

ARTICLE 14

FORCE MAJEURE

14.1 Force Majeure

As used in this Agreement, the expression “**Force Majeure**” or “**Force Majeure Event**” shall mean, save and except as expressly provided otherwise, occurrence in India of any or all of Non-Political Event, Indirect Political Event and Political Event, as defined in Clauses 14.2, 14.3 and 14.4, respectively, if it affects the performance by the Party claiming the benefit of Force Majeure (the “**Affected Party**”) of its obligations under this Agreement and which act or event (a) is beyond the reasonable control of the Affected Party, and (b) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice, and (c) has Material Adverse Effect on the Affected Party.

14.2 Non-Political Event

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

- (a) act of God, epidemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionising radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Project);
- (b) strikes or boycotts (other than those involving the Beneficiary Firm, Contractor or their respective employees/representatives, or attributable to any act or omission of any of them) interrupting supplies and services to the Project for a continuous period of [24 (twenty four)] hours and an aggregate period exceeding [7 (seven)] days in a Financial Year, and not being an Indirect Political Event set forth in Clause 14.3;
- (c) any failure or delay of a Contractor but only to the extent caused by another Non-Political Event and which does not result in any offsetting compensation being payable to the Beneficiary Firm by or on behalf of such Contractor;
- (d) any delay or failure of an overseas Contractor to deliver equipment in India if such delay or failure is caused outside India by any event specified in Sub-clause (a) above and which does not result in any offsetting compensation being payable to the Beneficiary Firm by or on behalf of such Contractor;
- (e) any judgement or order of any court of competent jurisdiction or statutory authority made against the Beneficiary Firm in any proceedings for reasons other than (i) failure of the Beneficiary Firm to comply with any Applicable Law or Applicable Permit, or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or (iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by the Government;
- (f) the discovery of geological conditions, toxic contamination or archaeological remains on the Project that could not reasonably have been expected to be discovered through a site inspection; or
- (g) any event or circumstances of a nature analogous to any of the foregoing.

14.3 Indirect Political Event

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

- (a) an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;
- (b) any political or economic upheaval, disturbance, movement, struggle or similar occurrence which could not have been anticipated or foreseen by a prudent person and which causes the construction or operation of the Project to be financially unviable or otherwise not feasible;
- (c) industry-wide or State-wide strikes or industrial action for a continuous period of [24 (twenty-four)] hours and exceeding an aggregate period of [7 (seven)] days in a Financial Year;
- (d) any civil commotion, boycott or political agitation which prevents production and assembly of Advance Chemistry Cell or fulfilment of obligations by the Beneficiary Firm for an aggregate period exceeding [15 (fifteen)] days in a Financial Year;
- (e) failure of the Government to permit the Beneficiary Firm to continue its construction works, with or without modifications, in the event of stoppage of such works after discovery of any geological or archaeological finds or for any other reason;
- (f) any failure or delay of a Contractor to the extent caused by any Indirect Political Event and which does not result in any offsetting compensation being payable to the Beneficiary Firm by or on behalf of such Contractor;
- (g) any Indirect Political Event that causes a Non-Political Event; or
- (h) any event or circumstances of a nature analogous to any of the foregoing.

14.4 Political Event

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

- (a) Change in Law, only if consequences thereof cannot be dealt with under and in accordance with the provisions of Article 15 and its effect, in financial terms, exceeds the sum specified in Clause 15.1;
- (b) compulsory acquisition in national interest or expropriation of any assets or rights in relation to the Project, of the Beneficiary Firm or Contractors;
- (c) unlawful or unauthorised or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, licence, permit, authorisation, no objection certificate, consent, approval or exemption required by the Beneficiary Firm or any of the Contractors to perform their respective obligations under this Agreement and the;

provided that such delay, modification, denial, refusal or revocation did not result from the Beneficiary Firm's or any Contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, licence, authorisation, no objection certificate, exemption, consent, approval or permit;

- (d) any failure or delay of a Contractor but only to the extent caused by another Political Event and which does not result in any offsetting compensation being payable to the Beneficiary Firm by or on behalf of such Contractor; or
- (e) any event or circumstance of a nature analogous to any of the foregoing.

14.5 Duty to report Force Majeure Event

14.5.1 Upon occurrence of a Force Majeure Event, the Affected Party shall by notice report such occurrence to the other Party forthwith. Any notice pursuant hereto shall include full particulars of:

- (a) the nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Article 14 with evidence in support thereof;
- (b) the estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Agreement;
- (c) the measures which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Event; and
- (d) any other information relevant to the Affected Party's claim.

14.5.2 The Affected Party shall not be entitled to any relief for or in respect of a Force Majeure Event unless it shall have notified the other Party of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event no later than [7 (seven)] days after the Affected Party knew, or ought reasonably to have known, of its occurrence, and shall have given particulars of the probable material effect that the Force Majeure Event is likely to have on the performance of its obligations under this Agreement.

14.5.3 For so long as the Affected Party continues to claim to be materially affected by such Force Majeure Event, it shall provide the other Party with regular [(and not less than weekly)] reports containing information as required under this Agreement, and such other information as the other Party may reasonably request the Affected Party to provide.

14.6 Effect of Force Majeure Event on the Contract

14.6.1 Upon the occurrence of any Force Majeure Event prior to the Appointed Date, the period set forth in Clause 2.1 for fulfilment of Conditions Precedent and for achieving the Appointed Date shall be extended by a period equal in length to the duration of the Force Majeure Event.

14.6.2 At any time after the Appointed Date, if any Force Majeure Event occurs, the Term shall be extended by a period, equal in length to the period during which the Beneficiary Firm was prevented from performing its obligations.

14.7 Allocation of costs arising out of Force Majeure

- 14.7.1 Upon occurrence of any Force Majeure Event prior to the Appointed Date, the Parties shall bear their respective costs and no Party shall be required to pay to the other Party any costs thereof.
- 14.7.2 Upon occurrence of a Force Majeure Event after the Appointed Date, the costs incurred and attributable to such event and directly relating to the Project (the “**Force Majeure Costs**”) shall be allocated and paid as follows:
- (a) upon occurrence of a Non-Political Event, the Parties shall bear their respective Force Majeure Costs and neither Party shall be required to pay to the other Party any costs thereof;
 - (b) upon occurrence of an Indirect Political Event, all Force Majeure Costs attributable to such Indirect Political Event, and not exceeding the insurance proceeds, if any for such Indirect Political Event, shall be borne by the Beneficiary Firm, and to the extent Force Majeure Costs exceed such insurance cover, one half of such excess amount shall be reimbursed by the Government to the Beneficiary Firm; and
 - (c) upon occurrence of a Political Event, all Force Majeure Costs attributable to such Political Event shall be reimbursed by the Government to the Beneficiary Firm.

For avoidance of doubt, Force Majeure Costs may include costs directly attributable to the Force Majeure Event, but shall not include loss of revenues or debt repayment obligations.

- 14.7.3 Save and except as expressly provided in this Article 14, neither Party shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant hereto.

14.8 Termination Notice for Force Majeure Event

If a Force Majeure Event subsists for a period of [90 (ninety)] days or more within a continuous period of [365 (three hundred and sixty five)] days, or for a continuous period of [90 (ninety) days] in any given time-frame, 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 14, and upon issue of such Termination Notice, this Agreement shall, notwithstanding anything to the contrary contained herein, stand terminated forthwith; provided that before issuing such Termination Notice, the Party intending to issue the Termination Notice shall inform the other Party of such intention and grant a period of [15 (fifteen)] days 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.

14.9 Compensation Payment for Force Majeure Event

- 14.9.1 If Termination is on account of a Non-Political Event, the Parties shall bear their respective Force Majeure Costs and neither Party shall be required to pay to the other Party any costs thereof.

14.9.2 If Termination is on account of an Indirect Political Event, all Force Majeure Costs attributable to such Indirect Political Event, and not exceeding the insurance proceeds, if any for such Indirect Political Event, shall be borne by the Beneficiary Firm, and to the extent Force Majeure Costs exceed such insurance cover, one half of such excess amount shall be reimbursed by the Government to the Beneficiary Firm.

14.9.3 If Termination is on account of a Political Event, the Government shall pay a Compensation Payment to the Beneficiary Firm in an amount that would be payable under Article 16 as if it were a Government Event of Default.

14.10 Dispute resolution

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

14.11 Excuse from performance of obligations

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

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

14.11.2 The Parties agree that the Beneficiary Firm shall develop alternate or standby arrangements for provision of goods and services in accordance with Good Industry Practice and failure on this account shall not excuse the Beneficiary Firm from performance of its obligations hereunder.

ARTICLE 15

CHANGE IN LAW

15.1 Increase in costs

If as a result of Change in Law, the Beneficiary Firm suffers an increase in costs or reduction in net after-tax return or other financial burden, the aggregate financial effect of which exceeds the higher of INR [5 (five) crores] per GWh of Committed Scale of Production in any Financial Year, the Beneficiary Firm may so notify the Government and propose amendments to this Agreement so as to place the Beneficiary Firm in the same financial position as it would have enjoyed had there been no such Change in Law resulting in the cost increase, reduction in return or other financial burden as aforesaid. Upon notice by the Beneficiary Firm, the Parties shall meet, as soon as reasonably practicable but no later than 30 (thirty) days from the date of notice, and either agree on amendments to this Agreement or on any other mutually agreed arrangement:

Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the Beneficiary Firm may by notice request the Government to pay an amount that would place the Beneficiary Firm in the same financial position that it would have enjoyed had there been no such Change in Law, and within 15 (fifteen) days of receipt of such notice, along with particulars thereof, the Government shall pay the amount specified therein; provided that if the Government shall dispute such claim of the Beneficiary Firm, the same shall be settled in accordance with Article 17. For the avoidance of doubt, it is agreed that this Clause 15.1 shall be restricted to changes in law directly affecting the Beneficiary Firm's costs of performing its obligations under this Agreement.

15.2 Reduction in costs

If as a result of Change in Law, the Beneficiary Firm benefits from a reduction in costs or increase in net after-tax return or other financial gains, the aggregate financial effect of which exceeds the higher of INR [5 (five) crores] per GWh of Committed Scale of Production in any Financial Year, the Government may so notify the Beneficiary Firm and propose amendments to this Agreement so as to place the Beneficiary Firm in the same financial position as it would have enjoyed had there been no such Change in Law resulting in the decreased costs, increase in return or other financial gains as aforesaid. Upon notice by the Government, the Parties shall meet, as soon as reasonably practicable but no later than 30 (thirty) days from the date of notice, and either agree on such amendments to this Agreement or on any other mutually agreed arrangement:

Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the Government may by notice require the Beneficiary Firm to pay an amount that would place the Beneficiary Firm in the same financial position that it would have enjoyed had there been no such Change in Law, and within 15 (fifteen) days of receipt of such notice, along with particulars thereof, the Beneficiary Firm shall pay the amount specified therein to the Government; provided that if the Beneficiary Firm shall dispute such claim of the Government, the same shall be settled in accordance with Article 17. For the avoidance of doubt, it is agreed

that this Clause 15.2 shall be restricted to changes in law directly affecting the Beneficiary Firm's costs of performing its obligations under this Agreement.

15.3 Protection of NPV

Pursuant to the provisions of Clauses 15.1 and 15.2 and for the purposes of placing the Beneficiary Firm in the same financial position as it would have enjoyed had there been no Change in Law affecting the costs, returns or other financial burden or gains, the Parties shall rely on the financial model to establish a net present value (the “NPV”) of the net cash flow and make necessary adjustments in costs, revenues, compensation or other relevant parameters, as the case may be, to procure that the NPV of the net cash flow is the same as it would have been if no Change in Law had occurred.

15.4 Restriction on cash compensation

The Parties acknowledge and agree that the demand for cash compensation under this Article 15 shall be restricted to the effect of Change in Law during the respective Financial Year and shall be made at any time after commencement of such year, but no later than one year from the close of such Financial Year. Any demand for cash compensation payable for and in respect of any subsequent Financial Year shall be made after the commencement of the Financial Year to which the demand pertains, but no later than 2 (two) years from the close of such Financial Year.

ARTICLE 16
EVENTS OF DEFAULT AND TERMINATION

16.1 Beneficiary Firm Event of Default

16.1.1 The occurrence of any of the following events would constitute an event of default on the part of the Beneficiary Firm (“**Beneficiary Firm Event of Default**”), unless such an event occurs due to Force Majeure Event or the Government Event of Default:

- (a) the Beneficiary Firm fails to meet any Condition Precedent, within a cure period of 60 (sixty) days;
- (b) appropriation of Performance Security for continuous default under Clause 7.2 for a period of 5 (five) consecutive quarters;
- (c) occurrence of any Insolvency Event;
- (d) if the Damages is levied for 6 (six) consecutive quarters owing to a non-achievement of Committed Scale of Production and/or the Committed Value Addition; and
- (e) breach of any other obligations under this Agreement.

16.2 Government Event of Default

16.2.1 The occurrence of any of the following events would constitute an event of default on the part of the Government (“**Government Event of Default**”), unless such an event occurs due to Force Majeure Event or Beneficiary Firm Event of Default:

- (a) the Government fails to meet any Condition Precedent, within a cure period of 30 (thirty) days;
- (b) the Government fails to disburse Subsidy to the Beneficiary Firm for a continuous period of 6 (six) months; and
- (c) failure to maintain Escrow Reserve Amount as specified in Clause 10.1.4 of this Agreement.

16.3 Termination for Beneficiary Firm Event of Default

16.3.1 Upon the occurrence of any Beneficiary Firm Event of Default for continuance period of 30 (thirty) days, the Government may deliver a default notice (“**Beneficiary Firm’s Default Notice**”), specifying the reasonable details and calling upon the Beneficiary Firm to remedy the same.

16.3.2 Unless the Parties have mutually agreed otherwise, or the Beneficiary Firm Event of Default has been remedied within a period of 15 (fifteen) days, the Government may terminate this Agreement by serving a 7 (seven) days’ notice (“**Beneficiary Firm’s Termination Notice**”) to such effect to the Beneficiary Firm.

- 16.3.3 Upon delivery of the Beneficiary Firm's Termination Notice, this Agreement shall stand terminated from the date of Beneficiary Firm's Termination Notice. Upon such termination, the Beneficiary Firm shall stand discharged of all its obligations, except for those that had accrued prior to the date of termination of this Agreement.

16.4 Termination for the Government Event of Default

- 16.4.1 Upon the occurrence of any the Government Event of Default for continuance period of 60 (sixty) days, the Beneficiary Firm may deliver a default notice ("**Government Default Notice**"), specifying the reasonable details and calling upon the Government to remedy the same.
- 16.4.2 Unless the Parties have mutually agreed otherwise, or the Government Event of Default has been remedied within a period of 30 (thirty) days, the Beneficiary Firm may terminate this Agreement by serving a 15 (fifteen) days' notice ("**Government Termination Notice**") to such effect to the Government.
- 16.4.3 Upon delivery of the Government's Termination Notice, this Agreement shall stand terminated from the date of the Government's Termination Notice. Upon such termination, the Government shall stand discharged of all its obligations, except for those that had accrued prior to the date of termination of this Agreement.

16.5 Compensation Payment

- 16.5.1 Upon Termination on account of a Government Event of Default after 2 (two) years from the Appointed Date but prior to 5 (five) years from the Appointed Date, the Government shall pay to the Beneficiary Firm, by way of Compensation Payment, NPV of the Subsidy due for a period of 3 (three) years. The Subsidy due to the Beneficiary Firm by way of Compensation Payment shall be calculated as per the Value Addition and quantity of Advance Chemistry Cell sold by the Beneficiary Firm, in the preceding quarter in accordance with this Agreement.
- 16.5.2 Notwithstanding anything to the contrary contained in Clause 16.5.1, upon Termination on account of a Government Event of Default after 5 (five) years from the Appointed Date, the Government shall pay to the Beneficiary Firm, by way of Compensation Payment, NPV of the Subsidy due for the remaining Term or 3 (three) years, whichever is lower. The Subsidy due to the Beneficiary Firm by way of Compensation Payment under this Clause shall be calculated as per the Value Addition and quantity of Advance Chemistry Cell sold by the Beneficiary Firm, as an average between the 5th (fifth) anniversary of the Appointed Date and the date of termination of this Agreement. .
- 16.5.3 The Parties agree that the Beneficiary Firm shall not be eligible to receive any Compensation Payment in the event the Beneficiary Firm has not commenced production and manufacturing of the Advance Chemistry Cells.
- 16.5.4 Compensation Payment shall become due and payable to the Beneficiary Firm within [60 (sixty)] days of a demand being made by the Beneficiary Firm to the Government with the necessary particulars, and in the event of any delay, the Government shall pay interest at a rate equal to an additional 1% (one per cent) of the current SBI MCLR; provided that such delay

shall not exceed [90 (ninety)] days; it is expressly agreed that Compensation Payment shall constitute full discharge by the Government of its payment obligations in respect thereof hereunder.

- 16.5.5 The Beneficiary Firm expressly agrees that Compensation Payment under this Article 16 shall constitute a full and final settlement of all claims of the Beneficiary Firm on account of Termination of this Agreement for any reason whatsoever and that the Beneficiary Firm or any shareholder thereof shall not have any further right or claim of any nature under any law, treaty, convention, contract, equity or otherwise.
- 16.5.6 The Parties agree that the Government shall pay such Compensation Payment for an amount not more than the actual Investment made by the Beneficiary Firm as a consequence of the Government Event of Default.

ARTICLE 17

DISPUTE RESOLUTION

17.1 Dispute resolution

- 17.1.1 Notwithstanding anything to contrary contained in this Agreement including Clause 17.1, any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (“**Dispute**”) shall, in the first instance, be attempted to be resolved amicably in accordance with the procedure set forth in Clauses 17.2, 17.3 and 17.4.

17.2 Conciliation

- 17.2.1 In the event of any Dispute between the Parties, either Party may require such Dispute to be referred to the authorised representative of Beneficiary Firm and the authorised representative of Government for an amicable settlement. In the event the Dispute is not amicably settled within 15 (fifteen) days of the meeting of the authorised representative of each Party or the Dispute is not resolved as evidenced by the signing of written terms of settlement within 30 (thirty) days of the notice in writing referred to in Clause 17.1.1 or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to the DRB in accordance with the provisions of Clause 17.3.

17.3 Dispute Resolution Board

- 17.3.1 Failing Conciliation by the authorised representatives of the Parties as set out in Clause 17.2 above, either Party may require such Dispute to be referred to the Dispute Resolution Board (“**DRB**”) in accordance with the procedure set forth in Schedule – K. The decision(s) of the DRB shall be binding on both Parties who shall promptly give effect to unless and until the same is amended, as hereinafter provided, during Arbitration.

17.4 Arbitration

- 17.4.1 Any Dispute which is not resolved amicably by conciliation, as provided in Clause 17.2, or through the DRB, as provided in Clause 17.3, shall be finally decided by reference to arbitration in accordance with the rules of the Delhi International Arbitration Centre (“**DIAC**”).
- 17.4.2 This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.
- 17.4.3 The seat and venue of arbitration shall be at New Delhi.
- 17.4.4 The arbitration panel shall consist of [3 (three)] arbitrators to be appointed in accordance with the rules of DIAC. The language of the arbitration shall be English.
- 17.4.5 The arbitral tribunal shall make a reasoned award (the “**Award**”). Any Award made in any arbitration help pursuant to this Article 17 shall be final and binding on the Parties as from the date it is made, and the Government and the Beneficiary Firm agree and undertake to carry out such Award without delay.

- 17.4.6 This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.
- 17.4.7 The Parties shall bear their respective costs of arbitration.
- 17.4.8 The Parties agree that in the event the Party against whom the Award has been granted challenges the Award for any reason in a court of law, it shall make an interim payment to the other Party for an amount equal to 75% (seventy five per cent) of the Award, pending final settlement of the Dispute. The aforesaid amount shall be paid forthwith upon furnishing an irrevocable bank guarantee for a sum equal to the aforesaid amount. Upon final settlement of the Dispute, the aforesaid interim payment shall be adjusted and any balance amount due to be paid or returned, as the case may be, shall be paid or returned with interest calculated at the rate of 10% (ten per cent) per annum from the date of interim payment to the date of final settlement of such balance.

ARTICLE 18

MISCELLANEOUS

18.1 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.

18.2 Waiver of sovereign immunity

The Government 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 Government 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).

18.3 No Waiver

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.

Neither the failure by any 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 any 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.

18.4 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.

18.5 Survival

18.5.1 Termination of this Agreement:

- (a) shall 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 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.

18.5.2 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.

18.6 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.

18.7 Language

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

18.8 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.

18.9 Confidentiality

- (a) The Parties agree that all aspects of the content of this Agreement shall be treated as confidential and no information in respect thereof shall be disclosed without prior written consent of the other Party.
- (b) Sub-clause (a) does not apply to confidential information which: (i) at the date of disclosure by and on behalf of one Party to the other Party or that other party's professional advisers is in the public domain, or (ii) after such disclosure, enters the public domain through no fault of that Party or its professional advisers, or (iii) was lawfully in the possession of that Party or its professional advisers at the date of hereof as evidenced by the written records of that Party or its professional advisers, and which was not acquired directly or indirectly from such first Party, or (iv) is required under the Applicable Law or order of any competent court.

18.10 Binding Nature

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

18.11 Further Assurance

Each Party agrees to execute, acknowledge, deliver, file record and publish such further contracts, certificates, amendments to certificates, instruments and documents, and do all such other acts and things as may be required by law, or as may be required to carry out the intent and purposes of this Agreement.

18.12 Heading and References

The clause headings are for convenience only and do not form part of this Agreement and references to Clause and Annexures shall be deemed to be references to clauses and Annexures of this Agreement unless the context expressly provides otherwise.

18.13 Counterparts

This Agreement may be executed in one or more duplicate counterparts, and when executed and delivered by the Parties, shall constitute a single binding agreement.

18.14 Amendment

This Agreement can be amended or supplemented only with the written consent of both the Parties.

18.15 Stamp Duty and Registration Costs

The Parties shall bear all charges equally on account of stamping or registration of this Agreement that may be applicable and is levied by the concerned authorities on registration of this Agreement.

18.16 Severability

- (a) The Parties agree that if any provision of this Agreement is or becomes invalid, illegal, or unenforceable, the validity, legality or enforceability of the remaining provisions shall not in any way be affected or impaired.
- (b) Notwithstanding the foregoing, the Parties shall thereupon negotiate in good faith in order to agree to the terms of a mutually satisfactory provision, achieving as nearly as possible the same commercial effect, to be substituted for the provision so found to be void or unenforceable.

18.17 Relationship of the Parties

This Agreement shall not be interpreted or construed to be or create an association, joint venture, or partnership between the Parties or to impose any partnership obligation or liability upon either Party. 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.

18.18 Entire Agreement

This Agreement and any other transaction documents to which both Parties are a party constitute the entire agreement of the parties relating to the subject matter hereof. There are no promises, terms, conditions, obligations, or warranties other than those contained in this Agreement. This Agreement supersedes all prior communications, representations, RFP or agreements, verbal or written, among the Parties relating to the subject matter hereof.

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

FOR [Government of India]	FOR [•]
<hr/> Authorised Signatory Name: Designation:	<hr/> Authorised Signatory Name: Designation:
 Witnessed by: Name: Designation:	 Witnessed by: Name: Designation:

DRAFT

SCHEDULE – A
APPLICABLE PERMITS FOR ESTABLISHING PROJECT

1. Clearance / Permit Requirements

Below is an indicative list of Applicable Permits for setting up the new manufacturing project as specified by Department for Promotion of Industry and Internal Trade:

Clearance/ permit	Agency concerned
Incorporation of Company	Registrar of Companies
Registration/IEM (Industrial Entrepreneur Memorandum/Industrial license	District Industry Center for Small Scale Industries (SSI) /Secretariat of Industrial Assistance (SIA) for large and medium industries
Allotment of land	State Directorate of Industries (DI) /State Industrial Development Corporation (SIDC)/Infrastructure Corporation/Small Scale Industrial Development Corporation (SSIDC)
Permission for land use (in case industry is located outside an industrial area)	a. State Directorate of Industries b. Department of Town and Country c. Planning d. Local authority/District Collector
NOC and consent to establish and operate under Water and Air Pollution Control Acts	State Pollution Control Board
Approval of construction activity and building plan	a. Town and country planning b. Municipal and local authorities c. Chief Inspector of Factories d. Pollution Control Board e. Electricity Board
Sanction of Power	State Electricity Board / State Power distribution utility or company
Tax Registration	a. State and Central GST Department b. State Department of Revenue
Extraction of Minerals (if required)	State Director of Mines and Geology
Code Number for Export and Import	Regional Office of Director General of Foreign Trade

SCHEDULE – B
SUBSIDY GRANTED TO THE BENEFICIARY FIRM
[.]

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Annex - I
Subsidy Determination Form

(For the purpose of releasing subsidy under “National Programme on Advance Chemistry Cell (ACC) Battery Storage”)

Beneficiary Name	CIN Number
Subsidy eligibility certificate No.	Subsidy eligibility certificate validity
From Month	To Month

I, _____ (Name, authorized signatory), on behalf of M/s _____ (Beneficiary name) being an applicant for release of subsidy under “National Programme on Advance Chemistry Cell (ACC) Battery Storage” with LOA number _____ (bid LOA number) hereby confirm that my subsidy during the period _____ to _____ (quarter months) is calculated to be INR.

a. Quantity of cells sold during period (Nos.):

HSN no.	Quantity (nos)

b. Quantity of cells sold during period (kWh):

HSN no.	Quantity (kWh)

c. Effective Subsidy per kWh (as per Programme Agreement) (INR):

HSN no.	Subsidy (INR / kWh)

d. Percentage of value capture (as per Certificate for value capture in India):

HSN no.	Value capture (%)

e. Overall subsidy amount (b x c x d) (INR):

HSN no.	Value capture (%)

.....
Authorized Signatory with date, Name and Seal
(Name of Beneficiary)
Designation.....

Seal

Verified by

.....
Name of Statutory Auditor

Seal

SCHEDULE – C

ESCROW AGREEMENT

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

AMONGST

- 1 Limited, a company incorporated under the provisions of the Companies Act, 2013 and having its registered office at (hereinafter referred to as the **“Beneficiary Firm”** which expression shall, unless repugnant to the context or meaning thereof, include its successors, permitted assigns and substitutes).
- 2 (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
- 3 The Government of India (**“GoI”**), through Department of Heavy Industry, Ministry of Heavy Industries and Public Enterprises (hereinafter referred to as the **“Government”** which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors, and assigns).

WHEREAS:

- (A) The Government has entered into a Programme Agreement dated with the Beneficiary Firm for pre-qualification and short-listing of bidders entitled to receive a subsidy (**“Subsidy”**) on the basis of the Advance Chemistry Cell manufactured by it (including scale of Advance Chemistry Cell production and Advance Chemistry Cell’s Value Addition in India) (**“Project”**), and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.
- (B) The Programme Agreement requires the Government to establish an Escrow Account, *inter alia*, on the terms and conditions stated therein.

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

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 Escrow Agreement and any amendment thereto made in accordance with the provisions contained herein;

“Programme Agreement” means the agreement entered into by both Parties for carrying out the Subsidy, annexed hereto as Annex-A, and shall include all of its Recitals and Schedules and any amendments made thereto in accordance with the provisions contained in this behalf therein;

“Cure Period” means the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Beneficiary Firm or the Government, as the case may be and shall commence from the date on which a notice is delivered by the Government or Beneficiary Firm, to the Beneficiary Firm or the Government, as the case may be, with either the Beneficiary Firm or the Government asking the other Party to cure the breach or default specified in such notice;

“Escrow Account” means an escrow account established in terms of and under this Agreement, and shall include the Sub-Accounts;

“Escrow Default” shall have the meaning ascribed thereto in Clause 6.1;

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

“Payment Date” means, in relation to any payment specified in Clause 4.1, the date(s) specified for such payment; and

“Sub-Accounts” means the respective Sub-Accounts of the Escrow Account, into which the monies specified in Clause 4.1 would be credited every month and paid out if due, and if not due in a month then appropriated proportionately in such month and retained in the respective Sub Accounts and paid out therefrom on the Payment Date(s).

1.2 Interpretation

1.2.1 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 Programme Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Programme Agreement.

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

1.2.3 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Programme Agreement shall apply, *mutatis mutandis*, to this Agreement.

2 ESCROW ACCOUNT

2.1 Escrow Bank to act as trustee

2.1.1 The Beneficiary Firm hereby appoints the Escrow Bank to act as trustee for the Government, and the Beneficiary Firm 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 Beneficiary Firm 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 Government and the Beneficiary Firm and applied in accordance with the terms of this Agreement. No person other than the Government and the Beneficiary Firm 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 Government 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 Government and the Beneficiary Firm 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 Within {insert number of days} days from the date of this Agreement, and in any case prior to the Appointed Date, the Beneficiary Firm shall open and establish the Escrow Account with the..... (name of Branch) Branch of the Escrow Bank. The Escrow Account shall be denominated in INR.
- 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 Beneficiary Firm shall, after consultation with the Government 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 Parties. Such fee and expenses shall be appropriated from the Escrow Account in accordance with Clause 4.1.

2.5 Rights of the parties

The rights of the Government and the Beneficiary Firm in the monies held in the Escrow Account are set forth in their entirety in this Agreement and the Government and the Beneficiary Firm shall have no other rights against or to the monies in the Escrow Account.

3 DEPOSITS INTO ESCROW ACCOUNT

3.1 Deposit by the Government

- 3.1.1 The Government agrees and undertakes that it shall deposit into and/or credit the Escrow Account with;

- (a) Subsidy in accordance with Article 11 of the Programme Agreement wherein the Government shall at all times throughout the Term of the Programme Agreement maintain in the Escrow Account, a balance of at least an amount equivalent to {2 (two)} months' estimated Subsidy;
- (b) Any other monies disbursed by the Government to the Beneficiary Firm;
- (c) Damages payable to the Beneficiary Firm; and
- (d) Compensation Payment.

4 WITHDRAWALS FROM ESCROW ACCOUNT

4.1 Withdrawals during Term

4.1.1 At the beginning of every month, or at such intervals as the Government may by written instructions determine, the Escrow Bank shall withdraw amounts from the Escrow Account and appropriate them in the following order by depositing such amounts in the relevant Sub-Accounts for making due payments, and if such payments are not due in any month, then retain such monies in such Sub-Accounts and pay out therefrom on the Payment Date(s):

- (a) All payments towards taxes and other statutory levies, payable by the Beneficiary Firm for and in respect of the Project;
- (b) all payments and Damages certified by the Government as due and payable to it by the Beneficiary Firm pursuant to the Programme Agreement; and
- (c) balance, if any, in accordance with the instructions of the Beneficiary Firm.

4.2 Withdrawals upon Termination

Upon Termination of the Programme Agreement, all amounts standing to the credit of the Escrow Account shall, notwithstanding anything in this Agreement, shall be appropriated in the following order:

- (a) all taxes due and payable by the Beneficiary Firm for and in respect of the Project;
- (b) all payments and Damages certified by the Government as due and payable to it by the Beneficiary Firm pursuant to the Programme Agreement and any claims in connection with or arising out of Termination; and
- (c) retention and payments arising out of, or in relation to, liability for defects and deficiencies set forth in the Programme Agreement.

4.3 Application of insufficient funds

Funds in the Escrow Account shall be applied in the serial order of priority set forth in Clauses 4.1. If the funds available are not sufficient to meet all the requirements, the Escrow Bank shall apply such funds in the serial order of priority until exhaustion thereof.

5 OBLIGATIONS OF THE ESCROW BANK

5.1 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 and property of the Escrow Bank.

5.2 Notification of balances

[•] business days prior to each Payment Date (and for this purpose the Escrow Bank shall be entitled to rely on an affirmation by the Government as to the relevant Payment Dates), the Escrow Bank shall notify the Government of the balances and any anticipated shortfall in the Escrow Account and Sub-Accounts as at the close of business on the immediately preceding business day. In the event of any such shortfall, the Government shall meet the same by crediting adequate sums to the Escrow Account from its own financial sources.

5.3 Communications and notices

In discharge of its duties and obligations hereunder, the Escrow Bank:

- (a) may, in the absence of bad faith or gross negligence on its part, rely as to any matters of fact which might reasonably be expected to be within the knowledge of the Government upon a certificate signed by or on behalf of the Government;
- (b) may, in the absence of bad faith or gross negligence on its part, rely upon the authenticity of any communication or document believed by it to be authentic;
- (c) shall, within [•] Business Days after receipt, deliver a copy to the Government acting through..... (name to be specified by the Government) of any notice or document received by the Escrow Bank (in its capacity as the Escrow Bank) from the Beneficiary Firm or any other person hereunder or in connection herewith;
- (d) shall, within [•] Business Days after receipt, deliver a copy to the Beneficiary Firm of any notice or document received by the Escrow Bank (in its capacity as the Escrow Bank) from the Government or any entity in connection herewith.

5.4 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 and properties 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.

5.5 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.

6 ESCROW DEFAULT

6.1 Escrow Default

6.1.1 Government Default

Following events shall constitute an event of default by the Government (a “Government Escrow Default”) unless such event of default has occurred as a result of Force Majeure or any act or omission of the Beneficiary Firm:

- (a) the Government commits breach of this Agreement by failing to deposit any monies into the Escrow Account as provided herein and fails to cure such breach by depositing the same into the Escrow Account within a Cure Period of [•] business days;
- (b) the Government causes the Escrow Bank to transfer funds to any account of the Government in breach of the terms of this Agreement and fails to cure such breach by depositing the relevant funds into the Escrow Account or any Sub-Account in which such transfer should have been made, within a Cure Period of [•] business days; or
- (c) the Government commits or causes any other breach of the provisions of this Agreement and fails to cure the same within a Cure Period of [•] business days.

6.1.2 Beneficiary Firm Default

Following events shall constitute an event of default by the Beneficiary Firm (a “Beneficiary Firm Escrow Default”) unless such event of default has occurred as a result of Force Majeure or any act or omission of the Government:

- (a) the Beneficiary Firm causes the Escrow Bank to transfer funds to any account of the Beneficiary Firm in breach of the terms of this Agreement and fails to cure such breach by depositing the relevant funds into the Escrow Account or any Sub-Account in which such transfer should have been made, within a Cure Period of [•] business days;
- (b) the Beneficiary Firm commits or causes any other breach of the provisions of this Agreement and fails to cure the same within a Cure Period of [•] business days.

6.1.3 Upon occurrence of a Government Escrow Default or Beneficiary Firm Escrow Default, as the case may be, the consequences thereof shall be dealt with under and in accordance with the provisions of the Programme Agreement.

7 TERMINATION OF ESCROW AGREEMENT

7.1 Duration of the Escrow Agreement

This Agreement shall unless terminated earlier by the mutual consent of the Parties or otherwise in accordance with the provisions of this Clause by written notice from the Government and the Beneficiary Firm to the Escrow Bank, remain in full force and effect for the duration of the Programme Agreement.

7.2 Substitution of Escrow Bank

The Government may after consultation with the Beneficiary Firm, by not less than [•] days prior notice to the Escrow Bank, terminate this Agreement and appoint a new Escrow Bank, provided that arrangements are made 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 Agreement with the substitute Escrow Bank.

7.3 Closure of Escrow Account

The Escrow Bank shall, at the request of the Government made on or after the payment by the Government of all outstanding amounts under the Programme Agreement including the payments specified in Clause 4.2, and upon confirmation of receipt of such payments, close the Escrow Account and Sub-Accounts and pay any amount standing to the credit thereof to the Government. Upon closure of the Escrow Account hereunder, the Escrow Agreement shall be deemed to be terminated.

8 SUPPLEMENTARY ESCROW AGREEMENT

8.1 Supplementary escrow agreement

The Government and the Beneficiary Firm shall be entitled to enter into a supplementary escrow agreement with the Escrow Bank providing, inter alia, for detailed procedures and documentation for withdrawals from Sub-Accounts pursuant to Clause 4.1.1 and for matters not covered under this Agreement such as the restrictions on withdrawals by the Beneficiary Firm or the Government in the event of breach of this Agreement or upon occurrence of an Escrow Default, procedures relating to operation of the Escrow Account and withdrawal therefrom, reporting requirements and any matters incidental thereto; provided that such supplementary escrow agreement shall not contain any provision which is inconsistent with this Agreement and in the event of any conflict or inconsistency between provisions of this Agreement and such supplementary escrow agreement, the provisions of this Agreement shall prevail.

9 INDEMNITY

9.1 General indemnity

- 9.1.1 The Government will indemnify, defend and hold the Beneficiary Firm and Escrow Bank, 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 Government of any of its obligations under

this Agreement or on account of failure of the Government to comply with Applicable Laws and Applicable Permits.

9.1.2 The Beneficiary Firm will indemnify, defend and hold the Government harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Beneficiary Firm to fulfil any of its obligations under this Agreement materially and adversely affecting the performance of the Government's obligations under the Programme Agreement.

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

9.2 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 10.1 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 [•] days of receipt of the claim 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, 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.

10 DISPUTE RESOLUTION

10.1 Dispute resolution

10.1.1 Any dispute, difference or claim arising out of or in connection with this Agreement, which is not resolved amicably, shall be decided finally by reference to arbitration to a Board of Arbitrators comprising one nominee of each Party to the dispute, and where the number of such nominees is an even number, the nominees shall elect another person to such Board. Such arbitration shall be held in accordance with rules of the Delhi International Arbitration Centre (the "Rules") or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996.

10.1.2 The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The venue of arbitration shall be.....(name of the city) and the language of arbitration shall be English.

11 MISCELLANEOUS PROVISIONS

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

11.2 Waiver of sovereign immunity

The Government 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 Government 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).

11.3 Priority of agreements

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

11.4 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.

11.5 Waiver

11.5.1 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.

11.5.2 Neither the failure by any 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 any 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.

11.6 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.

11.7 Survival

11.7.1 Termination of this Agreement:

- (a) shall 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 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.

11.7.2 All obligations surviving the cancellation, expiration or termination of this Agreement shall only survive for a period of [•] years following the date of such termination or expiry of this Agreement.

11.8 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 10.1 of this Agreement or otherwise.

11.9 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.

11.10 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 addresses for service of each Party, its facsimile number or 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.

11.11 Language

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

11.12 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.

11.13 Original Document

This Agreement may be executed in four 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
ESCROW BANK by:

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)

SIGNED, SEALED AND
DELIVERED

For and on behalf of
the Government by:

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)

SIGNED, SEALED AND
DELIVERED

For and on behalf of Beneficiary Firm
in the presence of:

1.

2.

DRAFT

SCHEDULE – D

TESTING STANDARDS

1 Testing Standards

1.1 Purpose

- 1.1.1 This schedule lays down guidelines for testing of Advance Chemistry Cells for the purpose of availing subsidy to be provided under the National Programme on Advance Chemistry Cell (ACC) Battery Storage. The tests and criteria prescribed in this schedule are limited to calculation of Energy Density and Cycle lives which are the essential qualifying criteria for manufacturers to avail subsidy for ACC as per the performance outputs specified in ACC matrix (e.g. para 1.2 below). For the purpose of commercial sale of the cells in the Indian market, independent testing as per the prevailing standards would be necessary.
- 1.1.2 This guideline provides the Standardized Testing Framework to decide the eligibility criteria in the National Programme on Advance Chemistry Cell Battery Storage for incentivising cell manufacturing in India. The cells will be tested to determine the Beneficiary Firm's eligibility as per the eligibility matrix for availing incentives under the said programme.
- 1.1.3 The Guidelines specify performance requirements of the cells to be tested by a third party laboratory accredited by NABL. It also specifies the requirements of sampling, test methods and key requirements to be met by the testing laboratories.

1.2 Terms and definitions

Following terms and definitions shall apply for standardise testing framework:

Advance Chemistry Cells:

As defined in Schedule-G.

The Cycle life and energy density have been defined which have to be achieved at specified operating conditions (Temperature and C-rate) as elaborated in this document. The cycle life has to be achieved at specified Depth of Discharge (DoD) and End of Life (EoL) capacity as defined in the document.

Energy density:

Energy density is the amount of energy stored per unit weight of a cell and to be measured in Wh/kg.

Cycle life:

Cycle life is the number of charge and discharge cycles that a cell is able to support at a specified DoD before its capacity degrades to the EoL (End of Life) condition.

State of Health (SoH):

State of Health is defined as the ratio of actual capacity of a cell and the initial rated capacity of the cell and it is expressed as a percentage.

End-of-life (EoL) capacity:

End-of-Life capacity is defined as the minimum SoH of the cells, post which they cannot fulfil the application's requirements due to a significant reduction in performance.

Room temperature:

Room Temperature is defined here as the temperature of 25 °C (centigrade) \pm 2K

Rate of Discharge (C-Rate):

Rate of Discharge (C-rate) is a measure of the rate at which a cell is discharged or charged relative to its maximum capacity. e.g. 1C rate means that the discharge current will discharge the entire cell in 1 hour and in the same cell discharging at 0.5C would mean that discharge current will discharge the entire cell in 2 hours.

Depth of discharge (DoD):

Depth of Discharge (DoD) is defined as the percentage (%) of energy cycled out of the battery on a given cycle with respect to the total capacity of the battery. In other words, the DoD can also be referred to as the fraction of the battery capacity which is used in every charge and discharge cycle.

Useable/ Useful energy:

Useable or useful energy refers to the total cumulative energy discharged by a cell during the entire cycle life at the specified DoD level and EoL capacity threshold.

State of Charge (SoC):

The state of charge of a cell denotes the capacity which is currently available as a function of the rated capacity. The value of the SoC varies between 0% and 100%. If the SoC is 100%, then the cell is said to be fully charged, whereas a SOC of 0% indicates that the cell is completely discharged.

Power Capacity:

Power Capacity refers to the rate at which the energy is delivered per unit time by the cell and is measured in Watts.

1.3 Testing criteria for cell performance

There are several factors which affect both the useable energy and the cycle life. To avail the incentive under the National Programme on ACC Battery Storage, the manufacturer shall follow a common set of operating and environmental conditions, as defined in the subsequent sections, to demonstrate the output parameters and qualify for the incentive under the said programme. Manufacturers may be permitted to make performance claim for which tests can be carried out over and above the minimum specified criteria. However, this must be done under the knowledge of the Programme Administrator.

1.3.1 Temperature

Criteria:

1.3.1.1 The test shall be performed at room temperature 25 °C \pm 2 K.

Note: The performance values at 25 °C has been prescribed for the purpose of availing subsidy. However, for the purpose of commercial sale of the ACCs in the Indian market, independent

testing as per prevailing standards would be required. It is anticipated that such additional testing for product validation purposes will be taken up by the product developers and concerned customers as per their application and specific requirements.

1.3.2 Rate of Discharge (C-Rate)

Criteria:

1.3.2.1 The Energy density and Cycle life tests shall be conducted at 0.5C charge and 0.5C discharge as the standard test condition or any other higher charge / discharge rate, if requested by the manufacturer.

1.3.3 Depth of discharge (DoD)

Criteria:

1.3.3.1 The minimum DoD for testing shall be 80%. Testing at any other higher DoD level is permissible, if requested by the manufacturer. The cycle life and energy density tests shall be done at the same level of DoD.

1.3.3.2 The criteria for determining eligibility for incentives are given hereunder:-

Manufacturers' specifications (illustrative)			Useful Wh for energy density calculation	Qualified? Yes/No
Cell	Name plate rating (Wh)	Cycle life at 80% DOD		
A	100	>10000	$100 \times 0.8 = 80$ Wh	Yes, if the cell meets or exceeds the energy density criteria of 50 Wh/kg
B	100	>4000	$100 \times 0.8 = 80$ Wh	Yes, if the cell meets or exceeds the energy density criteria of 125 Wh/kg
C	100	>2000	$100 \times 0.8 = 80$ Wh	Yes, if the cell meets or exceeds the energy density criteria of at least 200 Wh/kg
D	100	>1000	$100 \times 0.8 = 80$ Wh	Yes, if the cell meets or exceeds the energy density criteria of more than 275 Wh/kg

1.4 Testing criteria to assess the life cycle capacity

1.4.1 End-of-life (EoL) capacity

Criteria:

1.4.1.1 End-of-life capacity for testing shall be “80% of initial capacity and would be measured in Wh”.

1.4.2 Cycle life testing: Based on partial “cycle life” tests

Criteria:

1.4.2.1 Testing of the cycle life of the cells, at the specified DoD levels, shall be carried out up to completion of 50% of the number of cycles as specified by the manufacturer. Based on the performance of the cell at the end of 50% of the specified number of cycles, projections shall be made to arrive at the total cycle life of the cell, considering an EoL capacity of 80% of the initial rating of the cell. In addition:-

- (a) Energy delivered at the start of cycle life, at end of 50% of cycle life and as projected at the End-of-life capacity should be at or above 100%, 90% and 80% of the rated capacity, respectively.
- (b) Power delivered at the start of cycle life, at end of 50% of cycle life and as projected at the End-of-life capacity should be at or above the manufacturer specified value.
- (c) The cell needs to demonstrate minimum acceptable voltage level through a high-rate discharge test.

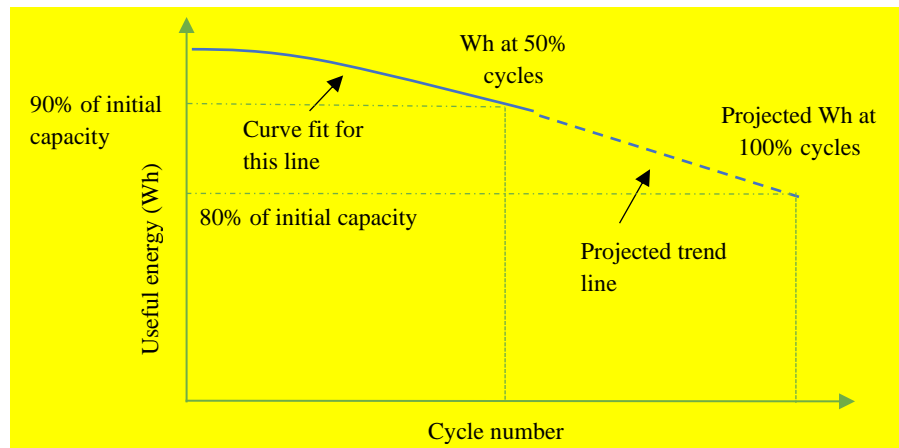
1.4.2.2 The subsidy determined through the above process would be provisional subject to the cell demonstrating the complete cycle life in due course. In case, the cell demonstrates a cycle life which changes its position in the ACC matrix, a penalty, as determined suitably, would have to be paid by the cell manufacturer. The detailed test procedure to carry out the cycle life test is given in **Section 3**.

1.4.2.3 It is recommended that the test results and projections shall cover the following parameters as minimum performance requirements of the cell:-

#	Parameter	Start of cycle test	End of 50% specified no. of cycles	End of specified no. of cycles
1	Useful energy in Wh (delivered in one cycle)	Measured value to match specified value	Measured value to be at least 90% of initial value	Projected value to be at least 80% initial value
2	Power Capacity (Watts)	Measured value to be equal to or exceed “specification”	Measured value to be equal to or exceed “specification @50% cycle”	Projected value to be equal to or exceed “specification @ end of cycle”

Note: Manufacturer has to mention the useful energy and power capacity for each of these stages.

1.4.2.4 To undertake the cycle life projections, post the end of 50% of specified no of cycles, the useful energy is measured in each cycle and a plot of energy is made against cycle number. The following diagram illustrates this process. This graph is then projected using a linear extrapolation method to determine the projected value of cycle life when the cell is expected to reach the End-of-life capacity (80% of initial capacity in Wh).

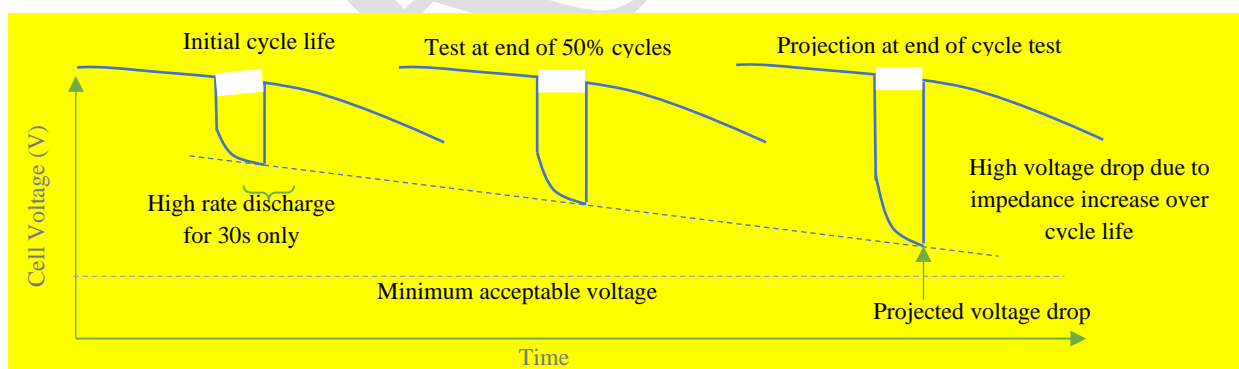


1.4.2.5 In addition, the testing should include a high rate discharge test to ensure that the cell, under testing, can deliver rated power/ C-rate till the end of projected life, apart from maintaining the rated energy (kWh) capacity. Considering the same, the Power capability of the cell, as mentioned in the end-of-life criterion, shall be measured using a “high rate pulse discharge” as described below.

[The testing agency should also endeavour to verify the results of cycle life testing, as per procedure illustrated above, through an alternate mechanism of Predictive cycle life / Accelerated ageing method, in line with relevant standards, if available, and suited for the concerned ACC type]

1.4.3 High rate discharge test

1.4.3.1 This test shall be conducted by applying a high current pulse of 30 second duration while the cell is going through a normal discharge test. The parameters to be measured are as shown by the following illustration:



Note: Manufacturer should define the minimum acceptable voltage level. No “specific” value of the magnitude of the “high current” pulse is recommended for this test. The “manufacturer specified” 30 sec peak discharge current value shall be used for the test.

1.4.3.2 The cell, under testing, will need to pass this test by demonstrating that the cell voltage after application of the high current pulse shall not fall below the manufacturer determined end-of-discharge voltage / minimum acceptable voltage as highlighted in the graph above.

- 1.4.3.3 It is recommended that this test shall be conducted at a temperature of $25^{\circ}\text{C} \pm 2 \text{ K}$ and SoC of the cell below 5Z0% but above 40%. The test should not be performed at below 40% SoC since the cell may not be able to deliver the required power at SoC levels below it.

2 Test Method for Energy Density

2.1 General

The following general conditions shall apply for the test method listed in subsequent clauses:

- 2.1.1 During each test, voltage, current and ambient temperature shall be recorded.
- 2.1.2 Before each test, the cell temperature shall be stabilized at room temperature by soaking at a temperature of 25°C for a minimum of 12 h.

NOTES

- Thermal Stabilization of a cell is considered to be reached if after an interval of 1 h, the change of cell temperature is lower than 1 K.
- The soaking period of 12 h may be reduced if thermal stabilization is reached.

- 2.1.3 The ambient temperature shall be the room temperature, which is the temperature of thermal chamber.
- 2.1.4 The overall accuracy of controlled or measured values, relative to the specified or actual values, shall be within the following tolerances:

$\pm 0.1 \%$ for voltage;
 $\pm 1 \%$ for current;
 $\pm 2 \text{ K}$ for temperature;
 $\pm 0.1 \%$ for time;
 $\pm 0.1 \%$ for mass;

NOTE These tolerances comprise the combined accuracy of the measuring instruments, the measurement technique used, and all other sources of error in the test procedure.

- 2.1.5 Rounding off shall be done as per IS 2.

2.2 Charging procedure for test purposes

- 2.2.1 Prior to charging, the cell or battery shall be discharged at 25°C at a constant C-rate, as per **1.3.2**, down to a specified final voltage as declared by the manufacturer.
- 2.2.2 The charging procedure for test purposes shall be carried out in an ambient temperature of 25°C , using the method declared by the manufacturer.

2.3 Mass measurement

The mass of a cell is measured at room temperature up to three significant figures in accordance with the tolerances in **2.1.4**.

2.4 Energy Capacity measurement (in Wh)

2.4.1 The energy capacity of a cell shall be measured in accordance with the following steps:

Step 1 – The cell shall be charged in accordance with **2.2**

Step 2 – The cell or battery shall be stored, in an ambient temperature of 25 °C, for the duration specified by the manufacturer.

Step 3 – The cell shall be discharged in an ambient temperature of 25 °C at a constant C-rate, as per **1.3.2**, to the end-of-discharge voltage that is provided by the cell manufacturer.

NOTE The end-of-discharge voltage provided by the cell manufacturer shall correspond to at least a DoD of 80%, as per **1.3.2**

Step 4 – Measure the discharge duration until the specified end-of-discharge voltage is reached. Calculate the discharge capacity of cell expressed in Ah up to three significant figures, by multiplying the discharge current (A) with the discharge duration (h).

Step 5 – Average voltage calculation

The value of the average voltage during discharging shall be obtained by integrating the discharge voltage over time and dividing the result by the discharge duration. The average voltage is calculated in a simple manner using the following method:

Discharge voltages U_1, U_2, \dots, U_n are noted every 5 sec from the time the discharging starts and voltages that cut off the end-of-discharge voltage in less than 5 sec are discarded. The average voltage U_{avr} is then calculated in a simplified manner using Equation (1) up to three significant figures by rounding off the result.

$$U_{avr} = \frac{U_1 + U_2 + \dots + U_n}{n} \quad (1)$$

Step 6 – The energy capacity expressed in Wh shall be calculated using Equation (2) up to three significant figures by rounding off the result.

$$W = C_d \times U_{avr} \quad \dots\dots(2)$$

where

W is the energy capacity of the cell at room temperature (Wh) when discharged under specified conditions;

C_d is the discharge capacity (Ah) as calculated in Step 4;

U_{avr} is the average voltage during discharging (V) as calculated in Step 5.

2.5 Calculation of mass energy density

2.5.1 Mass measurement

Mass of the cell shall be measured as specified in **2.3**.

2.5.2 Energy Capacity measurement

Energy capacity of the cell shall be determined in accordance with **2.4** at room temperature.

2.5.3 The mass energy density shall be calculated using Equation (3) up to three significant figures by rounding off the result:

$$\rho_{ed} = \frac{W}{m} \quad \text{..... (3)}$$

where

ρ_{ed} is the mass energy density (Wh/kg);

W is the energy capacity of the cell at room temperature (Wh) when discharged under specified conditions;

m is the mass of the cell (kg).

2.5.4 Process 2.5.2 and 2.5.3 shall be repeated five times. The final result shall be calculated by taking average of best three readings.

3 Test Method for Cycle Life measurement

A cell is generally chosen based on its high energy density and good power capability at the desired working voltage. However, the reliability of a cell depends on its ability to deliver the expected cycle life in the long run. High discharge currents can significantly reduce the cycle life of cells. The following steps illustrate the procedure for undertaking cycle life testing through a series of charge and discharge cycles. Before the charge and discharge cycle test, measure the energy capacity as the initial performance of the cell in accordance with **2.4** at 25 °C.

3.1 Charge and discharge cycle

The charge and discharge cycle test shall be performed as follows:

(a) At the start of the test, cell temperature shall be stabilized to 25 °C in accordance with **2.1.2**.

(b) Test phases

Phase 1 – The cell shall be discharged at 25 °C at a constant C-rate, as per **1.3.2**, down to a specified final voltage. The final voltage shall be the same as that declared by the manufacturer.

Phase 2 – The cells shall be fully charged, in an ambient temperature of 25 °C, by the method specified by the cell manufacturer. The charge time shall be less than 2 h for the constant current charging step.

Phase 3 - The cell shall be discharged, in an ambient temperature of 25 °C at constant C-rate, as per **1.3.2**, until its voltage is equal to the end-of-discharge voltage that is provided by the cell manufacturer.

NOTE The end-of-discharge voltage provided by the cell manufacturer shall correspond to at least a DoD of 80%, as per **1.3.3**.

Phase 4 – Phase 2 and 3 shall be repeated until the test termination specified in **3.1((d))**.

NOTE The rest time between each phase shall be as specified by the cell manufacturer.

(c) Periodical measurement of performance

After completion of every 500 cycles, the energy capacity of the cell shall be measured as specified in **2.4**.

(d) Termination of test

The cycle life test shall be terminated when either of the following conditions is satisfied.

Condition A – The test sequence from phase 2 to phase 4 has been repeated for equal number of cycles as declared by the cell manufacturer.

Condition B – Energy capacity is decreased to less than 80 % of the initial value.

NOTE If the voltage falls below the lower limit specified by the cell manufacturer during phase 3, the test shall be discontinued notwithstanding the stipulation in **3.1((d))**, and the cell performance shall be measured at this point as specified in **3.1((c))**.

4 Terms & Conditions for Empanelment of Testing Laboratories

This section describes the key guidelines and terms of empanelment of testing laboratories for the purpose of conducting the testing of Advance Chemistry Cell for evaluation of eligibility for subsidy as per the National Program on ACC Battery Storage and to fulfil the requirements of testing as mandated by the Programme Administrator from time to time. The Terms & Conditions for Empanelment of Testing Laboratories under the ACC Programme (hereinafter referred to as the “Terms of empanelment”) will be prepared by NABL in consultation with NITI Aayog. The Program Administrator/ Ministry will empanel the laboratories, in accordance with these Terms and Conditions.

4.1 Requirement of Laboratory set-up

4.1.1 Key requirements

Criteria:

- 4.1.1.1 The testing shall be carried out in a laboratory/testing facility which shall be accredited by NABL in accordance with ISO/IEC 17025: 2017. The useful energy, cycle life and high discharge rate test should be in the accredited scope of the laboratory for the test methods mentioned in this guideline.

Desirable Equipment:

The testing facility to be furnished with the following equipment to carry out the tests:

1. Digital multimeter - Resolution: 1 mV, 0.1 A
2. Charger – To cover the full range of C-rates i.e., 0.5 C to the maximum C rate claimed by the manufacturer.
3. Electronic load- for discharge should cover 0.5 C to the maximum discharge rate claimed by the manufacturer.
4. Battery impedance meter - Resolution 1 milli Ohm
5. Environmental chamber – Non-condensing humidity chamber for maintaining temperature of 25 +- 2°C and Relative Humidity of 45 to 70% for charge, discharge, and storage. All testing should be conducted using environmental chambers with forced air circulation. The cells shall be placed in such a manner that local heating effects are minimized.
6. Data logger - for continuous multi-channel data logging of test parameters with at least 10 Hz rate [two channels per cell (voltage & current) and two channels for Temperature and RH].

Note: If the parameter recording facility is part of cell cycler, no separate data logger is required.

7. Cell cycler with charge / discharge capability and data logging system to record continuous readings of voltage, current and temperature.

The charge / discharge rates shall be programmable up to the peak levels as required by the cell specification.

The cycler shall also have provision for programming any specific usage cycle on a second-by-second basis.

8. A high rate discharge tester for applying 30 sec high discharge pulse with sufficient rating to apply specified peak current and record voltage, temperature and current at a 10 Hz rate. (to be taken as per test method requirement given in the standard).

Some of the equipment may have a combination of more than one of the above requirements and hence it is left to the manufacturer to decide on the exact equipment which it wants to install.

Note: In addition to this, it is suggested that the cell manufacturer should have a testing process to analyze all cells which have returned from customer premises after being installed/ used. However, this is not required to be eligible for the incentive programme.

4.1.2 General Guidance

- 4.1.2.1 The laboratory in which the testing is to be carried out is required to be empanelled by the programme administrator.
- 4.1.2.2 The laboratory at manufacturer's facility should strive to have standard/ custom built equipment for demonstrating abuse tolerance of cells as per relevant UN/ BIS and AIS standards. However, these tests shall necessarily be carried out externally at an accredited laboratory.
- 4.1.2.3 All equipment for performance and cycle tests shall be calibrated through NABL accredited laboratory or directly from CSIR-National Physical Laboratory and records maintained. The periodicity of calibration should not be more than a year. It is recommended that the laboratory should obtain NABL accreditation, for its testing facility for at least the tests mentioned in this guideline. Additional facilities like x-ray scanning, calorimetry and microscopes are suggested for the purpose of battery diagnostics assessment.

Recommended additional facilities:

- 1. Infrared thermal imaging camera - To monitor, map and interpret the thermal behaviour of batteries during charging/discharging cycles
- 2. Battery analyser for EIS (Electrochemical Impedance Spectroscopy) measurement. EIS is an accurate analytical technique for measuring critical battery parameters, including:
 - (a) State of Charge (SoC)
 - (b) State of Health (SoH)
 - (c) Internal temperature
 - (d) Fault within cell packs

4.2 Eligibility criteria for laboratories

- 1. The laboratory must be a legal entity in India, having NABL accreditation certificate in accordance with ISO/IEC 17025 for the relevant scope (tests in this document) and valid for a year from the date of application.
- 2. The laboratory should have been in the testing activity for at least 6 months and must provide an undertaking affirming capability to test at least fifty cells at a time.
- 3. The laboratory must have adequate skilled people to conduct the test (Educational qualification/ experience as per NABL criteria). The details of skilled manpower must be submitted along with application for empanelment.

4. The laboratory should have adequate spare storage space for the tested samples. Samples shall be retained for a period of six months after testing.
5. The laboratory shall follow Indian Electricity Rules and any Regulatory requirements of the Central and State Governments, for ensuring safety and standards. If there is a contradiction between ISO/ IEC 17025 and the regulatory requirements, the regulatory requirements will supersede.
6. The laboratory should not have been blacklisted by any agency from India or abroad.

4.3 Operational guidelines

1. An agreement will be signed between the Programme Administrator and the laboratory for a period of 2 years. Renewal or extension of timeline will be as per the Terms of Empanelment.
 - (a) The work order of 2 years would be awarded to the successful empaneled laboratories.
 - (b) The contract may then be further extended depending upon the performance with mutual consent.
2. Minimum period to be maintained for NABL Accreditation
 - (a) Laboratory is responsible for maintaining a minimum of one year of validity of the NABL Accreditation Certification and shall inform the Programme Administrator when this minimum period is likely to be breached.
 - (b) In the event of failing to get extension the empanelment will be deemed to be suspended till the NABL accreditation is renewed.
 - (c) Laboratory shall ensure continuity in NABL accreditation while carrying out cycle life tests, as per the terms and conditions of NABL.
3. Temporary Incapacity
 - (a) Laboratory must inform the Programme Administrator within 5 working days about temporary incapacity to handle fresh samples, along with valid reasons for the same. In case there is a breakdown while testing is underway, the same has to be reported to the Programme Administrator by the laboratory so that fresh samples from the same quarter are submitted to another empanelled laboratory for conducting the test afresh. The financial terms in such a case are to be worked out by NITI Aayog.
 - (b) At any point of time if the laboratory is under adverse action like denial, scope reduction, suspension, debar or withdrawal of accreditation, laboratory shall inform the Programme administrator. The empanelment may be withdrawn by the Programme Administrator in such cases.
4. Removal from empanelled list

- (a) Programme Administrator may remove the name of a laboratory from its empanelled list after giving due notice.
 - (b) Once a laboratory has been removed by the Programme Administrator from the list of empanelled laboratories, the laboratory can apply for re-empanelment only after a cooling off period of 3 months.
5. Programme Administrator reserves the right to visit the laboratory at any time or call for any information related to the test carried out for the Programme.
 6. The Programme Administrator has the right to obtain the progress report of the testing from time to time in case of long duration tests.

5 Guidelines for the Sampling & Reporting Procedures

5.1 Sampling & Testing

5.1.1 Collection of samples.

5.1.1.1 For the purpose of this section, the definitions given in IS 4905: 2015 shall apply.

5.1.1.2 The sample size should be at least four times the number of units required for testing, to take into account probable damages due to transportation and possible repetition of tests upon failure in a test. Five cells for one particular test will suffice [Please refer IS 16046 (parts 1 and 2)].

Explanatory Note: If the total number of exclusive cells required for all the tests is n , the sample size will be n . The four samples will totally contain $4 \times n$ cells. Only the first sample out of the four selected samples need be submitted for testing. The other three sets totalling $3 \times n$ cells are to be kept as back up for the above-mentioned exigencies. If only five cells are required for each test and all the tests can sequentially be completed on those five cells, then n will be 5.

5.1.1.3 The sample should be drawn from cells which have completed manufacture, inclusive of all quality assurance programmes of the manufacturer, but before their assembly into batteries. The sample shall be drawn from batches which are not more than 3 months old.

5.1.1.4 The sample shall be collected as per Method 1 in clause 8.6 of IS 4905: 2015 from the production where the identification of the units shall be by their serial numbers. Random numbers for the purposes shall be generated as per algorithm at clause 7 of IS 4905.

Audit records as per 7.4 of IS 4905: 2015 shall be maintained.

5.1.2 Criteria for acceptance.

All units of a selected sample shall pass the tests. In case a sample fails (results fall outside the eligibility matrix) in any of the tests, a further sample consisting of double the number of units should be tested for all the tests. All units of this second sample shall pass in the tests.

5.1.3 Surveillance testing.

An Independent agency designated by the Programme Administrator shall collect samples at the dispatch point or customers premises and get the samples tested at an independent

laboratory once in a quarter. The samples shall conform to the requirements specified for the tests. In case of non-conformity, two more samples shall be tested, both of these subsequent samples shall conform to the specified requirements. The agency should draw the sufficient number of units to take care of this eventuality.

5.1.4 Storage/Transportation of samples.

Storage and transportation of samples shall be as per the instructions provided for the model by the manufacturer. UN 38.3 protocol for transportation of cells and batteries shall be followed in case no such instructions are provided by the manufacturer.

5.2 Online System for Sample Selection, Transactions & Reporting

1. The samples shall be provided by the manufacturer to the laboratory as per the Sampling Procedure. The manufacturer and the empanelled laboratory shall adhere to the Guidelines, in the selection of samples, codifications, handling, storage and dispatch.
2. Before initiating the testing of the samples, the laboratory shall record compliance to the Guidelines and if it observes any variance from the Guidelines, the laboratory will inform the Programme Administrator for specific decisions.
3. Testing shall be done as per the test parameters defined in this document, and in accordance with the Indian or International Standards. The turn-around time shall be less than 3 days, in addition to the required test duration as specified in the test method. No deviation is permitted in test procedures.
4. The Program Administrator shall implement an online system for information collation from the manufacturers and testing laboratories, for updating the status/details of sample physical fitness, sample receiving date, testing & completion date, test conformance details, progress report along with the test reports & its observed values, status of failures, analysis of trends etc.

5.3 Guidance on Samples used in Long Term Aging Test Procedures.

- 5.3.1 Cells are subject to degradation in storage due to a variety of chemical mechanisms, such as limited thermal stability of materials in storage. Battery performance can degrade during use, due to parasitic reactions. Rates of degradation can be related to a number of factors, such as storage temperature or temperature variations.
- 5.3.2 The effect of degradation of performance can be estimated by real time storage measurements or by accelerated ageing at high temperatures.
- 5.3.3 Hence, the selection of cells to be done for long term aging / cycle life testing has to be done exclusively from the fresh batch of manufacturing. For instance, as per **5.1.1**, if the sampling has been done for batches manufactured during January - March, the cycle life testing/ aging test has to be done on samples manufactured at the most recent date in the January - March period.

SCHEDULE – E

DISBURSEMENT MECHANISM

1. The amount of cash Subsidy to be distributed shall be linked to the following factors:
 - (a) Capacity of Advance Chemistry Cell sold (per KWh basis); and
 - (b) Value Addition within India of Advance Chemistry Cell produced. The percentage of Value Addition may also include the Value Addition by the ancillary units or indigenous manufacturers undertaking the activity of manufacturing in India.

2. The amount of Subsidy to be disbursed would be calculated as following:

Formula for calculation:

Fixed amount per kilowatt hour **X (multiplied)** Percentage of Value Addition achieved during the period **X (multiplied)** Actual production of Advance Chemistry Cell sold (in KWh).

Explanation:

“**Value Addition**” shall be construed as the percentage of manufacturing activity (to manufacture Advance Chemistry Cell) being undertaken in India, by the Beneficiary Firm either on its own or through ancillary units or via indigenous manufacturers.

3. **Self-certification/ Validation**

The Beneficiary Firm shall provide self-certification given by the Chartered Accountant in terms of generally accepted costing principles. The following parameters may be considered by the Cost Accountant to calculate the Value Addition in India:

- (a) Change in HSN at 6-digit level: The final product (Advance Chemistry Cell) should be achieved as a result of change in a HSN (as per the Customs Tariff Act, 1975) at the six digit level (of the final product manufactured vis-a-vis the goods procured for the manufacturing activity) on account of manufacturing activity undertaken by the Beneficiary Firm, ancillary unit or by the indigenous manufacturer, respectively.
- (b) The final process of manufacture is performed in India. The term “manufacture” may mean processing of raw-material or inputs in any manner that results in emergence of new product having a distinct name, character, and use. In other words, to meet the qualifying criteria for the incentives, the Advance Chemistry Cell should be manufactured in India and have such percentage of localization as may be notified from time to time.
- (c) Value Addition³ in respect of the Advance Chemistry Cell may be denominated as the ratio of 'actual value added' to the sale value (net of returns, price adjustments,

³ Similar procedure has been prescribed by the Central Government in the Notification No. 01/2010 – Central Excise, dated 06 February 2010

discounts, etc.) of the said goods (ACCs), excluding indirect taxes, if any paid on the goods. It may be expressed as the percentage of manufacturing activity being undertaken in India, either on its own or through ancillary units or indigenous manufacturers. The 'actual value added' may be calculated on the basis of financial records (including turnover reported in GST returns) as per the following formulae:

- Sale value of the said goods, excluding indirect taxes, if any, paid on the goods
 - **Less:** Cost of raw materials and packing materials consumed in the said goods (i.e. in the sale price of the goods sold) to be calculated in terms of generally accepted costing principles
 - **Less:** Cost of material whose source of origin cannot be ascertained (beyond prescribed threshold)
 - **Less:** Cost of fuel consumed, if eligible for GST input credit
 - **Less:** Expenses incurred in foreign currency for royalty or technical know-how as debited in the income statement (Directly or through intermediate Company)
 - **Add:** 'Actual value added by the ancillary units or indigenous manufacturers' attributable to sale value of said goods
- (d) 'Actual value added by the ancillary units or indigenous manufacturers' is 'actual value added' (as per the above formulae) by such units in relation to sale (net of returns, price adjustments, discounts, etc.) considered by the Mother Unit (for computation of the 'actual cumulative value added' by the Mother Unit). The value (in absolute terms) of 'Actual value added by the ancillary units or domestic manufacturers' may be validated basis the statutory auditor's certificate received from the respective ancillary unit or indigenous manufacturer.
- (e) The certificate from the statutory auditor may not be required where value addition by the ancillary unit or the indigenous manufacturer is less than 2% (two per cent) (viz. calculated as percentage of actual value added by indigenous manufacturers to the sale value (net of returns, price adjustments, discounts, etc.) of ACCs manufactured by Mother unit) or INR 200,000 (Rupees two lakhs) (Gross amount).
- (f) The onus to validate the Value Addition by ancillary units or indigenous manufacturers would remain on the Beneficiary Firm.
- (g) Where the Beneficiary Firm is also engaged in manufacture of battery packs and a Value Addition till the cell stage could not be determined with the abovementioned approach, the percentage of value added calculated (as above) should be reduced by at-least 35% (thirty five per cent) to calculate the percentage of value added to manufacture ACCs. For example, if the value capture at the battery level is x%, then the value capture at the cell level shall be $(x-35)/(100-35)\%$. The Beneficiary Firms shall be submitting to the Government, the information pertaining to the fraction of battery pack in the total battery value produced in India.

- (h) For the purpose of validation of claim, following documents may also be considered:
- (i) Document issued by the concerned Director of Industries evidencing the commencement of commercial production.
 - (ii) Certificate by a statutory auditor certifying the quantity and value of finished goods procured.
 - (iii) Certificate by a statutory auditor certifying the breakup of the major components in the final value of finished goods sold (i.e ACC Batteries). The major components shall constitute all those components that account for more than 2% (viz. calculated as percentage of actual value added by indigenous manufacturer to the sale value of ACC batteries manufactured by Mother unit) or INR 200,000 (Gross amount), whichever is lower, in the corresponding period.
 - (iv) Certificate by statutory auditor certifying the reconciliation of value and quantity of ACCs manufactured, traded, sold as scrap, stock transferred, and GST paid vis a vis the amount of reported in financial statements and GST returns.
 - (v) Audited account for the relevant financial year.
 - (vi) GST Audit Report for the relevant financial year for the company.
 - (vii) Self-Certification by the Authorized Signatory of the Beneficiary Firm, claiming the intended end-use (Category Mobile & Stationary) of the ACCs sold under the Programme.

SCHEDULE – F
PERFORMANCE SECURITY

The Chairman,

WHEREAS:

- (A) (the “**Beneficiary Firm**”) and The Government of India (“**GoI**”), through the Department of Heavy Industry, Ministry of Heavy Industries and Public Enterprises (hereinafter referred to as the “**Government**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) have entered into a Programme Agreement dated (the “**Agreement**”) for pre-qualification and short-listing of bidders entitled to receive a subsidy on the basis of the Advance Chemistry Cells manufactured by it (including scale of Advance Chemistry Cell production and Advance Chemistry Cell’s Value Addition in India)
- (B) The Agreement requires the Beneficiary Firm to furnish a Performance Security to the Government in a sum of INR***** (the “**Guarantee Amount**”) as security for due and faithful performance of its obligations, under and in accordance with the Agreement, during the Construction Period (as defined in the Agreement).
- (C) We, through our Branch at (the “**Bank**”) have agreed to furnish this Bank Guarantee by way of Performance Security.

NOW, THEREFORE, the Bank hereby, unconditionally, and irrevocably, guarantees and affirms as follows:

1. The Bank hereby unconditionally and irrevocably guarantees the due and faithful performance of the Beneficiary Firm’s obligations during the Term of the Agreement, under and in accordance with the Agreement, and agrees and undertakes to pay to the Government, upon its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Beneficiary Firm, such sum or sums up to an aggregate sum of the Guarantee Amount as the Government shall claim, without the Government being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.
2. A letter from the Government, that the Beneficiary Firm has committed default in the due and faithful performance of all or any of its obligations under and in accordance with the Agreement shall be conclusive, final and binding on the Bank. The Bank further agrees that the Government shall be the sole judge as to whether the Beneficiary Firm is in default in due and faithful performance of its obligations during the Term under the Agreement and its decision that the Beneficiary Firm is in default shall be final, and binding on the Bank, notwithstanding any differences between the Government and the Beneficiary Firm, or any Dispute between them pending before any court, tribunal, arbitrators or any other the Government or body, or by the discharge of the Beneficiary Firm for any reason whatsoever.