

TRIPARTITE AGREEMENT

For

**Implementation of National Programme on
ACC Battery Storage under the
Production Linked Incentive (PLI)
Scheme**

TRIPARTITE AGREEMENT

BY AND AMONGST

Ministry of Heavy Industries, Government of India

AND

[*insert name of the State Government*]

AND

[*insert name of the Beneficiary Firm*]

[To be executed on stamp paper of appropriate value]

TRIPARTITE AGREEMENT¹

THIS TRIPARTITE AGREEMENT (“Tripartite Agreement”) is made on this ____ day of _____, 20[•], by and amongst:

1. **Government of India**, through Ministry of Heavy Industries having its office at [• insert address], (hereinafter referred to as “**GoI**”), which expression shall unless repugnant to the context or meaning thereof, include its successors and assigns, of the **First Part**; and
2. **State Government of [•]**, through [• insert name], [• insert designation], [• insert Department], having its office at [• insert address], (hereinafter referred to as “**State Government**”), which expression shall unless repugnant to the context or meaning thereof, include its successors and assigns, of the **Second Part**; and
3. [• insert name], a company incorporated and registered under the Indian Companies Act 2013, with its corporate identity number [•] and having its registered office at [• insert address] (hereinafter referred to as the “**Beneficiary Firm**”, which expression shall, unless repugnant to the subject, context or meaning thereof, include its successors and permitted assigns) of **Third Part**.

The “**GoI**”, “**State Government**” and “**Beneficiary Firm**” hereinafter jointly referred to as the “**Parties**” and individually as the “**Party**”.

1. PREAMBLE

- 1.1 The GoI, in order to obtain self-reliance in production of advance chemistry cell (“**ACC**”) and storage batteries, endeavours to support domestic manufacturing of ACC;
- 1.2 The GoI has issued, has launched, and intends to implement the National Programme on Advance Chemistry Cell Battery Storage (“**Programme**”) for implementing an enabling ecosystem for the private sector to make investments into setting-up of greenfield ACC manufacturing facilities as described in the Programme Agreement (“**Project**”). The ecosystem will facilitate export competitiveness and address ongoing concern of the domestic manufacturing facilities;
- 1.3 The GoI is desirous of appointing a Beneficiary Firm, incorporated as a special purpose vehicle (“**SPV**”) under the Indian Companies Act 2013 pursuant to the request for proposal (“**RFP**”), issued by the GoI dated [•], to set-up a Project and undertake the capital phasing for the overall production capacity and domestic Value Addition. A copy of the Letter of Award given to the Beneficiary Firm by the GoI has been annexed with this Tripartite Agreement in Schedule-C;
- 1.4 The GoI shall render its support to the Beneficiary Firm by extending financial incentives (“**Subsidy**”) as quoted by the Beneficiary Firm under the RFP and the State Government has offered to extend support at its level for providing land (if required) to the Beneficiary Firm for setting up of the Project and extending support for procuring all the Applicable Permits;
- 1.5 Pursuant to the aforesaid, the Parties have agreed that the successful implementation of the Project, requires extensive continued support and grant of certain rights and authorities as hereinafter set forth, by State Government; and

¹ **Note:** Any additional provisions may be incorporated by the Parties in the Tripartite Agreement and non-essential clauses (clauses in square brackets) can be modified mutually by the Parties.

1.6 The Parties therefore consider it necessary and expedient to enter into this Tripartite Agreement.

NOW THEREFORE THE PARTIES HERETO HEREBY AGREE AND THIS AGREEMENT WITNESSETH AS FOLLOWS:

2. **DEFINITIONS AND INTERPRETATIONS**

2.1 In this Tripartite Agreement, the following terms shall, unless repugnant to the context or meaning thereof, have the meaning hereinafter respectively assigned to them:

“**ACC**” shall have the meaning ascribed under the Programme Agreement;

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

“**Applicable Permits**” means all clearances, licences, permits, authorisations, no objection certificates, consents, approvals and exemptions required to be obtained or maintained under Applicable Laws in connection with the construction, operation and maintenance of the Project during the subsistence of this Tripartite Agreement;

“**Effective Date**” shall be the date when the State Government meets all its obligations under this Tripartite Agreement;

“**Government Agency**” means any department, section, division or sub-division including any board, authority, commission, instrumentality, agency, municipality, panchayat or other local authority or any statutory body or authority under the control of State Government or which is subject to supervision, direction or control of State Government in respect of any matter or which can be suspended, superseded or dissolved by State Government;

“**Programme Agreement**” means the agreement executed between the Beneficiary Firm and the GoI in connection with the Project, as provided in Schedule B to this Tripartite Agreement;

“**Project**” has the meaning ascribed to such term in Clause 1.2 of this Tripartite Agreement;

“**RFP**” has the meaning ascribed to such term in Clause 1.3 of this Tripartite Agreement;

“**Site**” has the meaning ascribed to such term in Clause 7.1.1 of this Tripartite Agreement;

“**SPV**” has the meaning ascribed to such term in Clause 1.3 of this Tripartite Agreement;

“**Subsidy**” has the meaning ascribed to such term in Clause 1.4 of this Tripartite Agreement;
and

“**Tripartite Agreement**” means this tripartite agreement and all annexures, schedules and appendices hereto, as amended or modified from time to time, in accordance with the terms hereof.

2.2 The words and expressions beginning with or in capital letters used in this Tripartite Agreement shall have the meaning respectively assigned to them herein or in the Programme Agreement.

2.3 In this Tripartite Agreement unless the context otherwise requires:

- (i) any reference to any statute or any statutory provision shall include any amendment or re-enactment or consolidation thereof;
- (ii) the words importing singular shall include plural and vice versa, and reference to a “**person**” and words denoting natural persons shall include partnerships, firms, companies, corporations, joint ventures, trusts, associations, organizations or other entities (whether or not having a separate legal entity) and shall include Government Agencies;
- (iii) the headings are for convenience of reference only and shall not be used in and shall not affect the construction or interpretation of this Tripartite Agreement;
- (iv) the words “**include**” and “**including**” are to be construed without limitation;
- (v) any reference to a “**day**” shall mean reference to a calendar day, and any reference to “**month**” shall mean reference to a calendar month;
- (vi) the annexures and appendices to this Tripartite Agreement form an integral part of this Tripartite Agreement and will be in full force and effect as though they were expressly set out in the body of this Tripartite Agreement;
- (vii) any reference at any time to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference provided that this clause shall not operate so as to increase liabilities or obligations of State Government or Beneficiary Firm hereunder or pursuant hereto in any manner whatsoever;
- (viii) references to Recitals, Clauses, Sub-clauses, Schedules, Annexures or Appendices in this Tripartite Agreement shall be deemed to be references to recitals, clauses, sub-clauses, schedules, annexures, and appendices of this Tripartite Agreement;
- (ix) any agreement, consent, approval, authorization, proposal, notice, communication, information or report required under or pursuant to this Tripartite Agreement from or by any Party shall be valid and effectual only if it is in writing and executed by duly authorized representative of such Party in this behalf and not otherwise; and
- (x) any reference to any period commencing “**from**” a specified day or date and “**till**” or “**until**” a specified day or date shall include both days or dates.

2.4 **Priority of agreements**

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

- (i) the Programme Agreement; and
- (ii) this Tripartite Agreement;

i.e., the documents at (i) will prevail over agreements and documents at (ii).

3. **TERM**

This Tripartite Agreement shall come into force from the date hereof and shall continue to be in effect for the term of the Programme Agreement, unless otherwise agreed between the Parties.

4. **OBJECT & SCOPE**

The object of this Tripartite Agreement is to set out the broad principles of cooperation and modalities to guide and govern the role of the Parties in the effective implementation of the Project in accordance with the terms and conditions of this Tripartite Agreement.

5. **IMPLEMENTATION PERIOD**

Works for the Project shall commence as provided under the Programme Agreement and the State Government shall be scheduled to extend its incentives to the Beneficiary Firm in accordance with Applicable Laws.

6. **OBLIGATIONS OF THE GoI**

The GoI hereby agrees to disburse the Subsidy as per the terms of the Programme Agreement.

7. **OBLIGATIONS OF THE STATE GOVERNMENT²**

The State Government hereby agrees to comply with and perform the following, either by itself or through any other Government Agency:

7.1 **[Provision of land]**

7.1.1 If required by the Beneficiary Firm, the State Government shall acquire, lease or transfer XXXXX Acres of land per GWh (in accordance with the capacity specified and approved in the Programme Agreement) for the Project, free from encumbrances and hand over the possession of such land to the Beneficiary Firm (“**Site**”) within [•] months from the date of execution of this Tripartite Agreement.

7.1.2 The Parties agree that for obtaining the Site, the State Government or any Government Agency shall, by way of an outright sale, transfer the Site to the Beneficiary Firm or lease the Site to the Beneficiary Firm by way of a long-term lease for a period of 99 (ninety-nine) years. The State Government further agrees that in case of outright sale, the price payable by the Beneficiary Firm in respect of the Site shall not exceed the lower of: (i) market price; or (ii) the circle rate, as the case may be.

7.1.3 The State Government shall undertake adequate measures to ensure that any stamp duty payable on the Site transferred or leased to the Beneficiary Firm shall not be greater than XXX% (XXX per cent) of the lower of sale consideration or the circle rate for the Site, as the case may be.

7.2 **[Provision of trunk infrastructure]**

The State Government shall make available to the Beneficiary Firm, trunk infrastructure necessary for the Project. The trunk infrastructure shall include facilities such as access roads

² **Note:** These are guidelines and may be mutually revised as agreed between the Parties. All provisions in the square parenthesis [] are to be agreed between the Parties and may be modified accordingly.

to the Site, sewage, water, electricity infrastructure, etc. as provided in Schedule-A to this Tripartite Agreement. The State Government further agrees that it shall either provide to or share the cost incurred by the Beneficiary Firm on common infrastructure, including without limitation, common effluent treatment plants.^{3]}

7.3 Clearances

7.3.1 The Beneficiary Firm shall obtain and, at all times, continue to maintain all Applicable Permits required under Applicable Laws for undertaking and implementing the Project.

7.3.2 The State Government shall grant and cause its instrumentalities to accord all necessary Applicable Permits, sanctions, no objection certificates etc., under a single window clearance mechanism, as necessary, within the relevant statutory period or within a reasonable time after the relevant application for the same is fully completed, under and in accordance with Applicable Laws. The State Government shall, where applicable, set up a single window clearance mechanism for obtaining Applicable Permits in connection with the Project no later than [•] months from the date of execution of this Tripartite Agreement. It is clarified that notwithstanding the single window clearance mechanism of the State Government, the Beneficiary Firm shall comply with and be responsible to obtain all Applicable Permits under and in accordance with Applicable Laws.

7.4 [Additional Incentives

The State Government may provide subsidy to the Beneficiary Firm, over and above the incentives available to it under the National Programme on ACC Battery Storage, under and in accordance with Applicable Laws.]

7.5 [Other Obligations

7.5.1 The State Government shall ensure that the entities owning the existing road, right of way or utilities on, under or above the land where the Project is situated allow continuous satisfactory use thereof.

7.5.2 The State Government shall undertake shifting of any utility including electric lines, water pipes, telephone cables or any other utilities as may be required, to an appropriate location or alignment within or outside the Site if such utility causes or shall cause material adverse effect on the Project.

7.5.3 The State Government agrees that the tariff for electricity payable by the Beneficiary Firm at the Project shall be as per the applicable tariff order issued by the relevant state electricity regulatory commission, from time to time.

7.5.4 Subject to Clause 7.5.3 above, if the Beneficiary Firm does not procure electricity from the utility in the area of the Project and requires electricity through open access, the State Government shall, upon request made by the Beneficiary Firm, facilitate in obtaining such open access under and in accordance with Applicable Laws. The State Government further agrees that it shall facilitate in extending benefits in relation to transmission and wheeling charges for the Beneficiary Firm at discounted rates, under and in accordance with Applicable Laws.]

³ **Note:** Any charges with respect to common infrastructure may be shared by the Beneficiary Firm and the State Government.

7.5.5 It is clarified that the State Government shall fulfil its obligations provided in this Article no later than 120 (One hundred and twenty) days from the execution of this Tripartite Agreement (“Effective Date”).

8 OBLIGATIONS OF THE BENEFICIARY FIRM

Beneficiary Firm shall perform, observe, and comply with:

- (i) all Applicable Laws and Applicable Permits;
- (ii) its obligations, including without limitation to set up the Project in accordance with the Programme Agreement;
- (iii) undertaking construction, development, operation, and maintenance of the Project and bearing expenses in relation thereto;
- (iv) its obligations under this Tripartite Agreement;
- (v) prescribed codes and specifications for various items for construction and operation as well as the safety standards under the Applicable Law; and
- (vi) be bound by such directions as the GoI may give in writing from time to time after giving due opportunity to Beneficiary Firm to express its views before giving any direction.

9 REPRESENTATIONS AND WARRANTIES

Each Party hereby represents and warrants to the other Parties hereto as follows:

- (i) It has power and authority to execute, deliver and perform its obligations under this Tripartite Agreement and to carry out the transactions contemplated hereby;
- (ii) It has taken all necessary governmental, corporate, and other action under Applicable Laws and its constitutional documents (as applicable) to authorize the execution, delivery, and performance of this Tripartite Agreement;
- (iii) This Tripartite Agreement constitutes its legal, valid, and binding obligation, enforceable against it in accordance with the terms hereof;
- (iv) It is subject to civil and commercial laws of India with respect to this Tripartite Agreement and it hereby expressly and irrevocably waives any immunity in any jurisdiction in respect thereof;
- (v) The execution, delivery and performance of this Tripartite Agreement will not conflict with, result in the breach of, constitute a default under or accelerate performance required by any of the terms of the charter documents (if applicable) or any Applicable Laws or Applicable Permits or any covenant, agreement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected; and
- (vi) There are no actions, suits, proceedings or investigations pending or, to its knowledge, threatened, against it at law or in equity before any court or before any judicial, quasi-judicial or other authority, the outcome of which may result in the breach of or constitute a default on its part under this Tripartite Agreement, or which individually or in the aggregate may result in any material adverse effect on its business, properties

or assets or its condition, financial or otherwise, or in any impairment of its ability to perform its obligations and duties under this Tripartite Agreement.

10 GOVERNING LAW AND DISPUTE SETTLEMENT

10.1 This Tripartite Agreement shall be governed by and construed and interpreted in accordance with the laws of India.

10.2 Any and all claims, dispute, difference or controversy between the Parties of whatever nature, arising out of, or in connection with, or in relation to this Tripartite Agreement, which is not resolved amicably within 90 (ninety) days of receipt of notice of such dispute, difference or controversy from a Party/ Parties by the remaining Party/ Parties in the first instance, shall be exclusively resolved by the courts at New Delhi.

11 MISCELLANEOUS

11.1 Alteration of Terms

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

11.2 Time or Indulgence Allowed

An indulgence by a Party to any of the other Party in respect of any obligation or matter hereunder including time for performance to such other Party or to remedy any breach hereof shall not be construed as a waiver of any of its rights hereunder by the Parties, and any such indulgence may be on such terms and subject to such conditions as the Party giving it may specify and shall be without prejudice to the Party's then accrued rights under this Tripartite Agreement, except to the extent expressly varied in writing.

11.3 Severability of Terms

If any provision of this Tripartite Agreement is declared to be invalid, unenforceable, or illegal by any court, such invalidity, unenforceability, or illegality shall not prejudice or affect the remaining provisions of this Tripartite Agreement, which shall continue in full force and effect.

11.4 Language

All notices, certificates, correspondence, or other communications under or in connection with this Tripartite Agreement shall be in English language only.

11.5 Notices

(i) Any notice or communication hereunder shall be in writing, signed by the Party giving it and may be served by sending it by hand delivery, facsimile, e-mail, registered or speed post, or by reputed national courier service, addressed as follows (or to such other address as shall have been duly notified in accordance with this Clause):

If to the **GoI**:

Attn: [•]
Address: [•]
Fax no.: [•]
Email: [•]

If to the **State Government**:

Attn: [•]
Address: [•]
Fax no.: [•]
Email: [•]

If to **Beneficiary Firm**:

Attn: [•]
Address: [•]
Fax no.: [•]
Email: [•]

- (ii) All notices given in accordance with Sub-Clause (i) above shall be deemed to have been served as follows:
 - (a) if delivered by hand, at the time of delivery, when proof of delivery has been obtained;
 - (b) if sent by registered or speed-post or by a nationally recognized courier service, at the expiration of 7 (seven) days following posting; or
 - (c) if communicated by facsimile or e-mail, on receipt of confirmation of successful transmission and delivery.
- (iii) All notices communicated by facsimile or e-mail shall be followed by a copy thereof being sent by speed post to the addressee. A notice or other communication received on a day other than a business day, or after business hours in the place of receipt, shall be deemed to be given on the next following business day in such place.

11.6 Authorized Representatives

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

11.7 Original Document

This Tripartite Agreement is made in one or more counterparts, each of which shall be deemed to be an original.

11.8 Conflict

- 11.8.1 This Tripartite Agreement is solely for the benefit of the Parties and no other person or entity shall have any rights hereunder.
- 11.8.2 Termination of this Tripartite Agreement shall not relieve any Party of any accrued rights, obligations and liabilities arising out of, or caused by any act or omission of a Party, till the effective date of such termination or arising out of such termination.
- 11.8.3 State Government and Beneficiary Firm shall not assign their rights under this Tripartite Agreement without the prior written consent of the other Party. This Tripartite Agreement shall be binding on and shall inure to the benefit of successors-in interest and permitted assigns of the Parties.

[Signature page follows]

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

SIGNED SEALED AND DELIVERED BY

**For: Ministry of Heavy Industries,
Government of India**

For: Beneficiary Firm

Name:
Title:

Name:
Title:

For: State Government

Name:
Title:

Witnesses:

1. _____ Name: Address:	2. _____ Name: Address:
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SCHEDULE A

[Details of Trunk Infrastructure]

SCHEDULE B

[Programme Agreement]

SCHEDULE C
[Letter of Award]