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KKS Nagpur

# DOLLAR CREDIT LINE AGREEMENT

**DATED JANUARY 10, 2018**

**BETWEEN**

**THE GOVERNMENT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA**

**AND**

**EXPORT-IMPORT BANK OF INDIA**

# INDIA NON JUDICIAL

## Government of National Capital Territory of Delhi

## e-Stamp

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This stamp paper forms an integral part of Dollar Credit Line Agreement dated January 10, 2018, executed between the Government of the Democratic Socialist Republic of Sri Lanka and Export-Import Bank of India for USD 45,270,000 [Dollars Forty five million and two hundred and seventy thousand only]

# I N D E X

**THIS AGREEMENT** made as of 10th day of January 2018 between the **Democratic Socialist Republic of Sri Lanka** (hereinafter referred to as **"the Borrower"** which expression shall, unless the context or subject otherwise requires, include its successors and permitted assigns) of the **One Part** and **EXPORT-IMPORT BANK OF INDIA,** a corporation established under the Export-Import Bank of India Act, 1981 (an enactment by the Parliament of India) and having its Head Office at Centre One Building, Floor 21, World Trade Centre Complex, Cuffe Parade, Mumbai-400 005, India (hereinafter referred to as **"Exim Bank",** which expression shall, unless the context or subject otherwise requires, include its successors and assigns) of the **Other Part**

**WHEREAS:**

(i) it has been agreed between the parties hereto for the provision by Exim Bank of a Credit to the Borrower upto an aggregate sum of $ 45,270,000 [Dollars Forty five million and two hundred and seventy thousand only] for financing Rehabilitation of Kankesanthurai Harbour , in the Borrower's Country;

(ii) the parties hereto are desirous of recording the terms and conditions of the Credit.

**NOW THEREFORE IT IS HEREBY AGREED** by and between Exim Bank and the Borrower as follows:-

1. **Definitions:**

In this Agreement and in the Schedules hereto, unless the context shall otherwise require, the following expressions shall have the meanings respectively assigned to them as under:-

**"Advance"** means each disbursement of a portion of the Credit in accordance with Clause 4 hereof, or as the context may require, the principal amount thereof outstanding;

**"Borrower's Country"** means the Democratic Socialist Republic of Sri Lanka;

**"Business Day"** means any day on which Exim Bank and banks (as applicable) shall remain open for business in Mumbai, Colombo (Sri Lanka), New York, and London for the purpose contemplated by the Agreement;

**"Buyer"** means a buyer in the Borrower's Country in relation to an Eligible Contract;

**"Consultant / Project Management Consultant (PMC)"** means the Indian consultant being appointed by the Borrower for preparation of DPR, procurement of goods, project management as per the specified needs of the Borrower's Country and to carry out any other consultancy services for the Project;

**"Credit"** means the whole or any part of the Credit referred to in Clause 2 hereof, and where the context so requires, the principal amount thereof outstanding from time to time;

**"Detailed Project Report" or "DPR"** means the report forming the basis for grant of the Credit prepared in terms of extant guidelines issued by the Government of India;

**"Dollars"** and the sign **"$"** mean the lawful currency of the United States of America;

**"Effective Date of the Agreement"** means the date on which this Agreement shall become effective in terms of Clause 9.1 hereof;

**"Eligible Contract"** means a contract as is considered eligible under Clause 3 hereof to be financed out of the Credit;

**"Eligible Goods and Services"** in respect of an Eligible Contract means any goods including plant, machinery and equipment, and services including consultancy services for the purpose of rehabilitation works of Kankesanthurai Harbour by the Borrower, to be exported from India to the Borrower's Country, which may be agreed to be financed by Exim Bank under this Agreement, out of which goods and services of the value of at least 75% of the contract price shall be supplied by the Seller from India, and the remaining 25% of goods and services may be procured by the Seller for the purpose of the Eligible Contract from outside India;

**"Eligible Value"** means, in respect of an Eligible Contract, an amount upto 100% (one hundred per cent) of the FOB (free on board)/CFR (cost & freight)/CIF (cost, insurance & freight)/CIP (carriage and insurance paid to) contract price of the Eligible Contract, that may be made available by Exim Bank to the Borrower out of the Credit in respect of that contract;

**"Events of Default"** means any of the events mentioned in Section K.1 of the General Conditions or any event which with the giving of notice and/or lapse of time and/or fulfilment of any other requirement may become one of the events mentioned in that Section;

**"FOB/CFR/CIF/CIP"** means the seaway shipment terms as defined in Incoterms 2000;

**"General Conditions"** means the terms, conditions, covenants, stipulations and other provisions set out in **SCHEDULE** hereto which form an integral part of this Agreement and be deemed to be incorporated herein by reference;

**"Interest Payment Date"** means each of the two dates during each calendar year that may be advised by Exim Bank to the Borrower after approval of the first contract hereunder, on which interest and other payments in terms of this Agreement shall be payable by the Borrower;

**"Interest Period"** means, in relation to an Advance or the Credit, as the case may be, the period ascertained in accordance with Section C of the General Conditions;

**"Interest Rate"** means one point seven five per cent (1.75%) per annum at which interest shall be chargeable by Exim Bank on each Advance, or as the case may be, on the outstanding amount of the Credit;

**"Issuing Bank"** means a bank in the Borrower's Country which shall in that capacity be issuing letters of credit referred to in Clause 3.1 (d) hereof;

**"Negotiating Bank"** means Exim Bank to which documents shall be presented by the Seller for negotiation under letters of credit and through which payment shall be made to the Seller in relation to an Eligible Contract;

**"Payment Authorisation"** means the authorisation to be issued by the Borrower to Exim Bank as provided in **Clause 4.B**, irrevocably authorizing Exim Bank to make payment of the sum therein mentioned to the account of the Seller, whenever a payment needs to be made to the Seller under an Eligible Contract for advance payment and / or for supplies made/services rendered by the Seller in the Borrower's Country and payment of retention money under the Eligible Contract;

**"Project"** means the project for financing Rehabilitation of Kankesanthurai Harbour including supply of goods and services for which Exim Bank has agreed to make available the Credit, and the description thereof may be amended from time to time by agreement between the Borrower and Exim Bank;

**"Repayment Date"** means, the due date of payment of each instalment of the Credit;

**"Seller"** means a seller in India in relation to an Eligible Contract and shall include **Consultant / PMC**;

**"Shipment"** means any mode of despatch, whether by sea or otherwise. agreed between the Seller and the Buyer;

**"Terminal Disbursement Date"** means the date falling on expiration of a period of 60 (sixty) months after the scheduled completion date in case of project export and supply contract.

2. **Amount of the Credit:**

Exim Bank agrees to extend to the Borrower and the Borrower agrees to avail from Exim Bank a Credit of $ 45,270,000 [Dollars Forty five million and two hundred and seventy thousand only] for the Project in the Borrower's Country upto the Eligible Value of each Eligible Contract on the terms and conditions herein set out.

3. **Eligibility of contract to be financed out of the Credit:**

3.1 A contract shall not be eligible to be financed out of the Credit unless:-

(a) it is for the import of the Eligible Goods and Services into the Borrower's Country and in the case of any contract which includes rendering of consultancy services, it provides for sourcing consultancy services from India;

(b) the contract price is specified in Dollars and is not less than $ 50,000/- (Dollars fifty thousand only) or such amount as may from time to time be agreed upon between the Borrower and Exim Bank;

(c) the Borrower has conducted a transparent, non-discriminatory and fair bidding process for selection of the Seller for execution of the contract as per Guidelines for Bidding and Procurement Procedures given at **Annexure I**. The Borrower has ensured that the tendering process for selection of Indian suppliers on the basis of product specifications/eligibility criteria has been developed by the Borrower in consultation with Exim Bank to make the tendering process fair and competitive. The Borrower has also provided a confirmation to Exim Bank to the effect that the Seller has been selected by the Borrower through a competitive bidding process along with details of the procedures adopted for selection of the Seller including the price bids received, the weightages and other relevant criteria adopted in the final selection of the bids;

(d) the contract requires the Buyer to make payment to the Seller of 100% (one hundred per cent) of FOB/CFR/CIF/CIP contract price of the Eligible Goods excluding Services, pro-rata against shipments, to be covered under an irrevocable letter of credit in favour of the Seller;

(e) the Borrower hereby confirms to Exim Bank that the Eligible Goods and Services shall be exempt from all kinds of taxes and duties of any nature whatsoever levied in the Borrower's Country including all corporate/personal/value added taxes, import/custom duties, special levies and social security contributions for temporary employees deputed by the Seller in relation to the execution of the contract in the Borrower's Country; Provided however that, if the domestic laws of the Borrower's Country prohibits exemptions of any kinds of taxes and duties on Eligible Goods and Services, the same shall be paid by the Seller from its own resources and may then be reimbursed by the Buyer to the contractor;

(f) in the case of services to be rendered by a Seller in the Borrower's Country, or where the contract requires advance payment to be made by the Buyer to the Seller which needs to be financed out of the Credit, the contract provides for the Buyer to cause the Borrower to issue a Payment Authorisation, substantially in the format given at **Annexure III** to Exim Bank to enable the Seller to claim payment from Exim Bank of the Eligible Value apportionable to the amount of invoice for such services or, as the case may be, the amount of advance payment;

(g) the contract contains a provision that the Eligible Goods and Services shall be inspected before shipment on behalf of the Buyer and the documents to be furnished by the Seller to the Negotiating Bank under the letter of credit arrangement referred to in sub-clause (d) herein shall include an inspection certificate;

(h) the contract also contains a provision to the effect that Exim Bank shall not be liable to the Buyer or the Seller for not being able to finance purchase of the Eligible Goods and Services or any portion thereof by reason of suspension or cancellation of any undrawn amount of the Credit in terms of this Agreement;

(i) the Borrower has sent to Exim Bank brief details of the contract in the format at **Annexure II** and such other documents and information as Exim Bank may require in this behalf, and Exim Bank has, in writing, conveyed inclusion of the contract under the Credit indicating the Eligible Value thereof;

(j) the contract contains a procurement plan, an operational plan and suitable safeguards for ensuring sustainability and maintenance of the Project during the life of the Project.

(k) the contract has been concluded within eighteen months from the date of this Agreement;

3.2 Details of any amendment to an Eligible Contract agreed to by the parties thereto shall also be furnished by the Borrower to Exim Bank alongwith evidence of approval of the amendment by the Borrower. Provided, however, that Exim Bank's approval hereunder may not be necessary if such amendment is only a variation of technical specifications of the Eligible Goods and Services to be supplied under the contract that does not involve a material change in the scope or object of the contract/ payment terms. The Borrower shall, nevertheless, advise Exim Bank of any such amendment.

4. **Disbursements out of the Credit:**

4.A **Eligible Goods and Services covered by letters of credit:**

4.A.1 All letters of credit in pursuance of Clause 3.1 (d) hereof shall be opened by the Issuing Bank in favour of the Seller within such period prior to the relevant Terminal Disbursement Date as may be agreed by Exim Bank after the relative contract is approved by Exim Bank. The letters of credit shall be advised and negotiated through the Negotiating Bank. The letters of credit shall be subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision) published by the International Chamber of Commerce, (Publication No.600), and shall be irrevocable. Each letter of credit which shall be for an amount that shall cover the contract price, shall provide for payment to be made to the Seller against presentation of documents as specified in the letter of credit, an inspection certificate and Payment Authorisation;

4.A.2 Upon presentation of documents by the Seller to the Negotiating Bank, the Negotiating Bank shall pay to the Seller, an amount being not more than one hundred per cent (100%) of FOB/CFR/CIF/CIP contract value apportionable to the relative shipment as reduced by the amount of advance payment, if any, in equivalent amount at the spot rate of exchange of the Negotiating Bank, by credit to the account of the Seller with such bank as may be specified by it, provided the documents presented are in order and are compliant with the relevant letter of credit.

4.A.3 The amount of disbursement that shall have been made by Exim Bank as the Negotiating Bank as mentioned in Clause 4.A.2 shall be deemed to be an Advance made by Exim Bank to the Borrower out of the Credit and the date on which Exim Bank pays or remits the amount from Mumbai to the Seller shall be deemed to be the date of such Advance. Exim Bank shall, thereafter, advise the Borrower of the date and amount of Advance. The records of Exim Bank as to the particulars of disbursements and accounts shall be final and binding on the Borrower save for manifest error.

4.A.4 Bank charges, expenses, commission or stamp duty payable outside the Borrower's Country shall be to the account of the Seller and those payable in the Borrower's Country shall be to the account of the relevant Buyer.

4.A.5 Exim Bank shall in no way be liable or responsible for any act or omission in handling the letter(s) of credit or negotiation of documents thereunder.

**4.B Disbursements against Payment Authorisation:**

4.B.1 The Borrower shall on receiving :

(i) an invoice from the Seller duly certified by the Buyer representing the amount for supplies made / services rendered by the Seller under an Eligible Contract in the Borrower's Country, or,

(ii) a request from the Buyer to release advance payment to the Seller, in the case of the amount of advance payment under an Eligible Contract (where such advance payment is agreed to be financed out of the Credit),

(iii) a request from the Buyer to release retention money to the Seller under an Eligible Contract.

send Payment Authorisation favouring the Seller to Exim Bank in the format given at **Annexure III** for the amount of the Eligible Value apportionable to the relevant invoice/request.

4.B.2 Exim Bank shall on receipt of the original Payment Authorisation of the Borrower transfer the amount mentioned therein to the credit of the Seller in such account and with such bank as the Seller may have notified to Exim Bank.

4.B.3 The amount remitted by Exim Bank to the Seller pursuant to the Payment Authorisation for account of the Seller as aforesaid shall be deemed to be an Advance made by Exim Bank to the Borrower out of the Credit, and the date on which Exim Bank shall pay or remit the said amount from Mumbai to the designated account of the Seller shall be deemed to be the date of such Advance. Exim Bank shall thereafter, advise the Borrower of the date and amount of Advance. The records of Exim Bank as to the amount of disbursement(s) and particulars in the Borrower's account shall be final and binding on the Borrower save for manifest error.

4.C Notwithstanding anything contained hereinabove, Exim Bank shall not be obliged to make any payment to the Seller after the relevant Terminal Disbursement Date or otherwise in excess of the aggregate amount of the Credit facility. The Borrower shall therefore, ensure that Eligible Contracts shall be concluded in such a manner that letter(s) of credit in respect of the Eligible Contracts shall be opened within the period specified in Clause 4.A.1 or as the case may be, Payment Authorisation shall be received by Exim Bank and disbursements in respect of the letters of credit and under the Payment Authorisation can be made by Exim Bank on or before the relevant Terminal Disbursement Date and that the aggregate Eligible Value of the Eligible Contracts does not exceed the limit of the Credit.

4.D No part of any Advance(s) made under the Credit shall be applied towards payment of any taxes, whatsoever.

## 5. Interest:

5.1 On each Interest Payment Date, the Borrower shall pay to Exim Bank interest accrued on the principal amount of each Advance or, as the case may be, on the amount of the Credit outstanding during the Interest Period relating thereto at the Interest Rate.

5.2 Interest shall accrue from the date of each Advance and shall be calculated on the basis of the actual number of days elapsed (including the first day of the period during which it accrues) using 360 days a year factor.

5.3 Interest on other monies which may not be paid when due under the provisions of this Agreement shall also be payable on the relevant Interest Payment Date in the manner specified for payment of interest.

5.4 All interest on the outstanding amount of an Advance or the Credit, as the case may be, and on all other monies accruing due under the Credit Agreement shall, if not paid on the respective due dates, carry further interest at the same rate as specified above, computed from the respective due dates and shall become payable upon the footing of compound interest with rests taken or made half-yearly, without prejudice to the provisions of Clause 8 below.

## 6. Repayment:

The Borrower hereby agrees and covenants to repay to Exim Bank the outstanding principal amount of the Credit after a moratorium of five (5) years from the date of first Advance, in successive half-yearly substantially equal installments over such period not exceeding twenty (20) years (including the moratorium period) from the date of first Advance as may be agreed between Exim Bank and the Borrower, at the time of approval of the first Eligible Contract, the first of such installments falling

due for payment on the date immediately following the date of expiry of the aforesaid moratorium period. Exim Bank shall advise the Borrower of the repayment schedule relating to the Credit soon after disbursement of the first Advance. Provided However that if for any reason the aggregate amount of Advances finally disbursed by Exim Bank shall be less than the amount of Credit facility agreed to be provided by Exim Bank to the Borrower under this Agreement, the amount of the aforesaid repayment instalments of the Credit shall stand reduced in the inverse order of their maturity.

## 7. Fee(s)

### 7.1 Commitment Fee:

The Borrower shall pay to Exim Bank a commitment fee at the rate of 0.50% (fifty basis points) per annum on the amount of Credit remaining undrawn in respect of each Eligible Contract. The commitment fee shall begin to accrue from expiration of two (2) months from the date of approval of the relevant contract by Exim Bank and shall cease on the date of final disbursement of the Eligible Value of the Eligible Contract or on the Terminal Disbursement Date relating thereto, whichever is earlier. The commitment fee shall be payable on each Interest Payment Date alongwith half-yearly interest as specified in clause 5 hereof following the expiry of the said period of two (2) months. Provided however that commitment fee on the amount of Eligible Value of each Eligible Contract that may have remained undrawn on the relevant Terminal Disbursement Date shall be payable within ten (10) Business Days from such Terminal Disbursement Date.

### 7.2 Management Fee:

The Borrower shall pay to Exim Bank a one-time management fee at the rate of 0.50% (fifty basis points) on the amount of the Eligible Value of each Eligible Contract on the Interest Payment Date immediately following the date of approval of the relative Eligible Contract by Exim Bank.

7.3 No portion of commitment fee and management fee shall be refundable by Exim Bank to the Borrower even if disbursement of the whole or any part of the Eligible Value of an Eligible Contract may not materialise for any reason whatsoever.

## 8. Default Interest

8.1 If there shall be a default by the Borrower in the payment of any sum when due under this Agreement, the Borrower shall pay to Exim Bank additional interest by way of liquidated damages on the defaulted amount(s) from the due date to the date of actual payment (as well after as before judgement) at

the rate of 2% p.a. (two per cent per annum) over and above the Interest Rate.

8.2 Interest at the rate as aforesaid shall accrue from day to day, shall be calculated on the basis of the actual number of days elapsed and 360 days a year factor.

9. **Conditions Precedent:**

9.1 This Agreement shall become effective upon Exim Bank confirming to the Borrower in writing that it has received the following documents/documentary evidence from the Borrower in form and substance satisfactory to it :-

(a) an opinion of the Borrower's legal counsel substantially in the form given at **Annexure IV**, with respect to governmental and corporate authorisations, sanctions, consents and licences alongwith certified true copies thereof where available, that may be required for execution of this Agreement and all documents pursuant thereto, the execution, validity and enforceability of this Agreement and other documents in implementation thereof and such other matters pertaining to the transactions contemplated by this Agreement as Exim Bank may reasonably request;

(b) authenticated specimen signatures of the persons who are authorised to sign this Agreement and all documents thereunder including Payment Authorisations and to represent the Borrower in connection with implementation of this Agreement substantially in the format given at **Annexure V**; such specimen signatures shall be binding on the Borrower until Exim Bank receives notice of express revocation from the Borrower.

9.2 The Borrower hereby agrees to furnish the documents/documentary evidence mentioned in Clause 9.1 within 60 days from the date of this Agreement or within such extended period as may be agreed by Exim Bank.

9.3 Exim Bank shall approve a contract as eligible for being financed under this Agreement only after the Agreement has become effective, and Exim Bank shall disburse moneys for account of the Borrower subject to the following:-

(a) fee, interest and costs, charges and expenses, if any, payable by the Borrower under this Agreement shall have been paid to Exim Bank when due;

(b) Exim Bank shall have received from the Seller the documents in terms of Clause 4.A.2, or, as the case may be, Payment Authorisation of the Borrower in terms of Clause 4.B.2, prior to the relevant Terminal Disbursement Date;

(c) all representations and warranties made by the Borrower in the General Conditions of this Agreement shall have remained true and correct on the date of each Advance under the Credit as if all of them as may be relevant shall have been repeated with respect to the facts and circumstances existing on the date thereof;

(d) no Event of Default shall have happened and be continuing; and

(e) Exim Bank shall have received from the Borrower confirmation that all statutory /regulatory / budgetary approvals have been obtained for the Project and the Borrower has made available or made necessary arrangements for provision of availability of land, right of way, along with basic infrastructure, water and electricity at the Project site(s) in the Borrower's Country);

(f) Exim Bank shall have received from the Borrower, confirmation on tax and duty exemptions, financial closure and other commitments made by the Borrower in connection with the Project along with the copy of the contract.

(g) Exim Bank shall have received from the Borrower confirmation that the Project complies with laws and regulations relating to environment, social and governance matters as applicable in the Borrower's Country.

**10. Anti-Corruption Law:**

10.1 It is strictly forbidden to the contracting parties, by themselves or by a third party involved with this Agreement, to offer, ask or accept for itself or for a third party, financial or non-financial advantage or even direct or indirect promise, as offsets for the conclusion and/or execution of this Agreement, if susceptible of being qualified as criminal unlawful acts in accordance with national laws of any party involved.

10.2 In the event the Borrower, its officers and/or representatives have, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices in attempt of situations stipulated under Clause 10.1 hereinabove, it shall tantamount to an Event of Default under this Agreement, without prejudice to eventual civil and criminal consequences against those involved in these practices.

10.3 Notwithstanding anything contained hereinabove, Exim Bank, in consultation with the Government of Sri Lanka, shall have the right to (a) reject a proposal for award if it determines that the bidder recommended for award, or any of its personnel/agents/sub-consultants/sub-contractors/service providers/suppliers and/or their employees, has, directly or indirectly, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices in competing for the contract in question; and (b) cancel the portion of the Credit if it determines at any time that the recipient(s) of any part of the proceeds of Credit is/are engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices during the procurement or the implementation of the contract in question, without the Borrower having taken timely and appropriate action satisfactory to Exim Bank to address such practices when they occur, including by failing to inform Exim Bank in a timely manner at the time the Borrower knew of the practices.

**11. Integrity**

The Borrower hereby agrees, covenants and undertakes to take all necessary measures to maintain highest level of ethics and integrity during the currency of this Agreement and ensure that Seller, bidders, suppliers, contractors, agents, consultants, sub-contractors, service providers, and any personnel thereof shall take all necessary and reasonable steps within their scope of business and area of responsibility to avoid and defend against serious violations of obligations in or in connection with implementation of the Project including preparation of DPR, and in bidding, procurement and execution processes in connection with the Project.

**12. <u>General Conditions to form part of Credit Agreement:</u>**

This Agreement shall be read with the General Conditions contained in **SCHEDULE** hereto which shall form an integral part of this Agreement and be deemed incorporated herein by reference and the parties hereto agree to accept and be bound by the provisions thereof.

## THE SCHEDULE ABOVE REFERRED TO

### General Conditions

| | |
|---|---|
| A. | Definitions & Interpretations |
| B. | Borrower's liability |
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| D. | Taxes |
| E. | Currency of Account and Place of Payment |
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| P. | Partial Invalidity |
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**SCHEDULE**

## GENERAL CONDITIONS

**A. Definitions & Interpretations:**

Except as expressly specified herein, all expressions used in the General Conditions and defined in the Credit Agreement of which the General Conditions form a part, shall have the same meanings as given to them in the Credit Agreement. In the event of any inconsistency between any provision of the Credit Agreement and the General Conditions, the relative provision of the Credit Agreement shall prevail.

**B. Borrower's liability:**

The liability of the Borrower to make any payment hereunder being primary, shall in no way be conditional upon due performance by the Seller in terms of an Eligible Contract and shall not be affected by reason of any dispute between a Buyer and a Seller or any right which a Buyer may have or claim to have against a Seller nor shall the Borrower be entitled to raise any defence or objection emanating from its business or contractual relations with a Buyer, for making any payment to Exim Bank under the Credit Agreement.

**C. Interest Period:**

(1) The period for which an Advance or the Credit, as the case may be, is outstanding shall be divided into successive periods (each an "Interest Period"), having duration of six months each or as otherwise mentioned.

(2) The first Interest Period in respect of each Advance shall commence on the date on which an Advance is made, and in the case of first Advance relating to the first Eligible Contract, the first Interest Period shall end on the Interest Payment Date following the commencement of such Interest Period.

(3) The first Interest Period in respect of each subsequent Advance relating either to the same or another Eligible Contract shall end on the last day of the then current Interest Period relating to the first Advance pertaining to the first Eligible Contract.

(4) Each Interest Period (other than the first Interest Period in relation to each Advance) shall commence on the day immediately following the preceeding Interest Period, and shall end on the Interest Payment Date nearest to it.

(5) Any Interest Period that would otherwise end during the month preceding or extend beyond the final Repayment Date shall be of such duration that it shall end on that date subject to adjustment in accordance with Section E.4.

(6) Where two or more Interest Periods begin and also end on the same day, the Advances to which these Interest Periods relate, shall constitute and be referred to as one Advance.

**D. Taxes:**

D.1 All sums payable by the Borrower under the Credit Agreement shall be paid in full without set-off or counter-claim or any restriction or condition and free and clear of any deduction for or on account of any present or future taxes or other deductions or withholdings of any nature whatsoever, now or hereafter imposed by the government of the Borrower's Country ("the Taxes"). If (i) the Borrower shall be required by law to make any deduction or withholding from any sum payable by it hereunder; or (ii) Exim Bank shall be required by law to make any payment on account of tax (other than tax on its overall net income) on or in relation to any amount received or receivable by it hereunder, or otherwise payable by Exim Bank to its lender(s) from whom Exim Bank may have sourced funds to make available the Credit, then the sum payable by the Borrower in respect of which such deduction, withholding or payment may be required to be made, shall be increased to the extent necessary to ensure that after the making of such deduction, withholding or payment, Exim Bank shall receive and retain (free from any liability in respect of any such deduction, withholding or payment) a net sum equal to the sum which it would have received and so retained had no such deduction, withholding or payment been made.

D.2 The Borrower shall deliver to Exim Bank within thirty days after it shall have made any payment from which it shall have been required by law to make any deduction or withholding, a receipt issued by the relevant taxing or other authorities evidencing the deduction or withholding of amounts required to be deducted or withheld from such payment.

D.3 The Borrower shall hold Exim Bank harmless from and against any liability with respect to any tax on or in relation to any amount payable by the Borrower under the Credit Agreement (whether or not properly or legally asserted).

D.4 If at any time the Borrower shall become aware that any such deduction, withholding or payment contemplated by sub-Section (1) above may need to be made, it shall immediately notify Exim Bank and provide all available details thereof.

**E. Currency of Account and Place of Payment:**

E.1 Dollar is the currency of account and payment for each and every sum at any time due by the Borrower under the Credit Agreement. It is however hereby agreed that each sum which is otherwise payable by the Borrower to Exim Bank in Dollars.

E.2 (i) If any sum due from the Borrower under this Agreement or under any arbitral award or judgement on an award given or made in relation hereto, may need to be converted from the currency ("the First Currency") in which the same shall be payable hereunder or under such award or judgement into another currency ("the Second Currency") for the purpose of (i) making or filing a claim or proof against the Borrower; (ii) obtaining an arbitral award or judgement on an award in any court or tribunal; or (iii) enforcing any such award or judgement given or made in relation hereto, then such conversion shall be made at the rate of exchange quoted to Exim Bank by a commercial bank for freely transferable Dollars, at the close of business on the day before the day on which the claim or proof is filed or award or judgement is rendered, and the Borrower shall indemnify Exim Bank and hold it safe and harmless from and against any loss suffered by it as a result of any fluctuation between (a) the rate of exchange used for such purpose to convert the sum in question from the First Currency into the Second Currency and (b) the rate of exchange at which Exim Bank may in the ordinary course of business purchase the First Currency with the Second Currency upon receipt of a sum paid to it in satisfaction in whole or in part, of any such claim or proof or award or judgement.

(ii) For the purpose of sub-Section E.2(i) and without prejudice to the indemnity therein contained, the Borrower further agrees, to the full extent permitted by law, that any award or judgement on an award made in the Second Currency shall be for such sum as would, at the rate or rates of exchange at which Exim Bank may in the ordinary course of business purchase the First Currency with the Second Currency as at the date of payment, enable Exim Bank to receive the sum due to it in the First Currency.

E.3 All payments to be made hereunder by the Borrower to Exim Bank shall be made in Dollars by means of transfer/credit to the account(s) of Exim Bank with designated bank/s in India or abroad. The payments shall be so made as to enable Exim Bank to receive or realise at par the amount of payment on or before the relative due date thereof. Unless otherwise advised by Exim Bank, the Borrower shall make payment to the credit of Exim Bank A/c. No. 36247347 with Citibank N.A., New York, U.S.A., CHIPS UID 173871. The payment obligations of the Borrower shall be deemed fulfilled only when

and to the extent payments have been transferred without any deduction to the designated account of Exim Bank and are at its free disposal.

E.4 If the date on which any sum under the Credit Agreement is due and payable shall not be a Business Day at the place of payment or for Exim Bank, as applicable, then the due date for payment of any such sum shall be the next succeeding Business Day, unless such succeeding Business Day falls in another calendar month, in which event, the due date shall be the immediately preceding Business Day, and if necessary, interest and fee, if any, shall be calculated accordingly.

**F. <u>Appropriation of Payments</u>:**

F.1 Unless otherwise required by Exim Bank, any payment under this Credit Agreement when made to or received/recovered by Exim Bank, shall be appropriated in the following order and the Borrower waives any right it may have to direct appropriation in any other order:

(a) costs and expenses;
(b) fee;
(c) additional interest by way of liquidated damages;
(d) compound interest;
(e) interest; and
(f) instalment(s) of principal due under the Credit Agreement.

F.2 Notwithstanding anything contained in sub-Section (1) hereinabove, Exim Bank may at its discretion, appropriate such payment towards satisfaction of dues, if any, payable by the Borrower in respect of any other loan/ facility availed of from Exim Bank.

**G. <u>Indemnity</u>:**

The Borrower shall indemnify and keep Exim Bank indemnified from and against all losses, liabilities, damages, costs, charges and expenses which it may certify to have been incurred as a consequence of occurrence of any Event of Default or any other breach by the Borrower of any of its obligations under the Credit Agreement or by reason of any payment or repayment to or receipt or recovery by Exim Bank of any installment of the Credit or any overdue sum otherwise than on a Repayment Date or an Interest Payment Date relating thereto (including any loss incurred by Exim Bank in liquidating or redeploying funds acquired to maintain the Credit or arranged for the purpose of a proposed Advance and any interest or cost incurred in funding any unpaid sum).

## H. Representations:

11.1 The Borrower represents that:-

(i) the official(s) signing this Agreement has/have full power, capacity and authority to execute and deliver the Credit Agreement on behalf of the Borrower and that necessary action (statutory and any others) has been taken to authorise its borrowings hereunder and the execution, delivery and performance of the Credit Agreement and all documents in pursuance thereof;

(ii) all acts, conditions and things required to be done, fulfilled and performed in order (a) to enable the Borrower lawfully to enter into, exercise its rights under and perform the obligations expressed to be assumed by it under the Credit Agreement and (b) to ensure that the obligations expressed to be assumed by it in the Credit Agreement are legal, valid and enforceable, have been done, fulfilled and performed in strict compliance with the laws of the Borrower's Country and there has been no default in fulfillment of the conditions of any of them;

(iii) the obligations expressed to be assumed by the Borrower in the Credit Agreement constitute legal and valid obligations enforceable in accordance with their terms and are direct unconditional and general obligations of the Borrower, ranking at least pari passu with all its other unsecured obligations;

(iv) it is not necessary in order to ensure the legality, validity, enforceability or admissibility in evidence of the Credit Agreement and Payment Authorisation in the Borrower's Country that it or any other document be filed, notarised, registered, recorded or enrolled with any court or authority there or that any stamp, registration or similar tax be paid on or in relation to this Agreement;

(v) the Borrower is subject to civil and commercial law and to legal proceedings with respect to its obligations under the Credit Agreement and all documents executed pursuant thereto and the borrowing of the Credit execution and delivery of the Credit Agreement and the performance by the Borrower thereunder constitute/will constitute private and commercial acts and not governmental or public acts.

(vi) in any proceedings taken in the Borrower's Country for the enforcement of the Credit Agreement, the choice of English law as the governing law of the Credit Agreement is a valid choice of law and any decree or judgment or an arbitral award in respect of the Credit Agreement will be recognised and enforced by the courts in the Borrower's Country;

(vii) Exim Bank shall not be deemed to be domiciled or carrying on business in the Borrower's Country by reason only of the execution of the Credit Agreement.

H.2 The Borrower further represents that:-

(i) neither the execution or performance of the Credit Agreement or the Payment Authorisations nor the exercise by the Borrower of any of its rights hereunder will:

(a) conflict with or result in any breach of or default under any law, authorisation, judgment, order, agreement, instrument or obligation applicable to, or which is binding upon or affects the Borrower or any of its present or future assets or revenues, or

(b) result in the creation of or oblige the Borrower to create, any encumbrance on the whole or any part of its present or future assets or revenues;

(ii) the Borrower is not in breach of or in default under any law, authorisation, agreement, instrument or obligation applicable to, or which is binding upon or affects, the Borrower or any of its assets or revenues, being a breach or default which might have material adverse effect on the ability of the Borrower to duly observe and perform its obligations under the Credit Agreement;

(iii) there is no restriction imposed in the Borrower's Country which limits or prevents the transfer of foreign exchange by the Borrower for the purpose of performing any of its payment obligations under the Credit Agreement;

(iv) no event has occurred which is or may become specified (with the giving of notice and/or the passing of time and/or any finding of materiality) as one of those events mentioned in Section K.1 and no other event has occurred which entitles, or which, with the giving of notice and/or the passing of time, would entitle any creditor of the Borrower to declare its indebtedness due and payable prior to its specified maturity or to cancel or terminate any credit facility or to decline to make advances thereunder; and

(v) the information provided by the Borrower to Exim Bank before the date hereof in connection herewith is true and is not incorrect or misleading in any respect.

I. **Affirmative Covenants:**

The Borrower agrees, covenants and undertakes to:-

(i) utilise the Credit facility at least upto 75% for financing purchase from India of Eligible Goods and Services by Buyers in the Borrower's Country;

(ii) obtain, comply with the terms of and do all that is necessary to maintain in full force and effect all authorisations, approvals, licences and consents required by the laws and regulations of the Borrower's Country to enable the Borrower lawfully to enter into the Credit Agreement and perform its obligations hereunder and thereunder and to ensure the legality, validity, enforceability or admissibility in evidence of the Credit Agreement in the Borrower's Country;

(iii) promptly inform Exim Bank of the occurrence of any event which is or may become (with the giving of notice and / or the passing of time and / or any finding of materiality) one of those events mentioned in Section K.1 hereof;

(iv) promptly inform Exim Bank of any litigation, arbitration, administrative proceeding or contract claim brought or made against the Borrower or against any of the assets of the Borrower, the consequences of which might materially or adversely affect the financial condition of the Borrower or the ability of the Borrower to duly observe and perform any of its obligations under the Credit Agreement;

(v) ensure that its obligations hereunder will at all times be direct, unconditional and general obligations ranking at least pari passu with all its other unsecured obligations;

(vi) meet any shortfall in resources or costs overrun for completion of the Project.

(vii) pay or cause to be paid all lawful claims of whatever nature, which, if unpaid, might become an encumbrance upon the assets, revenues, income or profits of the Borrower, unless the validity thereof is being contested in good faith and such reserves or provisions as may be required by generally accepted accounting principles and practices in the Borrower's Country shall have been made therefor;

(viii) appoint a process agent in Mumbai whenever called upon by and ensure that until payment is made by the Borrower of all moneys to Exim Bank under the Credit Agreement, such agency relationship shall not be terminated after its appointment unless another process agent acceptable to Exim Bank has been substituted, and to notify to Exim Bank about any change in the appointment of process agent(s) or in their addresses, and pending appointment of a process agent, service of process by mailing copies thereof to the Borrower by registered airmail, postage prepaid, at the address specified herein, shall be deemed personal service accepted by the Borrower, and shall be valid and binding on it for the purposes of reference to arbitration.

## J. Inspection and Monitoring:

### J.1 Inspection

The Borrower covenants and agrees that until all amounts due under the Credit Agreement have been paid in full, the Borrower will facilitate inspection being taken by the representatives of Exim Bank of the Buyer's facilities, activities, books and records and cause their officers and employees to give full co-operation and assistance in connection therewith, it being understood that Exim Bank will exercise the right of inspection in limited circumstances and the inspection will be confined to that portion of the Buyer's project which may have utilised Exim Bank's funds. Such inspection may be subject to prior written approval of the concerned Buyer. The Borrower further covenants and agrees that it shall also procure the consent of its Seller, bidders, suppliers, contractors, agents, consultants, sub-contractors, service providers, and any personnel thereof, to allow the Government of India/Exim Bank to inspect all accounts, records and other documents relating to submission of bids and contract performance, and to have them audited by the auditors appointed by the Government of India/ Exim Bank during the currency of this Agreement.

### J.2 Monitoring of Project(s)/Eligible Contract(s)

(a) The Borrower shall submit a status report on execution of each Eligible Contract at an interval of 3 months from the date of approval of each contract till completion of the Eligible Contract.

(b) The Borrower, shall at its cost and expenses, on completion of Project/each Eligible Contract, submit a comprehensive Project completion report covering benefits derived/to be derived from the Project and its socio-economic impact in the Borrower's Country along with visual documentation.

(c) Exim Bank may appoint a Lender's Engineer for independent monitoring of the Project. The responsibility of the Lender's Engineer, is to ensure adherence to time and quality specifications, and where necessary, initiate corrective action for the successful and timely implementation of projects. The Borrower shall ensure that the Seller, contractors and consultants engaged with the Project provide necessary support and assistance to such Lender's Engineer.

(d) The Borrower shall at all times during the currency of the Credit, permit access to officials and representatives of Government of India / Exim Bank to the Project site(s) in the Borrower's Country.

**K. <u>Events of Default</u>:**

K.1 For the purpose of this clause, there shall be an event of default if –

(a) any amount payable by the Borrower to Exim Bank under the Credit Agreement is not paid when due;

(b) the Borrower fails to perform or observe any of its other obligations under the Credit Agreement;

(c) any information furnished or representation made by the Borrower to Exim Bank is found to be incorrect or incomplete in any material respect;

(d) the Borrower defaults in payment of any other external indebtedness arising from a transaction that has a legal effect of a borrowing on its due date or any external debt of the Borrower becomes due and payable prior to its stated maturity or a moratorium or embargo is declared on the payment of any external debt of the Borrower or any of its agencies, or any political event occurs by reason of which the Borrower's Country is declared to be on inimical terms with India;

(e) any restriction shall have been imposed in the Borrower's Country which limits or prevents the transfer of foreign exchange by the Borrower for the purpose of performing any of its payment obligations under the Credit Agreement.

K.2 If an Event of Default occurs and remains unremedied within thirty (30) days after Exim Bank has notified the Borrower of such default, then Exim Bank may, by a notice in writing to the Borrower declare that:

(a) access by the Borrower to availment of the Credit facility hereunder shall stand suspended in which event the Credit facility to the extent not availed of by the Borrower shall remain suspended until the event which gave rise to such suspension shall have ceased to exist to the satisfaction of Exim Bank and Exim Bank shall have notified the Borrower that access to the Credit facility has been restored; or

(b) any undrawn portion of the Credit shall stand cancelled whereupon the same shall stand cancelled; and

(c) the unpaid principal amount of all Advance(s) or the Credit, as the case may be, shall become immediately due and payable, whereupon the same shall become so payable by the Borrower to Exim Bank (anything to the contrary in the Credit Agreement notwithstanding) together with all interest accrued thereon and all other monies then owed by the Borrower to Exim Bank hereunder, without any further notice or demand of any kind whatsoever, all of which the Borrower hereby expressly waives in favour of Exim Bank.

K.3 All expenses incurred by Exim Bank after an Event of Default shall have occurred in connection with preservation of the Borrower's assets and collection of amounts due under the Credit Agreement shall be forthwith payable by the Borrower, and until payment, shall carry interest at the Interest Rate, besides additional interest by way of liquidated damages at the rate provided in the Credit Agreement.

K.4 Notwithstanding any suspension, cancellation or acceleration pursuant to any of the events of default referred to above, all the provisions of the Credit Agreement shall continue in full force and effect during the period any amount payable by the Borrower to Exim Bank remains outstanding, and independent of the Borrower's obligations under the Credit Agreement, the Borrower also agrees to indemnify Exim Bank against the consequences (direct or indirect) of any action that may be taken by a Seller or Buyer against Exim Bank by reason of suspension of the Credit facility or cancellation of the undrawn portion of the Credit as aforesaid.

L. **Evidence of Debt:**

(a) Exim Bank will maintain, in accordance with its usual practice, a loan account in the name of the Borrower evidencing the amount(s) from time to time lent by and owing to Exim Bank as also amount(s) received or recovered by it, and an interest receivable account showing therein the amount of interest and other moneys payable under the Credit Agreement as also amount(s) received or recovered by Exim Bank in respect thereof.

(b) In any proceedings arising out of or in connection with the Credit Agreement, entries made in the accounts maintained as aforesaid shall be prima facie evidence of the existence of the liability of the Borrower as therein recorded.

**M. Waiver:**

No delay in exercising or omission to exercise any right, power or remedy accruing to Exim Bank upon any default under the Credit Agreement or any other agreement or document executed pursuant thereto, shall impair any such right, power or remedy or shall constitute a waiver thereof or of any obligation of the Borrower hereunder or thereunder or be construed as an acquiescence in such default, nor shall the action or inaction of Exim Bank in respect of any default or any acquiescence by it in any default, affect or impair any right, power or remedy of Exim Bank in respect of any other default. The rights and remedies provided in the Credit Agreement are cumulative and not exclusive of any rights and remedies to which Exim Bank shall otherwise be entitled.

**N. Assignment/Transfer:**

Exim Bank shall be entitled at any time to transfer, assign, grant participation in or otherwise dispose of any of its rights and benefits under the Credit Agreement to any person within or outside India. In case Exim Bank proposes to transfer, assign, grant participation in or otherwise dispose of any rights and benefits under the Credit Agreement to any other party, it shall give prior written intimation of the same to the Borrower, which consent shall not be unreasonably withheld. The Borrower however, shall not assign or transfer any of its rights or obligations arising under the Credit Agreement.

**O. Certification by Exim Bank:**

Where pursuant to any provision of the Credit Agreement, Exim Bank may certify or determine a rate of interest or an amount to be payable by the Borrower or express an opinion on any matter, such certification, determination or opinion shall be conclusive and binding on the Borrower in the absence of manifest error.

**P. Partial Invalidity:**

If at any time any provision of the Credit Agreement shall become illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity, enforceability of the remaining provisions hereof nor legality, validity or enforceability of such provision under the law of any other jurisdiction shall in any way be affected or impaired thereby.

**Q. Language of documents:**

All documents required under the Credit Agreement shall be in English language.

**R. Law:**

The Credit Agreement shall be governed by and construed in accordance with English Laws.

**S. Arbitration:**

S.1 Any dispute or difference between the parties hereto arising out of this Agreement shall be settled by arbitration in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL) and an award in pursuance thereof shall be binding on the parties. The party which seeks to submit the dispute to arbitration shall notify the other party in writing not less than four weeks in advance of the proposed date of submission of the dispute to arbitration. The place of arbitration shall be Singapore and the language in arbitration proceedings shall be English.

S.2 The Borrower irrevocably and unconditionally waives any objection which it may now or hereafter have to the choice of Singapore as the venue of arbitration arising out of or relating to the Credit Agreement and documents executed pursuant thereto. The Borrower also agrees that an arbitral award against it in any such arbitration proceedings shall be conclusive evidence of the fact and amount of its indebtedness and may be enforced and executed in the Borrower's Country on the strength of a duly certified true copy thereof under its applicable laws for enforcement of a foreign arbitral award.

S.3 Either party may issue a notice of arbitration, hereinafter referred to as the "Arbitration Notice", to the other. The arbitration panel shall consist of three arbitrators; one arbitrator to be appointed by each party within twenty one (21) days of the Arbitration Notice and the third arbitrator to be jointly appointed by such arbitrators within twenty one (21) days after their appointment. The governing law of the arbitration shall be English Law Arbitration and shall take place in Singapore. The language used in the arbitration shall be English.

S.4 The decision of the arbitration panel shall be rendered without undue delay by majority vote of the arbitrators and shall be final and binding upon the parties.

S.5 Any information and/or documentation disclosed by a party, specifically for the purpose of endeavouring to conclude a final settlement of a dispute, during the negotiation process shall be kept confidential at all times.

**T. Notices:**

Any notice given and any request or demand made in relation to the Credit Agreement shall be sufficiently given or made if sent by registered air letter, cable, authenticated SWIFT or fax. Such notice, request or demand shall be deemed to have been duly given or made when it is duly dispatched / transmitted to the party to which it is required to be given or made at such party's address specified below or at such other place as such party may designate in writing. When any notice, request or demand is given or made by telex or fax, the party concerned shall also send within a reasonable time a confirmatory copy of such telex or fax by airmail post.

**BORROWER:**

The Government of the Democratic Socialist Republic of Sri Lanka
Ministry of Finance & Mass Media
The Secretariat
Colombo 01, Sri Lanka

Attention: The Director General
Department of External Resources
Telephone No: 00-94-11-2484693
Fax No.: 00-94-11-2447633
SWIFT :

**EXIM BANK:**

Export-Import Bank of India
Maker Chamber IV, 8th Floor
222, Nariman Point,
Mumbai-400 021

Attention: LOC Group
Telephone No: (00-91-22) 22861560
Fax No: (00-91-22) 22823394
SWIFT : EIBIINBB

**IN WITNESS WHEREOF** this Agreement has been signed in duplicate on behalf of the parties hereto by persons duly authorised in this behalf respectively on the date and place mentioned herein below.

**SIGNED AND DELIVERED** on behalf of )
**The Democratic Socialist Republic of Sri Lanka,** )
at New Delhi, India, by the hand of its duly authorized )
official Dr. R. H. S. Samaratunga, Secretary, )
Ministry of Finance and Mass Media )
on 10th day of January 2018. )

**SIGNED AND DELIVERED** by **Export - Import** )
**Bank of India** at New Delhi, India, by the hand of )
Mr. David Rasquinha its Managing Director )
on 10th day of January 2018. )

**Annexure I**

## Guidelines for Bidding and Procurement Procedures

a. The Borrower may conduct competitive bidding procedures in accordance with prevailing procurement laws, rules and regulations of the Borrower's Country to ensure that the award of the Eligible Contract to the Seller is made in a fair and transparent manner; the rules and regulations of the borrowing country relating to competitive bidding should be clearly defined and details of which should be provided to Exim Bank in advance;

b. The Borrower shall award the Eligible Contract to the Seller based on competitive bidding process. The bidding should be restricted to Indian companies registered in India and or incorporated/established under any law in force in India. However, if such entity is blacklisted by any multilateral agency or any authority in India or the Borrower's Country, such entity will not be eligible to participate;

c. The Borrower shall forward a complete set of the prequalification criteria and tender documents to Exim Bank for its approval prior to the start of the tender process;

d. Tender documents will need to be complete in all aspects and shall not be restrictive in nature and shall ensure greater participation from Indian companies. Payment terms shall be linked to milestone achievements under the Project. Exim Bank *may* restrict the advance payment up to 20% of the contract value. 10% of the contract value will be retained and disbursed only after the installation and commissioning of equipment supplied under the Project. Payment terms shall include liquidated damages in the range of 1-5% of the contract value for delays;

e. The Borrower shall express the bid price only in Dollar (US$);

f. The Borrower may draft the contract with scope of works and price and payment schedules on lines similar to the DPR and the tender documents. Under the broad expenditure heads generally stated in DPR, the contract should include suitable sub-headings of expenditure to define the costs more precisely. Any deviation in the contract vis-à-vis the DPR and the tender documents should be supported with detailed justifications for such deviations.

g. Exim Bank shall analyse the draft contract to ensure that the same is in line with the DPR and the tender documents. In case of any discrepancy, the same will be referred to the Government of India after obtaining clarifications from the Borrower. Exim Bank may, if required, provide its inputs to the Borrower on drafting the contract.

h. Exim Bank will invite Expression of Interest from Indian companies/entities and undertake a pre-qualification exercise for each project. The list of pre-qualified companies /entities will be provided to the Borrower. The Borrower shall invite bids from the pre-qualified companies / entities.

i. After the bidding process the Borrower will submit a copy of the draft contract and the bid evaluation report to Exim Bank. . Exim Bank shall analyse the said report to ensure that the contract is being awarded in a fair and transparent manner and convey inclusion of the contract under the Credit to the Borrower;

j. In the event of any deviation from the procedure of bidding, the Borrower shall provide a detailed justification for the same to Exim Bank, which, in turn, will seek the decision of the Government of India, regarding approval of such contracts.

k. The Borrower shall award the contract in accordance with fair and transparent evaluation criteria and procedures, Exim Bank would reserve the right to keep in abeyance all contracts that are violative of the norms of the transparency and fair competition;

l. The contract is between the Borrower/its nominated agency/Buyer/executing agency and the supplier or contractor from India whose selection is the prerogative of the Borrower. Exim Bank shall not be responsible for such selection. The responsibility for the implementation of the Project and therefore for the award and administration of contracts under the Project rests with the Borrower.

**Annexure II**

## CONTRACT INCLUSION

(On the letter head of the Government of _____)

DETAILS OF THE EXPORT CONTRACT TO BE FINANCED UNDER CREDIT AGREEMENT DATED _____ BETWEEN _____ (NAME OF BORROWER) _____ AND EXIM BANK

| | | | |
|---|---|---|---|
| 1. | No. and Date of Contract | : | |
| 2. | Name & Address of Importer | : | |
| 3. | Name and Address of Exporter | : | |
| 4. | Currency of Contract | : | US $ |
| 5. | Value of Contract | : | FOB/CFR/CIF/CIP |
| | (i) FOB | : | |
| | (ii) Freight | : | |
| | (iii) Insurance | | |
| | (iv)Total CFR/CIF | : | |
| 6. | (a) Deferred Credit (100%) | : | |
| | (b) Period of Deferred Credit | : | |
| 7. | Description of Goods | : | |
| 8. | Delivery Period | : | |
| 9. | Pre-shipment inspection agency. | : | |
| 10. | Credit Period Required | : | |

**(Name & Signature of Authorized Signatory/ies)**

**Annexure III**

**DRAFT OF PAYMENT AUTHORISATION**
(On the letter head of Government of _____)

Export-Import Bank of India
Address

Dear Sirs,

Re: Dollar Credit Line of US$ ___.
Under the Dollar Credit Line Agreement dated
Contract valued at US$ _____ between
_____, (Seller) and
_____ (Buyer)

We wish to inform you that the Seller has presented to us its invoice duly certified by the Buyer for an amount of US$ _____ in respect of *advance payment under the above contract / *supplies made / *services rendered by the Seller to the Buyer / *payment of retention money under the above contract.

We hereby irrevocably authorize Exim Bank to make payment of the said amount of US$ _____ to the designated account of the Seller in accordance with the payment instructions that may have been given by the Seller to Exim Bank. We agree that the amount so paid by Exim Bank to the Seller shall be deemed to be an Advance made by Exim Bank to us out of the Credit and the date on which Exim Bank shall pay / remit the amount from Mumbai shall be deemed to be the date of such Advance.

We request Exim Bank to advise us the date and the amount of the Advance soon after payment is made by Exim Bank as aforesaid.

Yours faithfully,

*Please delete whichever is not applicable.

**(Name & Signature of Authorized Signatory/ies)**

**Annexure IV**

**FORMAT OF OPINION OF LEGAL COUNSEL OF THE BORROWER**
(On the Letter Head of Legal Counsel of Government of _____)

Ref.No. Date:

Export-Import Bank of India
Address

Re: Credit Line of _____
to _____.

I, _____ (NAME), a Counsel and Legal Adviser to the Ministry of _____, Government of _____ ("the Government") have examined a copy of the Dollar Credit Line Agreement ("the Agreement") dated _____ between Export-Import Bank of India (Exim Bank) and the Government for a Credit Line of _____ ("the Credit") agreed to be made available by Exim Bank to the Government.

In connection with this opinion I have examined the constitution, laws, decrees, judicial decisions, rules and regulations of _____ ("the Republic") and such agreements, instruments, documents and other matters as I have considered necessary or desirable for the opinions hereinafter expressed.

Based on the foregoing, I am of the opinion that :

(a) the Government has full power and authority to execute and deliver the Agreement and to perform its obligations thereunder;

(b) Mr. _____ and / Mr. _____, the official(s) representing the Ministry of _____, Government of the Republic who has/have signed the Agreement on behalf of the Government has/have full power and authority to execute and deliver the Agreement and all documents pursuant thereto in the name and on behalf of the Government;

(c) all legislative, administrative and other governmental actions and statutory and other approvals and permissions required in the Republic for (i) the execution and delivery by the Government of the Agreement and all documents in pursuance thereof, (ii) the borrowings by the Government under the Agreement and (iii) all payments to be made by the Government in accordance with the provisions of the Agreement, have been obtained and are in full force and effect without any restriction, and the Agreement as executed and delivered constitutes a valid and legally binding

obligation of the Government enforceable in law and in accordance with its terms;

(d) the Government is subject to civil and commercial law and to legal/arbitration proceedings with respect to its obligations under the Agreement and all documents executed pursuant thereto, and the borrowing of the Credit, execution and delivery of the Agreement and the performance by the Government of its obligations thereunder constitute/will constitute private and commercial acts and not governmental or public acts;

(e) neither the execution and delivery of the Agreement nor the performance of its obligations under the Agreement nor compliance with the terms and conditions thereof will (i) conflict with any present law, regulation, treaty or rule of the Republic or any order of any judicial or other authority, (ii) result in any breach of any of the terms of, or constitute a default under, any agreement or other instrument to which the Government is a party or is subject or by which it or any of its property is bound, (iii) result in the creation or imposition of any encumbrance on any of the Government's property assets or revenues or (iv) require approval of any other lenders to the Government;

(f) the Government is not in default under any agreement to which it is a party or by which it may be bound;

(g) the obligations of the Government under the Agreement and all documents executed in pursuance thereof, constitute the direct, general and unconditional obligations of the Government and, with the exception of priority enjoyed by obligations which are mandatorily preferred by law, rank and will rank at least pari passu with all present and future unsecured indebtedness of the Government;

(h) it is not necessary in order to ensure the legality, validity, enforceability or admissibility in evidence of the Agreement in the Republic that it or any other document be filed, notarised, registered, recorded or enrolled with any court or authority there or that any stamp, registration or similar tax be paid on or in relation to the Agreement;

*(i) there is no restriction imposed in the Borrower's Country which limits or prevents the transfer of foreign exchange by the Borrower for the purpose of performing any of its payment obligations under the Credit Agreement;

**OR**

*(i) although there are foreign exchange restrictions under the laws of the Republic on the transactions contemplated by the Agreement, the Government has made satisfactory arrangements to ensure that requisite amount of foreign exchange will be available to enable the Government to meet its liability for making payments when due under the Agreement;

*(Please delete one of the Clause (i), whichever is not applicable)*

*(j) under the existing applicable law, there is no income-tax or other tax in the Republic imposed by withholding, which the Government would be otherwise required to deduct from or pay on any amount of payment to be made by the Government under the Agreement;

**OR**

*(j) under the existing applicable law, there is income-tax in or of the Republic imposed by withholding or otherwise, which the Government would be required to pay in respect of any payment when made by the Government under the Agreement or is imposed on or by virtue of execution, delivery or performance of the Agreement; it is however permissible under the laws of the Republic to gross up such payments so that Exim Bank can receive such payment from the Government which it would otherwise receive had there been no withholding of tax to be made by the Government;

*(Please delete one of the Clause (j), whichever is not applicable)*

(k) it is not necessary under any law, rule or regulation of the Republic

(a) in order to enable Exim Bank to enforce its rights under the Agreement or

(b) by reason of Exim Bank entering into the Agreement or exercising its rights or performing its obligations thereunder

that Exim Bank is required to be licenced, qualified or otherwise needs to carry on business in the Republic;

(l) Exim Bank shall not be deemed to be resident, domiciled or carrying on business in the Republic by reason only of the entering into of the Agreement or the exercise of its rights or the performance of its obligations thereunder;

(m) neither the Government nor any of its properties, assets or revenues is entitled to any right of immunity or privilege from service of process, attachment (whether prior to the entry of or in aid of execution upon a judgement) or set-off, arbitration proceedings, judgement, execution, or from any other legal process in the Republic on the grounds of sovereignty or otherwise, and the waiver contained in the Agreement of any right of such immunity and privilege by the Government is irrevocably binding on the Government;

(n) the choice of English law to govern the Agreement and all documents executed in pursuance thereof is a valid choice of law and the agreement by the Government to submission of any dispute to arbitration is valid under the laws of the Republic;

(o) any arbitral award obtained by Exim Bank in respect of any dispute arising under the Agreement shall be conclusive evidence of the amount of its indebtedness under the Agreement and will be recognized and enforced in the Republic on the strength of a duly certified true copy of the award in accordance with the ordinary procedure applicable under the laws of the Republic for enforcement of foreign arbitral award, without any requirement of filing a suit on such award in the courts of the Republic.

The opinions herein expressed are limited to the matters governed by the laws of the Republic as applicable to the Government and I express no opinion as to the laws of any other jurisdiction.

Yours faithfully,

(Name & Signature of the Legal Counsel)

**Annexure-V**

## FORMAT OF AUTHENTICATION OF SPECIMEN SIGNATURES

(On the letter head of Government of the _____ )

Ref.No. Date:

Export-Import Bank of India
Address:

Re: **Agreement dated _____ for Line of Credit of USD _____**
**Extended by Exim Bank to _____ (Borrower)**

I, _____ (NAME), _____ (Designation), _____, _____ ("the Borrower") hereby confirm that the following persons are, jointly / severally*, authorized to sign all documents thereunder including Payment Authorisations and to represent the Borrower in connection with implementation of the Agreement :

| Name | Designation | Specimen Signature |
|---|---|---|
| | | |
| | | |
| | | |
| | | |

*Please delete whichever is not applicable

**(Name & Signature of Authorized Signatory/ies)**

**Stamp**