

ARBITRAL AWARD ESCROW ACCOUNT AGREEMENT

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

AMONGST

- 1 [**** **LIMITED**], a company incorporated under the provisions of the Companies Act, 1956 and having its registered office at **** (hereinafter referred to as the “**Contractor**” which expression shall, unless repugnant to the context or meaning thereof, include its successors, permitted assigns and substitutes);
- 2 ****[name and particulars of Lenders’ Representative] and having its registered office at *** acting for and on behalf of the Lenders as their duly authorised 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);
- 3 ****[name and particulars of the Escrow Bank] and having its registered office at ****(hereinafter referred to as the “**Escrow Bank**” which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes); and
- 4 NTPC Limited, a Company registered under the Companies Act, 1956 having its registered office at NTPC Office Complex, ***** (hereinafter referred to as the “**NTPC and/or the Employer**”, which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns).

WHEREAS:

- (A) The Employer had entered into Contract Agreements (as per list enclosed as **Annex I**) with the Contractor (the “**Contract Agreements**”) for execution of Civil works of the ***** (name of the project), ---- Project and ----- Project.
- (B) The dispute(s) arose between the Parties to the Contract Agreements in course of implementation of these Projects. These disputes were referred to different Arbitration Tribunal constituted by the Parties in terms of the Contract Agreement and the Arbitration and Conciliation Act, 1996 amended time to time.
- (C) The Arbitral Tribunal declared the Award(s) including interest as per details enclosed at **Annex II** in favour of the Contractor for an amount working to Rs.

_____ to be paid by the Employer to the Contractor.

- (D) The Employer has challenged the Award in the Court(s) of Law as per details mentioned in the Annex . III
- (E) NITI Aayog, Government of India, vide Office Memorandum No. N-14070/14/2016-PPPAU dated 05.09.2016 has issued directions to the PSUs to release 75% of the Award amount to the Contractor against a Bank Guarantee without prejudice to the rights and stand of the Employer and subject to the final order of the Court in the matters for which Arbitral Awards have been challenged. The payment is to be made into a designated Escrow Account with the stipulation that the amount so released will be used in the following manner:
- i. for payment of lenders' dues,
 - ii. for construction/ completion of the NTPC project;
 - iii. for completion of other projects of the same Employer, as mutually agreed/decided.
 - iv. Any balance remaining in the escrow account subsequent to settlement of lenders' dues and completion of projects of the Employer may be allowed to be used by the Contractor with the prior approval of the lenders and the Employer.
- (F) Accordingly, the Contractor is required to establish an Escrow Account, inter alia, on the terms and conditions stated therein.

NOW IT IS HEREBY AGREED as follows:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

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

“Escrow Account” means an “**Arbitral Award Escrow Account**” established in terms of and under this Agreement;

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

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

1.2 Interpretation

- 1.2.1 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 Lenders.

1.2.2 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 shall, unless repugnant to the context, have their literal English meaning. Words importing the singular only also include the plural and vice versa where the context requires.

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

2 ESCROW ACCOUNT

2.1 Escrow Bank to act as trustee

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

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

2.2 Acceptance of Escrow Bank

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

2.3 Establishment and operation of Escrow Account

2.3.1 Immediately after execution of this Agreement, the Contractor shall open and establish the Escrow Account with the **** (name of Branch) Branch of the Escrow Bank. The Escrow Account shall be denominated in Indian National Rupees.

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

the said account from time to time.

- 2.3.3 The Escrow Bank and the Contractor shall, after consultation with the Lenders' Representative and the Employer, agree on the detailed mandates, terms and conditions, and operating procedures for the Escrow Account, but in the event of any conflict or inconsistency between this Agreement and such mandates, terms and conditions, or procedures, this Agreement shall prevail.

2.4 Escrow Bank's fee

The Escrow Bank shall be entitled to receive its fee and expenses in an amount, and at such times, as may be agreed between the Escrow Bank and the Contractor. For the avoidance of doubt, such fee and all expenses relating to opening and operation of said account shall be borne by the Contractor.

2.5 Rights of the parties

The rights of the Employer, the Lenders' Representative and the Contractor in the monies held in the Escrow Account are set forth in their entirety in this Agreement and the Employer, the Lenders' Representative and the Contractor shall have no other rights against or to the monies in the Escrow Account.

3 DEPOSITS INTO ESCROW ACCOUNT

3.1 Deposits by the Employer

Without prejudice to the rights and stand of Employer and subject to the final order of the Court in the matter under challenge, the Employer agrees and undertakes that, it shall deposit into and/or credit the Escrow Account with:

- (a) 75% of Arbitral Award Amount (as detailed in **Annex II**) i.e., Rs. _____ less the recoveries, if any, within 15 days of receipt of a Bank Guarantee of appropriate amount in the requisite format from the Contractor.

3.2 Bank Guarantees

The Contractor shall furnish to the Employer the Bank Guarantee of the amount released pursuant to this agreement plus interest amount for the tenure of the BG to secure the Arbitral Award amount. The Bank Guarantee shall be valid initially for one year and shall be renewed on annual basis. Failure of the Contractor to extend the validity of the Bank Guarantee 60 days prior to the expiry may lead to encashment and appropriation of the Guarantee.

3.3 Interest on deposits

The Escrow Bank agrees and undertakes that all interest accruing on the balances of the Escrow Account shall be credited to the Escrow Account and shall be used to make due payments in the manner as provided in Clause 4 of this Agreement.

- 3.4 In case the subsequent court order requires refund of money paid by the Employer into the Escrow Account, the amount shall be refunded by the Contractor along with appropriate interest (as specified in the OM dt. 05.09.2016) to be decided at the time releasing funds into Escrow Account.

4 WITHDRAWALS FROM ESCROW ACCOUNT

4.1 Withdrawals

The Escrow Bank shall withdraw and appropriate the amounts from the Escrow Account strictly in accordance with the instructions issued by the Employer to the Contractor, as mutually agreed/decided by Employer, Lender's Representative and Contractor; provided that such amounts shall be appropriated in the following order:

- (a) Debt Service Payments;
- (b) All payments relating to construction/ completion of the project;
- (c) All payments relating to construction/completion of other projects of the Employer under execution by the Contractor; and
- (d) Balance, if any, in accordance with the instructions of the Contractor after receiving the prior written approval of the Lender's Representative and the Employer.

The Matrix for release of Payment will include payments including payments for Debt Service and payment for Projects under construction/completion of Projects of Employer as enclosed at **Annex IV** is to be followed by the Escrow Bank and provision for same is required to be kept in the Escrow account.

4.2 Debt service Payment

- (i) The Contractor shall provide the Employer with the details of Lender/s and their dues specific to the Project.
- (ii) After withdrawal from the Escrow account and payment of Lender's dues, the Contractor shall provide the Employer, with a copy to the escrow banker, the acknowledgement receipts of payment of dues from all the applicable lenders.

4.3 All payments relating to construction/completion of the Project

- (i) The Contractor shall provide the Employer with the following details:
 - (a) The amounts due for payment to the suppliers/sub-contractors in respect of the work already completed;
 - (b) The remaining works in the Project along with the estimated costs of the respective works and the schedule for completion of such remaining works.
 - (c) The monthly/bi-annual/annual or any other periodic schedule of funds, (as agreed with the Employer), required to complete the remaining works.
- (ii) The Project authority shall verify the genuineness in respect of the above overdue payments/remaining works, the associated costs, the schedule and the (periodic) requirement of funds.
- (iii) On approval of Employer and subject to availability of funds in the designated Escrow Account, the total requirement of funds shall be earmarked for payment of the outstanding dues and completion of the remaining works of the

Projects.

- (iv) The Contractor shall then be allowed to withdraw the funds required to meet his obligations in the order mentioned under (i) above for completion of the project.
- (v) Balance amounts in the Arbitral Award Escrow Account, if available, shall be earmarked and concurrently used for the completion of other projects of Employer, as per conditions set forth in this Agreement keeping the progress work in view.

4.4 All payments relating to construction/completion of other projects of the Employer

- (i) Shall be applicable to other projects of the Employer being executed by the Contractor.
- (ii) For each of the other projects, provisions applicable to the main project shall be applicable.

4.5 Post the debt service payments, completion of the Project and completion of other projects of the Employer, and subject to availability of funds in the Arbitral Award Escrow Account, balance funds shall be appropriated in accordance with the instructions of the Contractor in terms of the this Agreement.

5 Event of Arbitral Award Escrow Default

5.1 Following events shall constitute an 'event of default' by the Contractor unless such event of default has occurred as a result of Force Majeure or any act or omission of the Employer :

- (i) The Contractor causes the Arbitral Award Escrow Bank to transfer funds to any account of the Contractor in breach of the terms of Arbitral Award Escrow account Agreement;
- (ii) The Contractor fails to make any refund due to the Employer in breach of the terms of Arbitral Award Escrow account Agreement within 5(five) business days of such refund becoming due;
- (iii) The Contractor commits or causes any other breach of the provisions of Arbitral Award Escrow Account Agreement and fails to cure the same within a Cure Period of 5 (five) business days; or
- (iv)The Contractor does not extend the validity of Bank Guarantee submitted to the Employer as security for the principal as well as for interest thereon, in case where such extension is required.

5.2 Upon occurrence of an Arbitral Award Escrow Default, the Employer shall be entitled to encash and appropriate the relevant amounts from the Bank Guarantee as Damages for such Arbitral Award Escrow Default.

6 OBLIGATIONS OF THE ESCROW BANK

6.1 Segregation of funds

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

6.2 No set off

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

6.3 Regulatory approvals

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

7 TERMINATION OF ESCROW AGREEMENT

7.1 Duration of the Escrow Agreement

This Agreement shall remain in full force and effect so long as the Court decides the Appeal and a certified copy of the decision of the Court has been submitted to the Escrow Bank., unless terminated earlier by consent of all the Parties or otherwise in accordance with the provisions of this Agreement.

7.2 Substitution of Escrow Bank

The Contractor may, by not less than 45 (forty five) days prior notice to the Escrow Bank, the Employer and the Lenders' Representative, terminate this Agreement with Escrow Bank and appoint a new Escrow Bank, provided that the new Escrow Bank is acceptable to the Lenders' Representative and Employer and arrangements are made satisfactory to the Lenders' Representative and Employer for transfer of amounts deposited in the Escrow Account to a new Escrow Account established with the successor Escrow Bank. The termination of this Agreement shall take effect only upon coming into force of an Escrow Account Agreement with the substitute Escrow Bank.

7.3 Closure of Escrow Account

The Escrow Bank shall close the Escrow Account at the request made by the Contractor and the Employer after the decision of the Appeal by the Court and

pay any amount standing to the credit thereof to the Contractor. Upon closure of the Escrow Account hereunder, the Escrow Agreement shall be deemed to be terminated.

8 MISCELLANEOUS PROVISIONS

8.1 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 Delhi shall have jurisdiction over all matters arising out of or relating to this Agreement.

8.2 Waiver of sovereign immunity

The Contractor 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 Contractor with respect to its assets;
- (c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and
- (d) consents generally in respect of the enforcement of any judgment or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgment that may be made or given in connection therewith).

8.3 Alteration of terms

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

8.4 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.

8.5 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.

8.6 Notices

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

8.7 Language

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

8.8 Authorised representatives

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

8.9 Original Document

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

8.10 Severability

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

9 Indemnities

- 9.1 The Contractor will indemnify, defend and hold the Employer, Arbitral Award Escrow Bank and Lenders' Representative, harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of any breach by the Contractor of any of its obligations under this Agreement or on account of failure of the Contractor] to comply with Applicable Laws and Applicable Permits.
- 9.2 The Employer will indemnify, defend and hold the Contractor harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Employer to fulfil any of its obligations under this Agreement materially and adversely affecting the performance of the Contractor's obligations under the Contract Agreement or this Agreement other than any loss, damage, cost and expense arising out of acts done in discharge of their lawful functions by the Employer, its officers, servants and agents.
- 9.3 The Arbitral Award Escrow Bank will indemnify, defend and hold the Contractor harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Arbitral Award Escrow Bank to fulfil its obligations under this Agreement materially and adversely affecting the performance of the Contractor's obligations under the Contract Agreement other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Arbitral Award Escrow Bank, its officers, servants and agents.

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
CONTRACTOR by:

SIGNED, SEALED AND
DELIVERED
For and on behalf of
LENDERS by the Lenders'
Representative:

(Signature)

(Signature)

(Name)

(Name)

(Designation)

(Designation)

(Address)

(Address)

(Fax No./ email)

(Fax No. / email)

SIGNED, SEALED AND
DELIVERED
For and on behalf of

SIGNED, SEALED AND
DELIVERED
For and on behalf of

ESCROW BANK by:

NTPC Limited by:

(Signature)

(Signature)

(Name)

(Name)

(Designation)

(Designation)

(Address)

(Address)

(Fax No. / email)

(Fax No./ email)

In the presence of:

1.

2.