance for the planning and engineering of port and marine operations associated with the transport, installation, and maintenance of offshore wind turbines.

CONCESSIONAIRE must ensure that all logistical planning and execution are conformed to project timelines as specified in Detailed Project Report (DPR) before construction.

2.10 Recycling of offshore wind turbines

The Concessionaire shall commit to a recycling program in Detailed Project Report (DPR) for the Offshore Wind Farm project. The Concessionaire shall follow all applicable recycling guidelines/standards/regulations in vogue at the time of the decommissioning.

2.11 Data Sharing

CONCESSIONAIRE shall not share data with any third party except in relation to executing the offshore wind energy project. Prior permission shall be taken from the Integrated Head Quarter (IHQ Navy) before sharing of any data; CONCESSIONAIRE must comply with Department of Science and Technology's (DST) Geo Spatial guidelines data sharing guidelines in vogue. CONCESSIONAIRE shall share real-time surveillance information with the Coast Guard, Navy, and other agencies, identified by the Central Government.

2.12 Cyber Security

CONCESSIONAIRE shall comply with Cyber Security guidelines/directives/regulations issued by Ministry of Power / relevant authority the from time to time, and the technical standards for communication system in Power Sector laid down by the relevant authority.

2.13 Insurance

The CONCESSIONAIRE should ensure the offshore wind project is insured. All project insurances are appropriately arranged and administered to protect all parties best interest and to meet risk profiling including (but not limited to) Construction All Risk (CAR), Third Party Public Liability (TPL), Professional indemnity (PI) and Difference In Conditions (DIC) policies where appropriate.

Subcontractors, major suppliers, and consultants should hold appropriate insurance cover, in relation to all project insurance matter, including vehicles for transport, plant and contractor's equipment, off-site third-party liability and workers compensation.

2.14 Safety of workforce

For installation, CONCESSIONAIRE must facilitate personal protective equipment for installation personnel wherein necessary. This may include all necessary gear but not limited to personal protective equipment such

as eye, foot, hearing, and head protection. All personnel climbing towers, or working above ground or at a water level, should be trained in such work and should use approved safety belts and safety climbing aids. Other safety devices include survival suits and buoyancy aids. All equipment shall be kept in good repair and be suitable for the task for which it is intended. Cranes, hoists and lifting equipment, including all slings, hooks, and other apparatus, shall be adequate for safe lifting and approved.

SCHEDULE- 2 SAFETY REQUIREMENTS

1 Health and Safety

Offshore wind farm construction and operations may pose significant health and safety risks for (contractor) the working personnel and should always be handled with great care to create a safe working environment. The CONCESSIONAIRE should understand all offshore wind health and safety risks, national and international guidelines to mitigate such risks and follow Good Industry practices and procedures for a typical offshore wind farm project.

The offshore wind turbine facility site shall be prepared, maintained, operated, and managed by the CONCESSIONAIRE so that work can be performed safely and efficiently. This should include procedures to prevent unauthorized access where appropriate.

2 Health and Safety guidelines

Health and safety guidelines help employers to mitigate risks. The CONCESSIONAIRE must abide by all the regulations put forward by The Occupational Safety, Health and Working conditions code, 2020 ('OSHW') Code of India which regulates the occupational safety, health and working conditions of the persons employed in an establishment.

- Duties of CONCESSIONAIRE inter alia include ensuring that the workplace is free from hazards, comply with occupational safety and health standards, providing annual health examination or tests, issuing a letter salient feature of appointment to every employee, compulsory reporting of diseases and accidents etc.
- Designers, manufacturers, importers, and suppliers of any article used in an establishment are duty bound to ensure such article is safe and does not probe any risk to health of workers.
- The CONCESSIONAIRE is responsible for maintaining health, safety and working conditions such as hygiene, cleanliness, ventilation, humidification and providing arrangements for treatment of wastes and effluents in the establishment.

Other notable Indian safety regulations as amended and revised to comply include,

- National policy on Health, Safety and Environment at Workplace
- Dock workers (Safety, Health, and Welfare) Act 1986 and Regulations, 1990
- The building and other construction workers (Regulations of Employment and Condition of Service) Act, 1996
- The Petroleum and Natural Gas (Safety in Onshore Operations) Rules, 2009
- The Petroleum and Natural Gas (Code of Practice for Emergency Response and Disaster Management Plan) Regulations, 2010
- The Environment (Protection) Act, 1986 (amended 1991) and The Environment (Protection) Rules, 1986 (amended 2010)

CONCESSIONAIRE can also seek international guidelines from agencies such as European Agency for Occupational Safety and Health at Work (EU-OSHA), Global Offshore Wind Health and Safety Organization (G+) and World Bank in matters of Health and Safety.

Furthermore, CONCESSIONAIRE is required to follow all accepted common health and safety guidelines

followed nationally and internationally. The following section provides a brief description of the most common health and safety guideline categories:

- **Investigation and reporting in a case of an incidents** - CONCESSIONAIRE must set or follow the procedures and formal requirements in a case of an incident. This includes recommendations on interviewing the inspection personnel at the site and filing and managing the collected information.
- **Marine roles for small workboats**- CONCESSIONAIRE must set or follow the guidelines for the staff of the offshore wind industry operating on small workboats (special requirements and areas of competence of the operation), with regards to local requirements.
- **Safe lifting** - CONCESSIONAIRE must set or follow the guidelines for lifting jobs in the marine environment. Good industry practice for offshore operations lays out rules for equipment, maintenance, and safe operation.
- **Toolbox talks** - is a guideline that gives recommendations for the phase right before the actual job at the offshore wind park. CONCESSIONAIRE must ensure that Toolbox talks take place regularly or at shift change and should follow the four basic requirements of timing, attendance, observation, and knowledge.
- **Working at height**, CONCESSIONAIRE must set or follow guidelines developed for the offshore oil and gas industry to reduce the number of work at height accidents.
- **Risk assessment**, CONCESSIONAIRE must set or follow recommendations for the continuous mitigation and controlling of risks in the offshore work environment. The Risk assessment must be written document and should include learnings from toolbox talk and cover all areas within the offshore operation.

3 Health and Safety Risks

A hazard is a situation or an activity with the potential to harm people, environment, or property.

The CONCESSIONAIRE must allow for a systematic assessment and handling; all dangerous tasks must be associated with the potential hazards that might occur during the project work. The CONCESSIONAIRE should identify and mitigate existing and all potential hazards.

Table 1: Hazards and dangerous activities in offshore wind projects

Hazards	Activities & Operations
Access and egress	Aviation
Confined spaces	Cable laying and entry
Electricity	Lifting
Ergonomics	Marine co-ordination
Fire	Navigation
Geological unknowns	Piling and grouting
Hazardous substances	Ports and mobilization
Weather and sea-conditions	Remote working
Noise	Subsea operations
Unexploded ordnance	Vessel operations
Vibration	Waste and spillage management
Height	

The CONCESSIONAIRE must assess all the risks associated with Offshore wind farm construction and operations based on occurrence and severity of the risk. A complete risk assessment including all possible events and steps must be completed. All tasks must be categorized into risk categories – Low, Medium, and High. CONCESSIONAIRE must mitigate high risk into an implementation of alternate method Low or Medium risk if in case possible. CONCESSIONAIRE must identify all hazards and formulate an action plan on dealing with them. A sample Task Risk Assessment Template is given in below Table.

Table 2: Example Task Risk Assessment

		PROBABILITY OF OCCURRENCE				
		A	B	C	D	E
S E V E R I T Y	1	LOW	LOW	LOW	LOW	MED
	2	LOW	LOW	LOW	MED	HIGH
	3	LOW	LOW	MED	HIGH	HIGH
	4	LOW	MED	HIGH	HIGH	HIGH
	5	MED	HIGH	HIGH	HIGH	HIGH

PROBABILITY OF OCCURRENCE	SEVERITY	RISK
A May never occur	1 Negligible	Low = No immediate action required, proceed with care
B May occur	2 Moderate	
C Might occur	3 Serious	Medium = Review & implement preventative measures
D May occur infrequently	4 Major	
E Will probably occur	5 Catastrophic	High = Unacceptable. Find alternative method.

SEVERITY	HUMAN	ENVIRONMENT	MATERIALS EQUIPMENT
NEGLIGIBLE	No or minor injury.	No or insignificant clean up naturally and dispersed	No or insignificant damage to equipment or materials
MODERATE	One lost time accident, with no loss of part of the body, or prolonged disability	Clean up requires less than 1 day	Damage to equipment or materials with lost time of 1 day production
SERIOUS	Multiple lost time accidents. One injury with loss of part of body, or with permanent disability	Clean up requires approx. 1 week	Significant damage to local area or essential equipment
MAJOR	One fatal injury. Several victims with loss of part of the body, or with permanent disability	Clean up requires approx. 1 month	Significant damage to local area or essential equipment which stops the work until a later date
CATASTROPHIC	Several fatal injuries	Clean up requires more than 1 month	Extensive damage to local area or essential equipment which stops the work totally

Table 3: Task Risk Assessment Table

ACTIVITY	HAZARD	CONSEQUENCE	INITIAL RISK	RISK CONTROL MEASURE	RESIDUAL RISK

4 Health and Safety Standards

CONCESSIONAIRE required to follow all accepted common health and safety standards, nationally and internationally. OISD (Oil Industry Safety Directorate) is a technical directorate under the Ministry of Petroleum and Natural Gas that formulates and coordinates the implementation of a series of self-regulatory measures aimed at enhancing the safety measures in Offshore in India. Following are the OISD standards that may apply to Offshore Wind - Health and Safety areas.

Table 4: Health and Safety Standards in offshore projects

Offshore wind – Health and Safety areas	OISD standards
Safety Management System	OISD-GDN-206 Guidelines on Safety Management System in Petroleum Industry.
Permit to Work	OISD-STD-105: Work Permit System
Hazardous chemicals	OISD-STD-114: Hazardous chemicals and their handling.
Personal Protective Equipment (PPE)	OISD-STD-155: PPE
Excess and Egress	OISD-GDN-192: Safety Practices during construction
Working at heights	
Confined spaces	
Handling and Lift equipment	
Helicopter transportation	
Work above water	
Job Safety Analysis (JSA)	
Incident Reporting and Investigation System	OISD-STD-145: Internal Safety Audits
Safety equipment and PPEs	OISD-STD-155
Static Electricity / electrical systems	OISD-RP-110: Recommended practice on static electricity OISD-RP-149: Design aspects for safety in electrical systems
Risk assessment, Hazards and Control system	OISD-GDN-232: Identification of hazards and control measures in E&P (exploration and production) industry.
Drilling and workover Rigs	OISD-GDN-218: Guidelines for safe rig-up and rig –down of drilling and work-over rigs. OISD-STD-190: Derrick floor operations (Onshore drilling / workover rigs)
Emergency Response and preparedness	OISD-GDN-227: Emergency Response and Preparedness in E&P industry.

5 Health and Safety Procedures

CONCESSIONAIRE should always implement a Health and Safety policy (or management system), including concrete working procedures to mitigate high risk activities in the field. Health and safety procedures are often the compilation of generic health and safety guidelines into concrete procedures on

project level.

CONCESSIONAIRE appoint a professional Health and Safety manager or coordinator to set-up a project specific Health and Safety policy or management system, including project specific procedures.

Those procedures involve training and certification of employees and the establishment of standard operating procedures for the mitigation of identified risks. Factors of success in the evolution and implementation of health and safety procedures are transparency, communication, the involvement of workers and continuous efforts towards improvement. Table 5 below reports the typical high-risk activities in offshore wind projects that require clear working procedures.

Table 5: Typical high-risk activities in offshore wind projects that require clear working procedures.

High risk activities
Working at height and rope access
Working in confined spaces
Working with electricity (low voltage and high voltage)
Hot work (welding, flame cutting, grinding etc.)
Heavy lifting (>500 KG) and odd size lifting onshore and offshore
People transfer at sea (vessel-to-vessel and vessel-to-structure)
Helicopter transfers and personnel winching operations
Jack up / DP (dynamic position) operations
Diving activities
Working during adverse weather conditions
Last minute changes in working methods

6 Work Plan, Work Permit and Management of Change

CONCESSIONAIRE must ensure that for all work activities, a Work Method Statement (WMS) and Task Risk Assessment (TRA) is included. All WMS and TRA must be reviewed and approved by the CONCESSIONAIRE (or representative of the CONCESSIONAIRE) as a permit to issue the work. CONCESSIONAIRE must also ensure that associated hazards and risks are properly identified and managed via Management of Change (MOC). This procedure should capture appropriate review, approval, implementation and tracking within the CONCESSIONAIRE.

In addition to Following Health and Safety Procedures, CONCESSIONAIRE must ensure all workplace hazards recorded via Health and Safety reports by employees. All issues must be addressed with utmost priority, potentially saving lives while reducing the cost and lost time associated with injuries. CONCESSIONAIRE must keep good record keeping of Health and Safety reports to remain compliant with local legislation. CONCESSIONAIRE must be obliged to share health and safety reports during periodic inspections and checks from relevant local and national safety authorities.

7 Emergency response

CONCESSIONAIRE for its employees (or contractors) must set or have in place an emergency response procedure (ERP) to reflect the requirements of their scope of work and in line with standard practices. CONCESSIONAIRE should always make sure to align this procedure with the relevant project specific emergency procedures.

8 Environment safety standards

CONCESSIONAIRE must ensure that all accepted environment safety standards should be complied throughout the duration of offshore Wind activity such as

- The Water (Prevention & Control of Pollution) Act, 1974 (The Water Act), as amended.
- Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016
- The Air (Prevention and Control of Pollution) Act, 1981, as amended.
- Noise pollution standards outlined under Environmental Protection Act 1986

SCHEDULE- 3
SUBSTITUTION AGREEMENT

This substitution agreement (the “**Substitution Agreement**”) is made as of the _____ day of _____, 20__ at _____:

BY AND BETWEEN

1. **The President of India**, represented by _____², Ministry of New and Renewable Energy, Government of India, having its office at Atal Akshay Urja Bhawan, Lodhi Road, New Delhi, 110003 (hereinafter referred to as the “**Concessioneing authority**”, which expression shall, unless repugnant to the context or meaning thereof, include its successors and assigns);
2. **M/s _____**, a company incorporated under the provisions of the Companies Act, 2013 and having its registered office at _____, (hereinafter referred to as the “**Concessionaire**” which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns and substitutes); and
3. _____³, having its registered office at _____, acting for and on behalf of the Senior Lenders as their duly authorized agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the “**Lenders’ Representative**”, which expression shall unless repugnant to the context or meaning thereof include its successors and substitutes).

WHEREAS:

- A. The Concessioneing authority has entered into a Seabed Lease Deed Agreement dated _____ with the Concessionaire (the “**Seabed Lease Deed Agreement**”) for the Project, and a copy of which is annexed hereto and marked as Annex A to form part of this Agreement.
- B. Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.
- C. Senior Lenders have requested the Concessioneing authority to enter into this Substitution Agreement for securing their interests through assignment, transfer and substitution of the Seabed Lease to a Nominated Company (hereinafter defined) in accordance with the provisions of this Agreement and the Seabed Lease Deed Agreement.
- D. In order to enable implementation of the Project including its financing, construction, operation and maintenance, the Concessioneing authority has agreed and undertaken to transfer and assign the Seabed Lease to a Nominated Company in accordance with the terms and conditions set forth in this Agreement and the Seabed Lease Deed Agreement.

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

1. DEFINITIONS AND INTERPRETATION

² Insert designation of authorised officer.

³ Insert name and particulars of Lenders’ Representative.

1.1 Definitions

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

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

“**Financial Default**” means occurrence of any breach of the terms and conditions of the Financing Agreements or a continuous default in Debt Service by the Concessionaire for a minimum period of 3 (three) months;

“**Lenders’ Representative**” means the person referred to as the Lenders’ Representative in the foregoing Recitals;

“**Nominated Company**” means a company, incorporated under the provisions of the Companies Act, 2013, selected by the Lenders’ Representative, on behalf of Senior Lenders, and proposed to the Concessioning authority for assignment/transfer of the Seabed Lease as provided in this Agreement;

“**Notice of Financial Default**” shall have the meaning ascribed thereto in Clause 3.2.1; and

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

1.2 Interpretation

- (a) References to Lenders’ Representative shall, unless repugnant to the context or meaning thereof, mean references to the Lenders’ Representative, acting for and on behalf of Senior Lenders.
- (b) References to Clauses are, unless stated otherwise, references to Clauses of this Agreement.
- (c) The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the Seabed Lease Deed Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Seabed Lease Deed Agreement.
- (d) The rules of interpretation stated in the Seabed Lease Deed Agreement shall apply, *mutatis mutandis*, to this Agreement.

2. ASSIGNMENT OF RIGHTS AND TITLE

The Concessionaire hereby agrees to assign the rights, title and interest in the Seabed Lease to, and in favour of, the Lenders’ Representative pursuant to and in accordance with the provisions of this Agreement and the Seabed Lease Deed Agreement by way of security in respect of financing by the Senior Lenders under the Financing Agreements.

3. SUBSTITUTION OF THE CONCESSIONAIRE

3.1 Rights of substitution

- 3.1.1 Pursuant to the rights, title and interest assigned under Clause 2, the Lenders' Representative shall be entitled to substitute the Concessionaire by a Nominated Company under and in accordance with the provisions of this Agreement and the Seabed Lease Deed Agreement.
- 3.1.2 The Concessions authority hereby agrees to substitute the Concessionaire by endorsement on the Seabed Lease Deed Agreement in favour of the Nominated Company selected by the Lenders' Representative in accordance with this Agreement. For the avoidance of doubt, the Senior Lenders or the Lenders' Representative shall not be entitled to operate and maintain the Project as Concessionaire either individually or collectively.

3.2 Substitution Upon occurrence of Financial Default

- 3.2.1 Upon occurrence of a Financial Default, the Lenders' Representative may issue a notice to the Concessionaire (the "**Notice of Financial Default**") along with particulars thereof, and send a copy to the Concessions authority for its information and record. A Notice of Financial Default under this Clause 3.2.1 shall be conclusive evidence of such Financial Default and it shall be final and binding upon the Concessionaire for the purposes of this Agreement.
- 3.2.2 Upon issue of a Notice of Financial Default hereunder, the Lenders' Representative may, without prejudice to any of its rights or remedies under this Agreement or the Financing Agreements, substitute the Concessionaire by a Nominated Company in accordance with the provisions of this Agreement.
- 3.2.3 At any time after the Lenders' Representative has issued a Notice of Financial Default, it may by notice require the Concessions authority to suspend all the rights of the Concessionaire and undertake the operation and maintenance of the Project in accordance with the provisions of Article 24 of the Seabed Lease Deed Agreement, and upon receipt of such notice, the Concessions authority shall undertake Suspension under and in accordance with the provisions of the Seabed Lease Deed Agreement. The aforesaid Suspension shall be revoked upon substitution of the Concessionaire by a Nominated Company, and in the event such substitution is not completed within 180 (one hundred and eighty) days from the date of such Suspension, the Concessions authority may terminate the Seabed Lease Deed Agreement forthwith by issuing a Termination Notice in accordance with the provisions of the Seabed Lease Deed Agreement; provided that upon written request from the Lenders' Representative and the Concessionaire, the Concessions authority may extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days. For the avoidance of doubt, the Concessions authority expressly agrees and undertakes to terminate the Seabed Lease Deed Agreement forthwith, upon receipt of a written request from the Lenders' Representative at any time after 240 (two hundred and forty) days from the date of Suspension hereunder.

3.3 Substitution upon occurrence of Concessionaire Event of Default

- 3.3.1 Upon occurrence of a Concessionaire Event of Default, the Concessions authority shall by a notice inform the Lenders' Representative of its intention to issue a Termination Notice and grant 15 (fifteen) days' time to the Lenders' Representative to make a representation, stating the intention to substitute the Concessionaire by a Nominated Company.
- 3.3.2 In the event that the Lenders' Representative makes a representation to the Concessions authority within the period of 15 (fifteen) days specified in Clause 3.3.1, stating that it intends to substitute the Concessionaire by a Nominated Company, the Lenders' Representative shall be entitled to undertake and complete the substitution of the Concessionaire by a Nominated Company in accordance with the provisions of this Agreement within a period of 180 (one hundred and eighty) days from the date of such representation, and the Concessions authority shall either withhold Termination or undertake Suspension for the aforesaid period of 180 (one hundred and eighty) days; provided that upon written

request from the Lenders' Representative and the Concessionaire, the Concessions authority shall extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days.

3.4 Procedure for substitution

3.4.1 The Concessions authority and the Concessionaire hereby agree that on or after the date of Notice of Financial Default or the date of representation to the Concessions authority under Clause 3.3, as the case may be, the Lenders' Representative may, without prejudice to any of the other rights or remedies of the Senior Lenders, invite, negotiate and procure offers, either by private negotiations or public auction or tenders for the take over and transfer of the Project Facilities including the Seabed Lease to the Nominated Company upon such Nominated Company's assumption of the liabilities and obligations of the Concessionaire towards the Concessions authority under the Seabed Lease Deed Agreement and towards the Senior Lenders under the Financing Agreements.

3.4.2 To be eligible for substitution in place of the Concessionaire, the Nominated Company shall be required to fulfil the eligibility criteria that were laid down by the Concessions authority for shortlisting the bidders for award of the Seabed Lease provided that the Lenders' Representative may represent to the Concessions authority that all or any of such criteria may be waived in the interest of the Project, and if the Concessions authority determines that such waiver shall not have any Material Adverse Effect on the Project, it may waive all or any of such eligibility criteria.

3.4.3 Upon selection of a Nominated Company, the Lenders' Representative shall request the Concessions authority to:

- (a) accede to transfer to the Nominated Company the right to construct, operate and maintain the Project in accordance with the provisions of the Seabed Lease Deed Agreement;
- (b) endorse and transfer the Seabed Lease to the Nominated Company, on the same terms and conditions, for the residual Term of the Seabed Lease Deed Agreement; and
- (c) enter into a Substitution Agreement with the Lenders' Representative and the Nominated Company on the same terms as are contained in this Agreement.

3.4.4 If the Concessions authority has any objection to the transfer of Seabed Lease in favour of the Nominated Company in accordance with this Agreement, it shall within 15 (fifteen) days from the date of proposal made by the Lenders' Representative, give a reasoned order after hearing the Lenders' Representative. If no such objection is raised by the Concessions authority, the Nominated Company shall be deemed to have been accepted. The Concessions authority thereupon shall transfer and endorse the Seabed Lease within 15 (fifteen) days of its acceptance/deemed acceptance of the Nominated Company; provided that in the event of such objection by the Concessions authority, the Lenders' Representative may propose another Nominated Company whereupon the procedure set forth in this Clause 3.4 shall be followed for substitution of such Nominated company in place of the Concessionaire.

3.5 Selection to be binding

The decision of the Lenders' Representative and the Concessions authority in selection of the Nominated Company shall be final and binding on the Concessionaire. The Concessionaire irrevocably agrees and waives any right to challenge the actions of the Lenders' Representative or the Senior Lenders or the Concessions authority taken pursuant to this Agreement including the transfer/assignment of the Seabed Lease in favour of the Nominated Company. The Concessionaire

agrees and confirms that it shall not have any right to seek revaluation of assets of the Project or the Concessionaire's shares. It is hereby acknowledged by the Parties that the rights of the Lenders' Representative are irrevocable and shall not be contested in any proceedings before any court or Concessioneing authority and the Concessionaire shall have no right or remedy to prevent, obstruct or restrain the Concessioneing authority or the Lenders' Representative from effecting or causing the transfer by substitution and endorsement of the Seabed Lease as requested by the Lenders' Representative.

4. PROJECT AGREEMENTS

4.1 Substitution of Nominated Company in Project Agreements

The Concessionaire shall ensure and procure that each Project Agreement contains provisions that entitle the Nominated Company to step into such Project Agreement, in its discretion, in place and substitution of the Concessionaire in the event of such Nominated Company's assumption of the liabilities and obligations of the Concessionaire under the Seabed Lease Deed Agreement.

5. TERMINATION OF SEABED LEASE DEED AGREEMENT

5.1 Termination upon occurrence of Financial Default

At any time after issue of a Notice of Financial Default, the Lenders' Representative may by a notice in writing require the Concessioneing authority to terminate the Seabed Lease Deed Agreement forthwith, and upon receipt of such notice, the Concessioneing authority shall undertake Termination under and in, accordance with the provisions of Article 25 of the Seabed Lease Deed Agreement.

5.2 Termination when no Nominated Company is selected

In the event that no Nominated Company acceptable to the Concessioneing authority is selected and recommended by the Lenders' Representative within the period of 180 (one hundred and eighty) days or any extension thereof as set forth in Clause 3.3, the Concessioneing authority may terminate the Seabed Lease Deed Agreement forthwith in accordance with the provisions thereof.

6. DURATION OF THE AGREEMENT

6.1 Duration of the Agreement

This Agreement shall come into force from the date hereof and shall expire at the earliest to occur of the following events:

- (a) Termination of the Agreement; or
- (b) no sum remains to be advanced, or is outstanding to the Senior Lenders, under the Financing Agreements.

7. INDEMNITY

7.1 General indemnity

7.1.1 The Concessionaire will indemnify, defend and hold the Concessioneing authority and the Lenders'

Representative harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense of whatever kind and nature arising out of any breach by the Concessionaire of any of its obligations under this Agreement or on account of failure of the Concessionaire to comply with Applicable Laws and Applicable Permits.

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

7.1.3 The Lenders' Representative will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Lenders' Representative to fulfil its obligations under his Agreement, materially and adversely affecting the performance of the Concessionaire's obligations under the Seabed Lease Deed Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Lenders' Representative, its officers, servants and agents.

7.2 Notice and contest of claims

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 7.1 or in respect of which it is entitled to reimbursement (the "**Indemnified Party**"), it shall notify the other party responsible for indemnifying such claim hereunder (the "**Indemnifying Party**") within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, such approval not to be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

8 DISPUTE RESOLUTION

8.1 Any dispute, difference or claim arising out of or in connection with this Agreement which is not resolved amicably shall be decided by reference to arbitration to a panel of arbitrators comprising 1 (one) nominee each of the Concessioneing authority, Concessionaire and the Lenders' Representative. Such arbitration shall be held in accordance with the Arbitration and Conciliation Act, 1996.

8.2 The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The venue of arbitration shall be New Delhi and the language of arbitration shall be English.

9 MISCELLANEOUS

9.1 Governing law and jurisdiction

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

9.2 Waiver of sovereign immunity

The Concessing authority unconditionally and irrevocably:

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

9.3 Priority of agreements

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

9.4 Alteration of terms

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

9.5 Waiver

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

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

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

9.6 No third party beneficiaries

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

rights hereunder.

9.7 Survival

Termination of this Agreement:

- (a) shall not relieve the Parties of any obligations hereunder which expressly or by implication survive Termination hereof.
- (b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, shall not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of or caused by acts or omissions of such Party prior to the effectiveness of such Termination or arising out of such Termination.
- (c) all obligations surviving the cancellation, expiration or Termination of this Agreement shall only survive for a period of 3 (three) years following the date of such Termination or expiry of this Agreement.

9.8 Severability

If for any reason whatsoever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Clause 8 of this Agreement or otherwise.

9.9 Successors and assigns

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

9.10 Notices

All notices or other communications to be given or made under this Agreement shall be in writing, shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or e-mail. The address for service of each Party, its facsimile number and e-mail address are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5:30 (five thirty) p.m. on any day, or on a day that is a public holiday, the notice shall be deemed to be received on the first working day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile or e-mail shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

9.11 Language

All notices, certificates, correspondence and proceedings under or in connection with this Agreement

shall be in English.

9.12 Authorized representatives

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

9.13 Original Document

This Agreement may be executed in 3 (three) counterparts, each of which when executed and delivered shall constitute an original of this Agreement.

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

SIGNED SEALED AND DELIVERED

For and on behalf of the Concessioneing authority by:

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

(e-mail address)

SIGNED SEALED AND DELIVERED

For and on behalf of the Concessionaire by:

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

(e-mail address)

THE COMMON SEAL OF CONCESSIONAIRE has been affixed pursuant to the resolution passed by the board of directors of the Concessionaire at its meeting held on the _____ day of _____, 20 _____ hereunto affixed in the presence of _____, Director, who has signed these presents in token

thereof and _____, Company Secretary/ Authorised Officer who has countersigned the same in token thereof:

SIGNED, SEALED AND DELIVERED

For and on behalf of SENIOR LENDERS by the Lenders' Representative:

(Signature)

(Name)

(Designation)

(Address)

(Fax)

(Email address)

In the presence of

- 1.
- 2.