



REPUBLIC OF GHANA

MINISTRY OF FINANCE

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number and date of this
letter should be quoted*

Our Ref: RMERD/INDIA-EXIM/YENDI/2019.02

Your Ref:

Tel No: 0302 747 197

7th
MARCH, 2019

**RE: REQUEST FOR PARLIAMENTARY APPROVAL FOR GOVERNMENT OF INDIA
SUPPORTED EXIM BANK LINE OF CREDIT OF US\$30.0 MILLION TO THE REPUBLIC OF
GHANA FOR THE REHABILITATION AND UP-GRADATION OF POTABLE WATER SYSTEM
PROJECT IN YENDI – JOINT MEMORANDUM TO PARLIAMENT**

We forward herewith Three Hundred (300) copies each of draft Credit Agreement and a joint Parliamentary Memorandum from Hon. Ministers for Sanitation and Water Resources and Finance to Parliament requesting for approval of a Government of India supported Exim Bank Concessional Line of Credit of US\$30.0 million to the Government of Ghana for the Rehabilitation and Up-gradation of Water System in Yendi.

2. Also attached is a copy of the Cabinet Approval letter number OPCA.3/3/180119.
3. Counting on your usual cooperation.

**PATRICK NOMO
CHIEF DIRECTOR**

For: Minister

**THE CLERK OF PARLIAMENT
PARLIAMENT HOUSE
ACCRA**

Cc: Hon. Minister, MoF
Hon Minister, MoA
Hon. Dep. Ministers, MoF
Director, RMERD, MoF
Director, Legal, MoF
Director, TDMD, MoF



JOINT PARLIAMENTARY MEMORANDUM

BY THE

MINISTER OF SANITATION AND WATER RESOURCES

AND

MINISTER OF FINANCE

ON THE

CREDIT FACILITY AGREEMENT

BETWEEN

GOVERNMENT OF GHANA

AND

INDIAN EXIM BANK

**FOR AN AMOUNT OF
US\$30,000,000.00**

BEING THE TOTAL PROJECT COST FOR THE

YENDI WATER SUPPLY PROJECT

 **FEBRUARY, 2019**

1.0 ACTION REQUIRED

Parliament is respectfully invited to consider and approve a concessional loan facility of US\$30,000,000.00 (Thirty Million US Dollars) from the Indian Exim Bank for the expansion of Yendi Water Supply System.

2.0 BACKGROUND

The Yendi Water Supply System supplies water to Yendi Municipality and other surrounding towns and villages. The water supply system takes its raw water from the River Daka which flows through a water treatment facility, built in 1961.

As a result of population and economic growth in Yendi Municipality, it has become necessary to expand the existing water supply system to meet the water demand of the beneficiary towns and communities, which has increased considerably over the past years.

It is proposed to either rehabilitate the existing plant or expand the water supply system to meet the water requirement of the people in the enclave and also meet the planning horizon up to the year 2030. An assessment carried out on the systems by Messrs Tahal Company Limited indicated their poor state and recommended major rehabilitation and expansion works to ensure continuity of supply to meet growing demand up to the year 2025 and beyond.

2.0 OPTIONS CONSIDERED

In developing this project, four (4) options were considered for supplying raw water to the Water Treatment Plant. These options are:

- i. Dredging and raising of existing Daka Dam
- ii. New Dam on Daka River
- iii. Abstraction from Oti River
- iv. Tapping Ground Water

OPTION 1

Field visits were conducted to several sites in the Daka Dam lake, and the bottom material investigated. No fine material indicating siltation was found. Hence, dredging of the Daka Dam is not a potential alternative to assure us of sustainable water supply to Yendi.

OPTION 2

Rising of the present dam on the Daka River is practically not feasible because of the Yendi-Tamale highway which is located upstream of the dam. Moreover, there is risk for contamination of this intake point in the long term, since this is located downstream of Yendi.

OPTION 3

The abstraction from Oti River is a potential alternative. The need for a longer transmission pipeline means that this alternative has a relatively high cost. Nevertheless, the Oti alternative has the advantages of allowing for water supply for the communities between Oti and Yendi and expansion possibilities beyond 2025.

OPTION 4

Regarding ground water, 9 new boreholes will have to be drilled near the Daka River, to the northwest and to the southwest of Yendi town. The location of these new boreholes has to be determined by exploratory drilling and test pumping. The aggregated long-term capacity of these well fields is about 1,800m³/day which is unable to meet the water demand of Yendi

3.1 PREFERRED OPTION

The third option is the preferred choice because of its reliability and the extended coverage. The Oti River has a higher available water flow, which makes this option more reliable and sustainable in the long term. Hence, the third option is more cost effective.

4.0 JUSTIFICATION FOR GOVERNMENT'S ACTION

It is the policy of the ruling government to ensure that by the year 2030 all people living in Ghana will have potable water. Providing potable water to over 133,000 people, as this project seeks to achieve will be a giant step towards achieving this feat.

The Yendi Municipality contributes significantly to the Agricultural fortunes of our country producing large activities of arable crops like maize, yam, cassava, rice. The catchment area also has an iron ore deposit which can generate economic activities like mining. The supply of potable water to the area will not only act as an impetus to increase Agricultural production but also assist in boosting the mining potential of the area.

In pursuit of the recommendation, Ghana Water Company Limited is considering structuring the project on a turnkey basis with support from the Indian Government. The Government of India has provided a letter of Credit worth \$30million to rehabilitate and expand the Yendi Water Supply Project.

5.0 SCOPE OF WORKS

The scope of works comprises the following:

- Abstraction of raw water from River Oti
- Construction of a 15,000m³/day (3.3MGD) conventional water treatment plant
- Construction of transmission pipeline of length 25km
- Construction of Booster Station
- Construction of reservoirs,
- Rehabilitation and extension of distribution network, approximately 50km

6.0 COST DETAILS

As part of the conditions for accessing the credit from the Indian Government, an Independent Indian consultant is to be procured who will prepare a Detailed Project Report. This report will come out with the preliminary design and the tender documents for the project. The project will be tendered for prospective Indian Contractors to bid as part of the Exim Bank Conditions.

7.0 FINANCING DETAILS

The Project is to be financed through a concessional loan from INDIA Exim Bank. The terms of the financing are as follows:

Loan Amount	-	US\$30,000,000.00
Grace Period	-	5 years
Repayment period	-	20 years
Maturity Period	-	25 years
Interest Rate	-	1.5 per annum (fixed)
Commitment Fee	-	0.50% per annum

8.0 PROJECT DURATION

The project duration is 30 months from the time of commencement.

9.0 EXPECTED BENEFITS

Benefits expected to accrue from the project include:

- Improved access to potable water supply to the supply areas
- Improved level of service by increased coverage in project area
- Growth in productivity of the inhabitants leading to economic development and growth
- Boosting of business opportunities mainly industrial and commercial enterprise
- Maximization of the social and health benefits of clean, safe and reliable drinking water.

8.0 CONCLUSION

Considering the immense benefit that will accrue to the inhabitants through the provision of good clean water and government's agenda of "Water For All", completion of the project will improve upon the coverage of water supply in Yendi and its environs.

Parliament is kindly invited to consider and approve the loan Agreement between the Government of Ghana and the Indian Exim Bank to implement the project.



**HON. CECILIA ABENA DAPAAH
MINISTER OF SANITATION &
WATER RESOURCES**



**HON. KEN OFORI-ATTA
MINISTER OF FINANCE**

22nd
22 February, 2019

CONFIDENTIAL

*In case of reply the
number and date of this
letter should be quoted*

My Ref. No OPCA.3/3/180119

Your Ref. No.....

REPUBLIC OF GHANA



18th January, 2019

**CREDIT FACILITY AGREEMENT BETWEEN GOVERNMENT OF GHANA AND
INDIAN EXIM BANK FOR AN AMOUNT OF USD30,000,000 BEING THE TOTAL
PROJECT COST FOR THE YENDI WATER SUPPLY PROJECT**

Cabinet at its Forty-sixth meeting held on Wednesday, 16th January, 2019 considered a report of the Cabinet Committee on Economic Matters on the above-mentioned Memorandum submitted jointly by the Ministers for Sanitation and Water Resources, and Finance.

2. The Memorandum requested Cabinet to consider and approve a concessional loan facility of Thirty million United States Dollars (USD30,000,000) from the Indian Exim Bank for the expansion of the Yendi Water Supply System.
3. Cabinet approved the Memorandum and recommended same to Parliament for consideration.
4. I should be grateful if you could take requisite action on the decision by Cabinet.

MERCY DEBRAH-KARIKARI
SECRETARY TO THE CABINET

THE HON. MINISTER FOR SANITATION AND
WATER RESOURCES

THE HON. MINISTER FOR FINANCE

Chief of Staff
Secretary to the President
Secretary to the Vice President
Hon. Minister for Parliamentary
Affairs
Chairperson, Cabinet Committee on
Economic Matters

DOLLAR CREDIT LINE AGREEMENT

DATED _____

BETWEEN

GOVERNMENT OF GHANA

AND

EXPORT-IMPORT BANK OF INDIA

I N D E X

<u>Clause No.</u>	<u>Particulars</u>
1.	Definitions
2.	Amount of the Credit
3.	Eligibility of Contract to be financed out of the Credit
4.	Disbursements out of the Credit
5.	Interest
6.	Repayment
7.	Fee(s)
8.	Default Interest
9.	Conditions Precedent
10.	Anti-Corruption Law
11.	Integrity
12.	General Conditions to form part of Credit Agreement

SCHEDULE

General Conditions

ENCLOSURES

Enclosure I	Legal opinion of Legal Counsel of the Borrower with respect to the Credit Agreement
Enclosure II	List of Authorised Signatories with specimen signatures

ANNEXURES

Annexure I	Guidelines for Bidding and Procurement Procedures
Annexure II	Format of Contract Inclusion
Annexure III	Format of Payment Authorisation

THIS AGREEMENT made as of _____ day of _____ between **the Government of the Republic of Ghana** (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:

It has been agreed between the parties hereto for the provision by Exim Bank of a Credit to the Borrower up to an aggregate sum of USD 30,000,000 (United States Dollars Thirty Million Only) for the purpose of financing Rehabilitation and Up-Gradation of Potable Water System in Yendi, in the Borrower's Country.

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 Republic of Ghana;

"Business Day" means any day on which banks and Exim Bank shall remain open for business in Mumbai, Accra, 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;

"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”, “USD” and the sign **“\$”** mean the lawful currency of the United States of America;

“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 works and services including consultancy services for the purpose of the Project in the Borrower’s Country, which may be agreed to be financed by Exim Bank under this Agreement, out of which goods, works 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 up to 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 2010;

“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 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 Five per cent (1.50%) 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 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**, 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;

“Project” means the project including supply of goods, works and services including consulting 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;

“Project Management Consultant (PMC)/ Consultant” 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;

“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 PMC/ Consultant;

“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 of the Project.

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 USD 30,000,000 (United States Dollars Thirty Million Only) to finance purchase of the Eligible Goods and Services 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 Seller on the basis of project/ product specifications and 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 and 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 Contract shall be exempt from all kinds of taxes, levies and duties of any nature whatsoever levied in the Borrower's Country;
- (f) the contract provides for the Buyer to cause the Borrower to issue a Payment Authorisation 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 Eligible Goods and 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 and operational plan for implementation 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 along with 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 change in the value, 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 included by Exim Bank under the Credit. 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, confirmation of the compliance to stipulated Indian content requirement issued by PMC/ Buyer 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 Eligible Contract value apportionable to the relative invoice as reduced by the amount of advance payment/ retention money, if any, in equivalent amount at the 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) 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),
 - (ii) an invoice from the Seller duly certified by the PMC and Buyer representing the amount for supplies made, works completed and/ or services rendered by the Seller and confirming the compliance to the stipulated Indian content requirement under an Eligible Contract in the Borrower's Country, or,
 - (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 i.e. May 10 and November 10 of each year, 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 Five (25) 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 May 10/ November 10 immediately following the 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 twelve (12) 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 along with half-yearly interest as specified in clause 5 hereof following the expiry of the said period of twelve (12) months.

- 7.2 No portion of commitment 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 an installment of principal, interest or any other monies when due under this Agreement, the Borrower shall pay to Exim Bank additional interest 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:

Exim Bank shall deem a contract as eligible for being financed under this Agreement and shall disburse monies for account of the Borrower subject to the following:

- (a) 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;
- (b) 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);
- (c) 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.
- (d) 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;
- (e) 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;
- (f) no Event of Default shall have happened and be continuing; and

- (g) Exim Bank shall have received from the Seller the documents in terms of Clause 4 including Contract Inclusion Form as per Annexure II and Payment Authorisation as per Annexure III duly signed by the persons authorized by the Borrower as per Enclosure II, prior to the relevant Terminal Disbursement Date;

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 Any contract that is based in the practice or its attempt of situations stipulated under Clause 10.1 shall tantamount to an Event of Default under this Agreement, without prejudice to eventual civil and criminal consequences against those involved in these 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. General Conditions to form part of Credit Agreement:

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
- C. Interest Period
- D. Taxes
- E. Currency of Account and Place of Payment
- F. Appropriation of Payments
- G. Indemnity
- H. Representations
- I. Affirmative Covenants
- J. Inspection and Monitoring
- K. Events of Default
- L. Evidence of Debt
- M. Waiver
- N. Assignment/Transfer
- O. Certification by Exim Bank
- P. Partial Invalidity
- Q. Language of documents
- R. Law
- S. Arbitration
- T. Notices

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 preceding 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.
- 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. 36046887 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. Appropriation of Payments:

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 on the defaulted amounts;
- (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. Indemnity:

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:

H.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. The Borrower is not entitled to any right of immunity from any legal process in the Borrower's Country on the grounds of sovereignty or otherwise, and the waiver contained in this Agreement of any right of immunity by the Borrower is irrevocably binding on the Borrower;
- (vi) in any proceedings taken in the Borrower's Country for the enforcement of the Credit Agreement, the choice of the Indian 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 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