

CONTRACT NO. : SEPCO, CHINA/SK/1160201/255

ON-SHORE SERVICES CONTRACT

BETWEEN

WARDHA POWER COMPANY PRIVATE LIMITED

AND

SEPCO ELECTRIC POWER CONSTRUCTION CORPORATION

REGARDING

3600 MW POWER PLANT AT NARIYARA, JANJIGIR-CHAMPA, CHATTISGARH

include its successors and permitted assigns) as party of the second part;

The Owner and the Contractor are referred to herein individually as a "Party" and collectively as the "Parties".

### RECITALS

#### WHEREAS

- A. The Owner is setting up a 3600 MW coal based power plant (hereinafter referred to as the "Project" / "the Power Plant") on build, own and operate ("BOO") basis at Nariyara, Janjgir – Champa Dist, Chattisgarh State, India (hereinafter referred to as the "Site") for the purpose of selling electrical energy to the participating consumers or their successors and assigns.
- B. The Contractor is engaged in the business of undertaking various onshore services, supervising services, project management services and other allied services for various kinds of power plants similar to the one proposed to be set up by the Owner.
- C. The Owner is purchasing one "Complete Plant" under different contracts for installation at the Owner's Power Plant, proposed to be located the Site.
- D. The Owner wishes to engage the Contractor to provide such onshore, supervisory, project management and allied services ("Services") for the Complete Plant at Site.
- E. The Contractor has agreed to provide such Services on a fixed lumpsum price basis and in accordance with the terms and conditions set forth in the Contract.
- F. The Contractor has satisfied itself by careful examination as to the nature and magnitude of the Contract and the availability of resources and has obtained necessary information as to the matters in connection with the performance of the Contract; and
- G. The Contractor hereby confirms and warrants that it has the necessary expertise and resources to perform their obligations under the Contract and has rendered such similar Services for various coal based power plants.





- H. The Owner has agreed to award to the Contractor and the Contractor has agreed to undertake the Services based on the understanding recorded in the Letter of Award dated Feb 26, 2009 and annexed hereto as Annexure-1 ("LoA") and the Parties desire to document the terms and conditions under which the Supplier will make the Services, being these presents.
- I. The Owner and the Contractor wish to enter into the Contract to set forth the terms and conditions under which the Contractor shall render the agreed Services.

NOW, THEREFORE, THE CONTRACT WITNESSETH as follows:

## 1. DEFINITIONS

### 1.1 Definitions

The following terms shall have the meanings specified in this Article and used in the Contract (including in the Recitals hereof), unless the context clearly requires otherwise:

"**Acceptance Tests**" shall mean Trial Runs, Initial Operations, Reliability Run Tests and Performance Guarantee Tests, as described in Schedule specifications which certify that Plant and Equipment has satisfied the defined criteria during the Acceptance Tests.

"**Affiliate**" in relation to any Party, means a Person that controls, is controlled by, or is under common control with such Party. As used in this definition the term "control" means, with respect to a Person that is a legal entity, the ownership, directly or indirectly, of more than 50% of the voting securities of such Person or, with respect to a Person that is not a legal entity, the power to direct the management or policies of such Person, whether by operation of law, by contract, or otherwise.

"**Applicable Clearances**" shall mean any consent, licence, approval, permit or other authorisation of whatsoever nature which is required to be granted by any Competent Authority, for such matters as may be necessary in connection with the Project or the performance of the Contractor's and/or the Owner's obligations under the Contract.



**"Applicable Law"** means the Constitution of India and any act, rule, regulations, directive, notification, order or instruction having the force of law enacted or issued by any Competent Authority.

**"Articles"** means the Articles or Sub-Articles of the Contract.

**"Bank Guarantee"** shall have the meaning as ascribed to it in Article 8.7 of the Contract.

**"Business days"** shall mean day on which banks are legally permitted to be open for business in India for banking.

**"Contract"** shall mean this document, and attached Annexures/Schedules, including any supplement(s) subsequently written and modification(s) thereto.

**"Change"** means any addition to, deletion from, or modification to the quality, function, capability, capacity, composition, or intent of the Service as presently delineated in this Agreement, so long as the change requested is reasonably related to the Service including any such addition, deletion, suspension or other modification that requires a change in one or more of the Contract Price, the project schedule, or the Performance Guaranteed Values. Correction of errors or omissions by Contractor shall not be deemed a Change and shall be performed at Contractor's sole cost and expense.

**"Change Order/Variation"** means a written order to Contractor signed by Owner and Contractor during the execution and delivery of Scope of Work under the Contract authorizing a Change and, if appropriate, an adjustment in one or more of the Contract Price, the Project schedule, or the Performance Guaranteed Values or any other amendment of the terms and conditions of the Contract.

**"Change in Law"** shall mean (a) any enactment or issuance of any new Applicable Law; or (b) any amendment, alteration, modification or repeal of any existing Applicable Law; or (c) any change in the application or interpretation of any Applicable Law by any Competent Authority which is contrary to the existing accepted application or interpretation thereof, in each case with respect to a) , b) and c) above coming into effect after the signing date of the Contract and which was not reasonably foreseeable by the Contractor at the date of the Contract. Provided that, the statutory variations in taxes and duties shall not constitute a Change in Law.



"Claim" shall have the meaning set forth in Article 27.

"Competent Authority" means any local or State Government or Union Territory in India or the Government of India or any department, instrumentality or agency thereof or any corporation (to the extent acting in a legislative, judicial or administrative capacity and not as a contracting party with the Owner or the Contractor) or commission under the direct or indirect control of such local or State Government or Union Territory or the Government of India or any political subdivision thereof or any court, tribunal or judicial or quasi-judicial body within India.

"Codes" shall mean the following, but not limited to the following, including all latest Amendments, and / or replacements, if any:

- (a) Indian Boiler Act and Rules and Regulations made thereunder including those laid down by the State of Chhattisgarh;
- (b) The Electricity Act 2003 and rules and regulations made thereunder;
- (c) Indian Factory Act and rules and regulations made thereunder;
- (d) Indian Explosives Act and rules and regulations made thereunder;
- (e) Indian Petroleum Act and rules and regulations made thereunder;
- (f) A.S.M.E. Test codes.
- (g) A.I.E.E. Test Codes.
- (h) American Society of materials testing codes (ASTM).
- (i) Indian Standards (IS).
- (j) MoEF, Center and CECB, Chattisgarh rules (Pollution Control Board)
- (k) Other internationally recognised standards and/or rules and regulations touching the subject matter of the contract.
- (l) Applicable Environment Protection Laws, Rules, Regulations and Notifications thereto.

"Complete Plant or Plant" shall mean the equipment and materials capable to generate electric power meeting the Performance Guarantees, such as Boiler with Auxiliaries, Turbine with Auxiliaries, Generator with Auxiliaries, Transformers, complete plant DCS system, Auxiliary/Start-up Boiler and Control and Instrumentation System for these, Coal Handling System, Fuel Oil Handling System, Pulverizers, Stacker-cum-Reclaimer, Ash Handling System, Raw Water Treatment System, DM Water System,

Potable and Service Water System, Cooling Water System, Auxiliary Cooling Water System, Cooling Tower, CW Treatment Plant, Fire Protection System, Compressed Air System, Air conditioning System, Ventilating System, EOT Crane, Hoists, Pippings, Hangers, Supports, Valves, Fittings, Painting and Protective Coatings, Effluent Treatment Plant, Reverse Osmosis (RO) Plant System, Services related to Ash Dyke , Evaporation Pond , Reservoir, lab equipments, workshop equipments, Electrical System including switchyard, control and instrumentation system and other systems / equipments / tools & tackles complete as further defined in the Technical Specifications except CNC Lathe Machine, training simulator and CCTV,

**"Commissioning"** shall mean, in relation to each Part, the first successful integrated operation of all the Equipment and materials supplied by the Contractor in accordance with this Agreement after all initial adjustment, trials, cleaning and re-assembly, if any, required on completion of installation at the Site, have been completed and the plant / equipment has been first synchronised with the Grid.

**"Commissioning Certificate"** shall mean the fully executed certificate issued by Owner to Contractor certifying the Commissioning Date.

**"Commissioning Date"** shall mean the date on which the Commissioning has been completed. The scheduled Commissioning Date for the purpose shall be the first Synchronization Date for each Unit as per Project schedule

**"Commercial Operations Date/Taking Over Date"** shall mean the date on successful completion of Reliability Run Test of each Unit.

**"Conditions"** shall mean the general terms and conditions of the Contract.

**"Confidential Information"** shall mean information now or hereafter owned by or otherwise within the possession or control of a Party, including patented and unpatented inventions, business and trade secrets, know-how, techniques, data, specifications, as-built drawings, blue prints, manuals, flow sheets, designs, engineering information, construction information, operation criteria and other intangible information related to the Project.



**"Consequential Damages"** shall mean indirect, punitive, special or incidental damages, including but not limited to, the loss of profits or revenue, loss of use of the Equipment or materials or any associated equipment, cost of capital and/or financing, down time costs, loss of opportunity, loss of goodwill, and claims of customers for damages of like nature.

**"Consumables"** shall mean all lubricants, lubrication and control oils, additives, greases, filters, demineralising resins, water treatment chemicals and the like required for operation of the Project.

**"Contract Price"** means the Contract Price as set forth in Article 8.

**"Contract Period"** shall mean the time for completion of the Works as stated in the Contract.

**"Contractor's Representative"** shall mean the Person nominated by the Contractor from time to time by notice in writing to the Owner to act as Contractor's representative for the purposes of the Contract which may include from time to time a representative of a Sub-Contractor.

**"Contractor's Works"** means the place of work used by the Contractor, its manufacturers, contractors, collaborators or sub-contractors for the performance of the Works.

**"Date of contract signing"** shall mean the date on which both the Parties have signed the Contract.

**"Day"** shall mean Gregorian calendar day or days of twenty-four (24) hours each for the Contract Period.

**"Documentation/Documents"** shall mean, design basis report (DBR), Drawings, designs, data sheets, calculations, computer data (insofar as stored in computer diskettes/ Compact Disc), other than the proprietary information, samples, patterns, models, type tests as applicable, quality plans, inspection reports, field quality plans, test reports/protocols, Competent Authority certificates in Owner's name, "as-built" drawings, method statement, erection drawings and instructions, fabrication drawings,





and other manuals and information of a similar nature, to be submitted by the Contractor.

**"Drawings"** shall mean the, drawings, diagrams, plans, specifications related to the Site, Complete Plant and its parameters, supporting fuel and power lines, pressure, temperature ranges, foundation support points for the units/modules, and other information furnished by the Contractor or the Owner in connection with execution and completion of engineering design and fabrication of the Complete Plant for the Complete Plant.

**"Dispute"** shall have the meaning as set forth in Article 27 of the Contract.

**"Directive"** shall mean any requirement, instruction, direction, order, regulation, code, standard or rule of any Competent Authority, which is legally binding and any modification, extension or replacement thereof from time to time, in force.

**"Effective Date/Zero Date"** shall have the meaning as set forth in Article 4.14.3 of the Contract.

**"Engineer"** means the Officer appointed from time to time in accordance with Article 4.3 by the Owner/Lender and notified in writing by the Owner to the Contractor to act as Engineer for the purpose of the Contract. Unless any change is notified, the project head of the Owner shall act as the Engineer.

**"Engineer's Representative"** shall mean resident Engineer or project manager or an assistant of the Engineer appointed from time to time by the Engineer to exercise the powers, discretion, functions, and authorities vested in him.

**"Field Quality Plan"** shall mean as set out in Clause 4.16.

**"Final Acceptance"** has the meaning as set forth in Article 22.10.

**"Final Acceptance Certificate"** means the certificate as specified in Article 22.10.

**"Financing Entity"** shall mean any Person providing finance to the Owner in connection with the Project under the Loan Contract(s).



**"Force Majeure"** has the meaning as set forth in Article 25.

**"Good Industry Practice"** means the exercise of that degree of skill, diligence and prudence which would reasonably and ordinarily be expected from a skilled and experienced Contractor, equipment manufacturer or operator applying the standards generally adopted by Indian and/or international Contractors, equipment manufacturers and operators in the construction or operation of coal based power plant or the manufacture of equipment therefor, except insofar as necessary to comply with any Applicable Law.

**"Guaranteed Completion Date"** shall be the dates specified in Article 4.14.

**"IBR"** shall mean requirements under Indian Boiler Act and Rules and Regulations made thereunder including those laid down by the State of Chhattisgarh

**"Indemnified Party"** shall have the meaning set forth in Article 19.

**"Income Tax Law"** shall mean the laws, rules, regulations, and other provisions in force under the Income Tax Act, 1961 of the Government of India, as may be amended from time to time.

**"Initial Operation"** shall mean the first integral operation of the complete Unit supplied under the Contract with all incidental and auxiliary equipments or systems.

**"Inspector"** shall mean the Owner or any person / firm appointed by or duly authorised by the Owner or appointed by the Contractor on approval of the owner from time to time to inspect the Complete Plant and/or the Works in totality according to the terms and conditions of the Contract.

**"Item"** shall mean any service being a part of the Unit/s and/or the Complete Plant to be provided by the Contractor in accordance with Schedule 2.

**"Lender"** shall include the services enabling or Institutions or Financing entity providing construction, interim or long-term financing (including any refinancing thereof) (i) for KSK Energy Ventures Private Limited (sponsors) for the Services and / or (ii) the Owner or sponsor for the set-up, procurement and construction of Power Plant.





**"Loan Contract"** shall mean the contract or contracts to be entered into by the Owner for the provision of finance in connection with the Project.

**"KW"** shall mean electrical kilowatts.

**"KWh"** shall mean electrical kilowatt-hours.

**"Kick-off Meeting"** shall mean the very first meeting held between the Parties after the signing of the Contract.

**"Law"** shall mean any law, act, ordinance, code, rule, resolution, regulation, order, specified standards or criteria contained in any applicable Permit, or other legislative, administrative or judicial action or decision of any Governmental Authority in force and effect during the term of the Contract.

**"Latent Defect"** shall mean, in respect of each Part, defects which are inherent or not visible at the time of Taking Over of the said Parts of Project and which were undetected at the expiry of the respective Warranty Period relating to the said Parts of Project.

**"Lien(s)"** shall mean any lien, claim, charge, encumbrance, cause of action, security interest, mortgage or other possessory or non-possessory interest in, on or against real, tangible or intangible property as administered under Applicable Law arising out of, due to, or otherwise as a result of the Contractor's acts or omissions, including any lien recorded or held by any Sub-Contractor or any other person entitled to a lien under Applicable Law.

**"Mechanical Completion"** shall mean when all the equipment supplied with respect to each Unit is installed and tested / pre-commissioned in accordance with Engineering Documents / Instruction Manuals and documented through protocols, as set forth in the Technical Specifications and confirmed by a Certificate of Owner, date of which shall happen before Commissioning Date.

**"Miss Outs"** shall mean the Scope of Service and related Technical Specifications which are not detailed in the Technical Specifications but which are essentially required to complete the Scope of Service, as per applicable standards, but shall not include any

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variations or additions outside the Miss Outs, which are instructed to be carried out by or on behalf of the Owner.

**"Month"** means any calendar month.

**"MW"** shall mean 1000 electrical kilowatts.

**"O&M Contractor"** shall mean the Person with which Owner has entered into or will enter into an Agreement to provide operation and maintenance services to the Power Plant for the period immediately following its completion.

**"Owner's Contractor"** shall mean the other contractors/suppliers engaged by the Owner for execution of specific Services, services and works with respect to the project, which are outside the scope of work under the Contract.

**"Owner Event of Default"** shall have the meaning set forth in Article 26.2.

**"Owner Indemnified Party"** shall have the meaning set forth in Article 19.1-B.

**"Owner's Representative"** shall mean the Person nominated by the Owner from time to time by notice in writing to the Contractor to act as Owner's representative for the purposes of the Contract.

**"Party"** means the Owner or the Contractor, as the case may be and **"Parties"** shall mean both of them.

**"Payment Term" or "Terms of Payment"** shall have the meaning given to it in Article 8.6.

**"Performance Guarantee Test Certificate"** shall mean a certificate issued to the Contractor certifying that the Complete Plant has successfully passed the Performance Guarantee Tests.

**"Performance Guarantee Tests"** means the tests to be conducted so as to establish the Performance Guarantee parameters in the manner set forth in Article 22.9.

**"Performance Guaranteed Values"** means the guaranteed levels of performance of

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the Complete Plant as set out in Article 22.9.

**"Performance Liquidated Damages"** means the damages relating to the performance of the Complete Plant set out in Article 23.2.

**"Person"** shall mean any natural person, firm, corporation, company, voluntary association, partnership, joint venture, trust, incorporated organisation, unincorporated organisation, Competent Authority or other entity.

**"Progress Reports"** has the meaning as set forth in Article 4.15.

**"Project or Power Plant"** shall mean the 3600 MW coal based power plant to be set up on build, own and operate ("BOO") basis at the Site.

**"Project Schedule"** means the schedule (bar chart/PERT Chart) of the entire Power Plant as provided in Schedule 2.

**"Reliability Run Test"** shall mean as defined in Article 22.8 and as defined Technical Specifications.

**"Requirements"** shall mean, under the Contract, Applicable Laws, Contractor Permits, Good Industry Practices, Scope of Services, and Technical Specifications, patents, licenses and all terms, conditions and other provisions.

**"Services/Works"** shall mean the all onshore Services for the Complete Plant including but not limited to onshore services, Contractor's permits and clearances, inspection, Visa permits Customs Clearance, Inland transportation, Complete Insurance, project management services and expediting, Site mobilisation, Storage, Security, supervising, training, co-ordination, Supervision of erection, testing and commissioning of the Complete Plant, start-up complete erection, testing, commissioning of the Complete Plant at Site, Reliability Run Test, Performance Guarantee Test at site, to enable completion and hand over of Complete Plant as defined in Technical Specifications and Schedules to the Contract and as specified in detail in the Contract.

**"Schedules"** Means the schedules 1 to 2 of the Contract including any amendments thereto.

**"Scope of Work"** means and includes all the Works to be rendered for the Complete Plant by the Contractor in accordance with Schedule 2 and Article 2.1 of the Contract

**"Site"** shall mean the site in Nariyara, Janjgir – Champa Dist, Chattisgarh State, India where the Owner intends to locate the Power Plant.

**"Sub-Contractor"** means any Person (other than the Contractor or the Owner) to whom the Contractor has sub-contracted any part of his Scope of Services or with whom the Contractor has entered into any contract for the providing onshore Services, in connection with the Scope of Work, including any such Person's legal successors in title or permitted assigns and, unless otherwise stated, all sub-contractors and contractors of any tier to such Person.

**"Sub-Contracts"** has the meaning given in Article 2.6.

**"Supervisory Personnel"** shall mean the supervisory personnel deputed by the Contractor or any other manufacturer who has supplied the material either through or on behalf of the Contractor or under whose supervision the Works pertaining to the contract is carried out

**"Synchronisation / Synchronised"** means the event of the Unit(s) getting connected with the external utility grid smoothly for long term operation in the grid by injecting electrical energy into such grid, with the event being recognized by such grid.

**"Taking Over"** means the taking over of the care, custody and control of the Complete Plant and/or each Unit (where applicable) by the Owner (Take Over shall have the same meaning as Taking Over).

**"Taking Over Certificates"** shall mean, a certificate issued to the Contractor by the Owner certifying that Taking Over has been accomplished.

**"Taxes"** shall mean all taxes, duties, and cess imposed by the Government of India or any of its subdivisions, excise, storage and consumption taxes, service tax, license fees, sales and/or purchase taxes (including value added tax), works contract tax, octroi, entry tax, and labour cess applicable to any portion of the Services, or any other tax, duty or fee of similar nature irrespective of the nomenclature used for the same. For





the avoidance of doubt, it is agreed that all taxes on income, profit, other real and personal property and franchise taxes, as well as personal income taxes of the Contractor or any authorised persons acting on behalf of the Contractor; and all applicable national, state and local payroll, social security, workers' compensation, employment taxes and contributions imposed by Applicable Law with respect to or measured by compensation (wage, salaries or other) paid to employees of the Contractor, including taxes, health and welfare funds, pensions and annuities, disability insurance and all other similar social payments will not be considered as Taxes."

**"Technical Dispute"** shall have the meaning as ascribed to it in Article 27 of the Contract.

**"Technical Expert"** shall have the meaning as ascribed to it in Article 27 of the Contract.

**"Technical Specifications"/"Specifications"** means the technical specifications set out in Schedule 2, setting out a description, quantity and signed on behalf of the Parties as of the date of the Contract and forming an integral part of the Contract.

**"Trial Run"** means the first operation of the Item and or Unit forming part of the Complete Plant.

**"Unit"** means any of the six Units forming the entire Complete Plant proposed to be set up at the Site.

**"Unit Price"** shall be a sum of Rs. 1,899,833,333/-being one-sixth of the Contract Price.

**"Warranty Period"** has the meaning given in Article 12.

**"Year"** means a calendar year of 12 (twelve) consecutive calendar months.

## 1.2 RULES OF INTERPRETATION

1.2.1 Words importing persons shall include firms, Companies, corporations and associated or body of individuals, whether incorporated or not.

1.2.2 Words importing singular only shall also include the plural and vice a versa where the context so requires.



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1.2.3 The headings and sub headings are inserted for convenience and are to be ignored for the purposes of construction of the Contract.

1.2.4 The Schedules to these Conditions form part of the Contract and will be in full force and effect as if they were expressly set out in the body of these Conditions.

1.2.5 When the words 'Approved' 'Subject to Approval', 'Satisfactory', 'Equal to 'Proper', 'Requested' 'As directed', 'when directed', 'Determined by', 'Accepted', 'Permitted' or words and phrases of like import are used, the approval, judgement, direction etc. is understood to be a function of the Owner.

1.2.6 Wherever provision is made for the giving of notice, approval or consent by any Person, unless otherwise specified such notice, approval or consent shall be in writing and the words "notify" and "approve" shall be construed accordingly.

1.2.7 The invalidity or unenforceability of any portion or provision of the Contract shall not affect the validity or enforceability of any other portion or provision. Any invalid or unenforceable portion or provision shall be deemed severed from the Contract. The Parties agree in such circumstances to interpret and to negotiate an equitable amendment to the provisions of the Contract to give effect to the underlying purposes of the Contract.

#### 1.2.8 Contract Documents

The term "Contract Documents" shall mean and include the following, which shall be deemed to form an integral part of the contract:

1. Schedule 1 – Cash Flow
2. Schedule 2 – Technical Specifications
3. Annexure 1 – LoA – Letter of Award
4. Annexure 2 – Format of Advance Payment Bank Guarantee
5. Annexure 3 – Format of Performance Bank Guarantee

## 2. SCOPE OF WORK

### 2.1 Services

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The Contractor's obligations under the Contract shall include the detailed Services to be provided, including project management services, inspection, expediting, supervision of erection, testing and commissioning and such Services as may be required from time to time, for timely commissioning of the envisaged Complete Plant and as set out in Schedule 2 of the Contract (hereinafter "Scope of Work"). The Contractor shall sequence its Services under the Contract in accordance with the onshore Services Completion Schedule matching the Project Schedule approved by the Owner to meet the requirements of erection at Site and to facilitate achieving successful Reliability Run Test of the Units by the respective Guaranteed Completion Date as well as training of Owner's Personnel, Supervision services at Site and Owner's Taking Over of the Unit/s from the date of Commercial Operation Date and satisfactory completion of Performance Guarantee Tests thereon.

2.2. The obligations of the Contractor under the Contract shall include single point responsibility for all necessary co-ordination in respect of the independent Services to be performed to ensure that the Project is completed in every respect as contemplated or as the change approved and signed by the Owner. Thus the Contractor needs to ensure that the Scope of Work is completed in accordance with the Guaranteed Dates, the Specifications and the Performance Guaranteed Values and the overall performance of the Services as agreed.

2.3 The Services rendered shall be complete in all respects and in accordance with Good Industry Practices, including Miss-Outs, even if it is not specifically detailed in the Technical Specifications. The Contractor shall not be eligible for any extra payment in respect of any additional services rendered & needed for safe and reliable operation of the Plant or if required under applicable Codes though they may not have been included in the Contract.

#### **2.4 Assignment and Sub-Contracts**

##### **2.4.1 Assignment by the Contractor**

The Contractor shall not without the prior written consent of the Owner assign to any Person any benefit of or obligation under the Contract in whole or in part.

##### **2.5 Assignment by the Owner**



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The Owner shall not without the prior written consent of the Contractor, assign to any person any benefit of or obligation under the Contract in whole or in part save that the Contractor hereby consents to the creation by the Owner of a security assignment of the Contract in favour of any Lender (or a trustee acting on behalf of one or more Lender) and hereby undertakes to execute upon the request of the Owner such documents as may be reasonably and customarily required to give effect to any such assignment. Any stamp duty and all costs and expenses payable in respect of such documents shall be for the account of the Owner. Further, save and except to group companies or the current promoters of the Owner (the "Promoters") where assignment shall be effective with prior notice to the Contractor, in all other cases the Owner shall not assign to any Person any benefit of or obligation under the Contract in whole or in part without prior written consent of the Contractor.

## **2.6 Sub-Contracting**

- 2.6.1 The Contractor may, sub-contract any part of the Contract, provided that the Contractor obtain written consent from the Owner for the list of Major Sub-Contractor. The Contractor shall have the right to have any of the Scope of Work accomplished by Sub-Contractors pursuant to written sub-contracts between Contractor and such Sub-Contractors (or in the case of Sub-Contractors who are also Contractor's affiliates, pursuant to whatever method Contractor chooses). However, the creation of any sub-contract relationship shall not relieve the Contractor of any of its obligations under the Contract.
- 2.6.2 The Contractor shall be solely responsible for the engagement, payment and management of Sub-Contractors in the performance of the Scope of Work for all the Services performed by Sub-Contractors, and for all acts and omissions of Sub-Contractors. No contractual relationship or privity of contract shall exist between Owner and any Sub -Contractor with respect to the Services. No Sub-Contractor is intended to be or shall be deemed a third-party beneficiary of the Contract.
- 2.6.3 Provided that the Contractor shall obtain the approval of Owner of the list of Sub Contractors who shall provide Services or materials in excess of 20 Million Rs (such Sub Contractor being a "Major Sub Contractor")



- 2.6.4 The Owner reserves the right to reject a Sub-Contractor if the financial and technical performance of such Sub-Contractor is found to have deteriorated before the award of a Sub-Contract by the Contractor to the Sub-Contractor. In the case of Sub Contractor(s) not already identified in the Contract, the experience list of the Sub-Contractor(s) under consideration by the Contractor shall be furnished to the Owner for approval prior to procurement of all such Items of the Complete Plant. The Owner shall provide their decision in this regard within 7 (seven) working days from the Contractor providing the Sub-Contractor details
- 2.6.5 The Contractor shall ensure that all sub-contracts with the Sub-Contractors are made in writing. It is understood and agreed between the Parties that if the terms of the contracts with the Sub- Contractors, including those relating to delivery date and performance for any Item, shall be equivalent terms of the Contract as signed with Owner.
- 2.6.6 The (un-priced) copies of all the sub-contractswith the major Sub-Contractor/s including the technical and functional specifications shall be submitted to the Owner by the Contractor within 2 months from the date of order placement by Contractor. The quality plans of the Sub-Contractor/s shall be as per the Quality Assurance Plan under the Contract.
- 2.6.6 Under any Sub-Contract with the Sub-Contractors the Contractor shall provide that, pursuant to the terms in form and substance satisfactory to the Owner, the rights of the Contractor under such sub-contract are assignable to the Owner successors and assigns and the Financing Entities upon the Owner's written request following termination of the Contract or after warranty period completion.
- 2.6.7 In the event of termination of the Contract, based on Owner's request, the Contractor shall use best efforts to procure that a Sub-Contractor (other than in relation to minor or immaterial sub-contracts) enter into a direct Contract with the Owner wherein the Sub-Contractor, upon settlement of all payments payable as per Contract, to the Contractor under the Contract shall agree that all rights and obligations of the Contractor under such Sub-Contract are transferred to the Owner.

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Provided however that, to the extent that the Contractor relies on any of its rights under Sub-Contracts as the basis of a claim against a Sub-Contractor prior to the termination of the Contract, the Contractor and the Owner shall mutually discuss and agree upon treatment of such rights.

2.6.8 No obligation/liabilities of the Contractor arising out of any default or non-compliance of the terms of Contract between such Sub-Contractor(s) and the Contractor shall be transferred to the Owner.

2.6.9 Any sub-contracting of the Contract fully, or any rights thereunder fully by the Contractor without the prior written consent of the Owner shall be null and void. Such sub-contracting shall not relieve the Contractor from any obligation, duty or responsibility under the Contract.

2.6.10 The Contractor shall be responsible for the engagement, management and compensation of Sub-Contractors, his agents, servants, representatives or employees in the performance of the work, acts, defaults and neglects of any sub-Contractors, the agents, servants, representatives, or employees of such sub-Contractors as fully as if they were the acts defaults or neglects of the Contractor the agents, servants, representatives or employees of the Contractor. The Contractor shall assure that all Sub- Contractors comply with all pertinent provisions of the Contract in their performance of the work. The Contractor shall remain fully and primarily responsible for the performance of all Scope of Services delegated to Sub- Contractors, the agents, servants, representatives or employees, and shall be fully responsible for all acts, defaults, neglects, omissions or faults of any Sub-Contractor as if they were the acts, omissions or faults of the Contractor.

### 3. CONTRACTOR TO INFORM HIMSELF FULLY

3.1 The Contractor is deemed to have carefully examined all Technical Specifications mentioned in Schedule 2, to his entire satisfaction before signing of the Contract. The Contractor is deemed to have made independent enquiries and satisfied himself for all the required information, inputs, conditions, circumstances and factors having effect on the Contract Price and on execution of the Works covered in the Contract.



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- 3.2 The Contractor is also deemed to have familiarised himself with various acts and laws prevailing in India and have considered them fully while signing the Contract
- 3.3 The Owner shall not permit any change in time schedule or any financial adjustment arising due to lack of information on the part of the Contractor. Any information obtained by the Contractor from the Owner, which is not in writing, shall not in any way relieve the Contractor of his responsibility to fulfill his obligation under the Contract.
- 3.4 The Contractor shall be deemed to have inspected the Site and its surroundings and to have satisfied itself as to all technical, commercial, geographical, topological, social and general condition of and all circumstances affecting the Site including the nature of the ground and sub-soil, the form and nature of the Site, the extent and nature for rendering the Services for the Complete Plant at Site.
- 3.5 The Contractor shall not, except as expressly provided in the Contract and save to the extent of any misrepresentation or misinformation given to it by or on behalf of the Owner, be entitled to any extension of time for any of the items listed in the Completion Schedule or to any adjustment of the Contract Price on the grounds of misinterpretation or misunderstanding of any such matter. Any information obtained by the Contractor from the Owner, which is not in writing, shall not in any way relieve the Contractor of his responsibility to fulfill his obligation under the Contract.

#### **4. CONTRACTOR'S OBLIGATIONS**

##### **4.1 Scope of Work**

The Contractor shall provide the agreed Services covered under the Scope of Work set out in the Contract and as further described in Technical Specifications in Schedule 2.

##### **4.2 Conformance to Requirements**

The Contractor shall provide the Services for the Complete Plant in accordance

with all Requirements and Good Industry Practice, to the Owner in accordance with the Contract. The Contractor shall perform at all times during the Term of the Contract in a good and workmanlike manner. Liberal factors of safety shall be used throughout and especially for all parts subject to alternating stresses or shocks. The Contractor shall carry out the Works as per Requirements conforming to acceptable level of safety as per standard set out for such Complete Plant dependability, efficiency and economy, in each case using qualified, competent and, where necessary, licensed personnel. The Contractor shall provide and complete all necessary services for start-up and Commissioning and Taking Over of the Power Plant.

#### **4.3 Engineer**

The Contractor shall undertake co-ordination of the progress on the Project and inform the Owner on the progress of the Works. The Owner / Lender shall nominate a competent and qualified person ("Engineer") who shall be a single point contact between the Owner and the Contractor in all matters relating to the Contract. The name and contact details shall be furnished to the Contractor during Kick-off Meeting.

#### **4.4 Co-ordination, Co-operation and Compliance**

##### **4.4.1 Co-ordination with O & M Contractor**

The Parties acknowledge that Owner shall require O&M Contractors' personnel to be present on the Site at least 60 (sixty) days prior to the anticipated date of the Mechanical Completion of first Unit. The Contractor shall co-ordinate with the O&M Contractor to allow O&M Contractor to train its operators and other personnel; provided that such training shall not unreasonably interfere with the Works. The Owner shall require O&M Contractor to assist in operating the Complete Plant under the direction and supervision of the Contractor, during the Acceptance Tests as set forth in Technical Specifications.

Contractor shall provide support to Owner for regular operations and Maintenance of the Unit(s) handed over to Owner until the Performance Guarantee Test of sixth Unit

##### **4.4.2 Co-operation and Interfacing with Other Contractors and Engineers**



The Contractor shall co-operate and interface with the Owner's other contractor and Engineer and freely exchange with them such technical information, data and details as is necessary to obtain the most efficient and economical design and to avoid unnecessary duplication of efforts. The Engineer shall be provided with the copies of all correspondence addressed by the Contractor to other contractors.

#### **4.5 Compliance with the Engineer's Decision**

The Contractor shall proceed with the Works in co-ordination with the Engineer and during the course of activities, the decisions, instructions and orders given by the Engineer subject to and in accordance with the Contract, including provisions for Variations as set out in Clause 13 hereof, shall be binding and complied with by the Contractor. In respect of all matters, which are left to the decision of the Owner including the granting or withholding of the certification, the decision of the Engineer shall be final.

#### **4.6 Training of Owner's Personnel**

4.6.1 The Contractor shall provide operations & maintenance training as per Technical Specifications only for the Complete Plant provided by Contractor at no additional cost to the Owner. However, for any other additional training required, over and above what is required as per the Technical Specifications, separate negotiations shall be made, and the training thereof shall be charged. The schedule of training shall be mutually discussed and agreed upon.

4.6.2 The Contractor shall also undertake to train the Owner's engineering personnel (selected and deputed by the Owner) at the Contractor's works. The period and the nature of training for the individual personnel shall be agreed upon mutually between the Contractor and the Owner. The engineering personnel shall be given special training in the shops, where the Equipment will be manufactured and / or in their collaborator's works and wherever possible, in any other plants where Equipment manufactured by the Contractor or the Contractor's collaborator is under installation, operation or testing to enable these personnel to become familiar with the Equipment being furnished by the Contractor. The details of the number of persons to be trained, period of training, nature of

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training etc. shall be outlined in accompanying Technical Specifications as detailed in Clause No. 15.03.00 of Section-III, Vol-II.

- 4.6.3 All the traveling and living expenses for the engineering personnel to be trained during the total period of training will be borne by the Owner. These engineering personnel while undergoing training shall be responsible to the Contractor for discipline.

#### **4.7 Contractor's Representative and Personnel**

- 4.7.1 The Contractor shall provide all requisite superintendence during the Services envisaged under the Contract until proper completion of the Contractors obligation under the Contract. Such superintendence shall be through experienced and qualified personnel, with prior experience in similar plant setup and adequate knowledge (including knowledge of operations to be carried out, preventive steps and procedures on accidents) facilitating timely implementation of the project.
- 4.7.2 The Contractor shall provide superintendence to comply with the Project Schedule solely at its cost to complete the performance under the Contract.
- 4.7.3 The Contractor shall not recruit, or attempt to recruit, its staff and labour from amongst the employees of the Owner. Likewise, Owner shall not recruit, or attempt to recruit, its staff and labour from amongst persons in the service of Contractor.
- 4.7.4 The Contractor shall comply with all the relevant labour laws applying to its employees, including Laws relating to minimum wages, contract labour (regulation & prohibition), workmen's compensation and occupational health & safety. The Contractor shall promptly pay and afford to its employees all their rights under employment with the Contractor. The Contractor shall be required to ensure that all such employees obey all Applicable Laws, including those concerning safety. The Contractor undertakes to include in each of its sub contracts a provision that the Sub-Contractor will comply with the foregoing labour Laws and worker's rights requirements with respect to its employees and that of any sub-contractors. Nothing contained in any part of the Contract shall be construed to create any privity of relationship between the Owner and the

Contractor or the Sub-Contractors or the employees, if any, deployed by the Contractor or the Sub-Contractor for the purpose of performance of the Scope of Services, including but not limited to principal-agent, master-servant and employer-employee.

4.7.5 The Contractor shall endeavor to depute / designate English-speaking personnel ("**Contractor Representative**") who shall be responsible for the performance of the Scope of Services by Contractor and shall be authorized to execute Variation/Change Orders and to act on behalf of Contractor. The Contractor shall provide Owner with the name, current address, telephone and facsimile numbers of such personnel.

4.7.6 No obligation of the Contractor pursuant to this Clause shall be construed as obligating Owner to inspect or review the Contractor's labour and employment practices. Inspection or review of the Services, procedures, methodologies and the like or the Contractor's facilities by Owner or Owner's Representative shall not (a) constitute either (i) an approval, endorsement or confirmation of the Contractor's or any Sub Contractor's labour or employment practices or (ii) an acknowledgment by any such Person that labour or employment practices satisfies any of the Requirements; or (b) relieve the Contractor from any of its obligations under this Clause or any Applicable Law, or (ii) liability or responsibility under any of the Requirements.

4.7.7 The Contractor shall employ in and about the execution of the Works only such persons as are careful skilled and experienced in their several trades and callings and the Engineer reserves the right to object to and require the Contractor to remove from the Site any person employed by the Contractor in or about the execution of the Works who in the opinion of the Engineer misconducts himself or is incompetent or negligent in the proper performance of his duties or whose activities directly or indirectly adversely effect the quality and/or the progress of the Work and such persons shall not be re-employed upon the Works without the permission of the Owner's Engineer.

4.7.8 The Contractor shall submit to the Owner data on all personnel, if any, the Contractor proposes to bring into India for the performance of the Works under the Contract, at least 30 (thirty) days prior to the departure of such personnel to India. Such data will include for each Person the name, his present address, the assignment and responsibility of such Person in connection with the Works.

and a short resume of the qualification, years of experience, specialisation and the like in relation to the work to be performed by the Contractor.

4.7.9 No Person brought to India for the purposes of the Works shall be repatriated without the consent of the Owner in writing based on a written request from the Contractor for such repatriation giving reasons for such an action to the Engineer. The Owner may give permission for such repatriation provided the Owner is satisfied that the progress of Works will not suffer due to such repatriation.

4.7.10 The Contractor and the expatriate personnel shall respect all Indian acts, Laws, rules and regulations and shall not in anyway interfere with Indian political, religious and social affairs and shall conform to any other rules and regulations the Competent Authority, the Owner and the Engineer may establish from time to time, on them. The Contractor's expatriate personnel shall work and live in close co-operation and co-ordination with their co-workers and the community and shall not engage themselves in any other employment either part time or full time nor shall they take part in any local politics.

4.7.11 Contractor shall be responsible for obtaining Visa Permits for Contractor personnel. Owner shall issue invitation letter in this regard.

#### 4.8 Access

Upon reasonable notice, the Contractor shall provide or arrange for the Owner access during normal business hours to the place of works of Contractor and all Sub-Contractors in order to view tests, to inspect and examine the Complete Plant, and to monitor compliance by the Contractor with the terms hereof; provided that such access shall not unreasonably interfere with the timely completion of the scope under the Contract. Notwithstanding any terms of this Sub-Clause to the contrary, the Contractor (and, if applicable, any Sub-Contractor) may provide, and the Owner shall accept, an escort or any safety measures that the Contractor (and, if applicable, any Sub Contractor), in its sole discretion, deems necessary or advisable. The Owner shall be solely responsible for the cost and expense of lodging, transportation, meals and any and all other expenses incurred as a result of these inspection activities.



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#### **4.9 Compliance with Requirements, Codes and Standards of Care**

#### **4.9 Compliance with Applicable Law**

4.9.1 The Contractor shall in its performance of the Contract ascertain and comply with the Applicable Laws and the Contractor shall be responsible and liable for any wrong assumptions, misunderstandings of any Applicable Laws and /or any other rules, regulations and laws prevailing in India.

4.9.2 All the Services shall be delivered by the Contractor in accordance with Applicable Laws in effect from time to time. If and to the extent that any Change in Law gives rise to the requirement to make a modification to the Complete plant, such Change in Law shall be treated as if it were a Variation instructed by the Owner, upon which Article 13 of the Contract shall apply.

4.9.3 Either Party shall indemnify the other Party against losses, claims and liabilities, including any governmental penalties and sanctions payable to a Competent Authority, together with any legal expenses incurred in connection therewith, to the extent arising out of any failure of the other party, to comply with this assurance on compliance with the Applicable Laws.

#### **4.10 Compliance with Requirements**

- (a) The Contractor shall comply with all Requirements as per Technical Specifications of the Contract.
- (b) If any Change of Law occurs, a Change Order shall be issued for such purpose in accordance with the procedure set forth in Clause 13. Either Party shall immediately provide written notice to the other Party, in accordance with Article 13, upon discovery of a Change of Law, and shall submit detailed documentation to the other Party describing the Change of Law.

#### **4.11 Divergences from Statutory Requirements**

If and to the extent that any Change in Law gives rise to the requirement to make a modification to the works, such Change in Law shall be treated as if it were a



Variation instructed by the Owner upon which the Article 13 of the Contract shall apply.

If either Party discovers any discrepancy or inconsistency between the Contract and any Requirement, Directive, such Party shall immediately provide written notice thereof to the other Party in accordance with the provisions in the Contract.

If the Contractor or the Owner finds any divergence between the Applicable Law and the Performance Guarantee parameters or the Technical Specifications (other than resulting directly from any Change in Law) it shall immediately give to the other Party written notice specifying the divergence. The Contractor shall promptly upon becoming aware of the same, inform the Owner in writing of its proposed amendment for removing the divergence, and with the Owner's consent and subject to agreement on any variation in the Contract Price, the Contractor shall deliver the Goods in accordance with such amendment. The cost and expenses (if any) involved in the above divergence shall be mutually discussed and agreed upon.

#### **4.12 Codes**

4.12.1 The Contractor shall at all times comply with the applicable Codes as relevant for the execution of the Contract and ensure that the Works are carried out in accordance with such Codes.

4.12.2 If any new Codes are introduced subsequent to Feb 21, 2009, which are recommended or which would result in better performance of the Project, the Contractor shall comply with the same. However, if such compliance calls for any modification of the design of the Complete Plant or any Item thereof with financial implication, the same shall be discussed and mutually agreed to between the Contractor and Owner.

4.12.3 The Contractor shall at all times execute and complete the Works in a safe, prudent and reliable manner in strict accordance with the Contract and with Good Industry Practices and shall exercise the same degree of care, skill and diligence in execution of the Works that is generally accepted internationally and commonly used in the international electric utility industry for the power station of



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the same size and characteristics similar to that of the Project. In case contractor works are affected due to non compliance with norms or protocols in accordance with the Contract, then such delay shall be attributable to Contractor.

#### 4.13 Program of Works/ Services

The Contractor shall so organize its resources and perform its obligations as to meet the Guaranteed Completion Date as per the Project Schedule of each Unit of the Complete Plant to achieve the relevant completion of Reliability Run Test applicable thereto, and to permit successful completion of Performance Guarantee Tests

#### 4.14 Project Schedule

4.14.1 The Services, covered under the Contract are to be programmed ("Project Schedule") in such a way that each Unit is commissioned and handed over to the Owner within the time period specified below.

4.14.2 Successful completion of Reliability Run Test of each Unit with relevant auxiliaries duly commissioned and handing over of the Unit to the Purchaser within the following period from Zero Date.

Unit No.	Reliability Run Test completion (months) from Zero Date (best effort basis)	Reliability Run Test completion (months) from Zero Date (Guaranteed Completion Date)
1 X 600 MW	36	38
2 X 600 MW	40	42
3 X 600 MW	44	46
4 X 600 MW	48	50
5 X 600 MW	52	54
6 X 600 MW	56	58

4.14.3 Zero Date or Effective Date shall mean the date of the LoA issued, subject to following:

- Contractor shall submit ABG at the end of 9th month from the date of LoA issued for 10% of the Contract Price
- Owner shall pay any advance payment within 7 Business days from receipt

of swift message and a scanned image of the ABG to the bankers of Owner to be notified by Owner, confirming that the ABG has been issued on behalf of Contractor. Owner shall arrange for the confirmation of the ABG, if required, for which the necessary charges shall be to the account of owner. In case, of delay of payment of advance beyond 7 Business days from receipt of swift message and a scanned image of the ABG, Guaranteed Completion Date will be extended by corresponding period of such delay.

- o For the first advance payment if such delay continued for 30 days from due date, then the Contract Price and Guaranteed Completion Date shall be renegotiated.
- All the area within the boundary wall shall be handed over to Contractor within 6 months from Zero Date with the formal confirmation letter from Owner. Failing to do so by Owner, the Guaranteed Completion Date shall be extended by the corresponding period of such delay.
- Owner will furnish the letter signed by their banker within 5 months from 'Effective Date' that debt finance has been tied up. Failing to do so by Owner, the Guaranteed Completion Date shall be extended by the same period of the delay of such furnishing.

4.14.4 The micro detailed Project Schedule so as to match with the above completion of the Works shall be submitted by the Contractor for the Owner's approval, after award of the Contract.

4.14.5 The Contractor shall for approval of the Owner, submit, within 4 (four) weeks of Zero date, a detailed programme on the basis of Project Schedule in the form of PERT/BAR chart indicating the list of activities and activity duration to be followed in respect of

- (i) Completion of Services at Site;
- (ii) Inland transportation to site
- (iii) All fabrication, installation and erection work at Site;
- (iv) Testing, Commissioning and performance testing and handing over of the Complete Plant to meet the Performance Guaranteed Values.

Project progress shall be monitored based on the detailed Project Schedule.



4.14.6 This programme submitted to the Owner shall be reviewed by the Owner and on approval shall form part of the Contract and subject to updation, without changing the Guaranteed Completion Date, based on Owner approval, shall be strictly adhered to by the Contractor during the execution of the Contract. The Contractor shall also submit the schedule of inputs required from the Owner in order to execute the Project as per the Project Schedule.

4.14.7 The Contractor shall arrange the Services sequentially as per agreed Project Schedule.

#### 4.14.8 Grounds for Extension of Guaranteed Completion Date

Without prejudice to any other clause of time extension, the Contractor shall be entitled to an extension of time if, by the following reasons of:

- (a) any Variation/Change Order issued in accordance with Article 13 hereof;
- (b) events or circumstances of Force Majeure as defined in Article 25 hereof;
- (c) other failure of the Owner to fulfil any of its obligations under the Contract;
- (d) an instruction of the Owner to suspend the whole or any part of the Works for reasons not attributable to the Contractor;
- (e) any stoppage in the Works caused by any Village Disturbance
  - exceeding 10 days in the aggregate before completion of Boundary wall
  - exceeding 30 days in the aggregate after completion of Boundary wall

(for the purpose of this sub-clause, Village Disturbance shall mean any disturbance to or interference with the performance of the Scope of Work caused locally at the Site due to concerted riotous act of people for the reasons not attributable to acts of the Contractor or its personnel). The effect of disturbance on the critical path will qualify for such delayed time.

#### 4.15 Progress Reports

The Contractor shall constantly monitor the progress of all activities in connection with completion of the Services in accordance with the Completion Schedule and the Project Schedule and shall submit a detailed Progress Report, in 6 (six) copies in print and one soft copy in CD to the Owner every week. The





Progress Report shall contain such information, as the Parties shall mutually agree. The Progress Report shall detail the actual status of procurement of raw materials and sub-contracted equipment, manufacture, assembly, inspection, testing and completion of the Complete Plant as against the Project Schedule and if any activities are behind the Completion Schedule and/or Project Schedule, shall set out the explanation therefore, consequences thereof, and the action being taken to remedy the delay.

#### **4.16 Field Quality Plan**

4.16.1 The Field Quality Plan shall be submitted by Contractor well in advance of commencement of Works for mutual discussions and agreement. The Contractor shall ensure that the Works carried out under the Contract shall be of such quality that it shall be suitable for the erection, testing, commissioning of the Complete Plant. The list of all the inspections, tests to be carried out before commencement of erection, testing, commissioning activities of the Complete Plant shall be mutually decided. Subsequent to these tests, the Works carried out shall be tested as a whole. All the inspections and tests to be carried during these stages shall be mutually decided by the Parties.

4.16.2 The schedule of inspections, tests and acceptance criteria shall be called as Field Quality Plan and the Contractor shall follow the same during various stages of Erection, commissioning.

#### **4.17 Patent Rights, Royalties and License Fees**

4.17.1 The Contractor shall hold the Owner indemnified and harmless from and against all claims and proceedings for or on account of infringement of any patent right, design, trade mark or name or other protected rights in respect of any plant or materials incorporated in the Works from and against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect thereof and in relation thereto.

4.17.2 Royalties and fees for patents covering materials, apparatus, devices, equipment or process used in the Works shall be deemed to have been included in the contract price. The Contractor shall satisfy all demands that may be made at any time for such royalties or fees and he alone shall be liable for payments of

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the same.

4.17.3 In the event of any claim being made or action brought against the Owner arising out of the matters referred to in the Article, the Contractor shall be promptly notified thereof and may at his own expenses conduct all negotiations for the settlement of the same and any litigation that may arise therefrom. The Owner shall not, unless and until the Contractor shall have failed to take over the conduct of the negotiations or litigation, make any admission, which might be prejudicial thereto. The conduct by the Contractor of such negotiations or litigation shall be conditional upon the Contractor having first given to the Owner such reasonable security as shall from time to time be required by the Owner to cover the amount ascertained or agreed or estimated as the case may be of any compensation, damages, expenses and costs for which the Owner may be liable in respect of such infringement as aforesaid. The Owner shall, at the request of the Contractor, afford all available assistance for the purpose of contesting any such claim or action and shall be repaid any expenses incurred in so doing.

4.17.4 Final payment to the Contractor by the Owner shall not be made while any suit or claim regarding infringement of patent, or any other intellectual right and royalties remains unsettled. In the event any apparatus, Plant or Equipment or any part thereof furnished by the Contractor in such suit or proceedings is held to constitute infringement and its use is not permitted, the Contractor shall, at his option, and at his own expenses, either procure for the Owner the right to continue use of said apparatus, Plant or Equipment or part thereof, replace with non-infringing apparatus, Plant or Equipment or modify it so that it becomes non-infringing

4.18 Intentionally deleted

#### 4.19 Utilities

The Contractor shall be responsible as part of the Contract Price, pay for all construction power and sewage and refuse/waste disposal services to perform the Services at Site. The Contractor shall be entitled to use electricity generated by the Complete Plant for operation of equipment and tools of normal parasitic/auxiliary loads of the facility during testing of the Complete Plant. The Contractor acknowledges that it has studied and inspected all roads and access areas providing transport to and ingress and egress from the Site, including the

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main entrance from the national highway and such access ways are sufficient and suitable to support the Contractor's performance of Works, without limitation, the transport of men, materials and other equipment required for such Works.

#### **4.20 Financing Matters**

4.20.1 The Contractor hereby consents to assignment of the Contract to the Lenders of the Project for their security purposes.

4.20.2 The Contractor shall cooperate with the Owner and the Lenders and shall execute, deliver, and perform under such documents as may be reasonably required by the Lenders.

4.20.3 It is agreed that the Owner will furnish the letter signed by their Lender within 5 months from the 'Effective Date' that debt finance has been tied up. The completion schedule shall be extended by the same period of the delay of such furnishing.

#### **4.21 Regulation of Local Authorities and Statutes**

4.21.1 The Contractor shall comply with all the rules and regulations of local authorities during the performance of the field activities. He shall also comply with the Minimum Wages Act, 1948 and the payment of Wages Act and the rules made there under in respect of any employee or workman employed or engaged by him or his sub contractor.

4.21.2 All registration and statutory inspection fees, if any, in respect of the Work, pursuant to the Contract shall be to the account of the Contractor.

#### **4.22 Access to Site and Works on Site**

4.22.1 Suitable access to and possession of the Site shall be afforded to the Contractor by the Owner to enable him to execute the site works.

4.22.2 The Works so far as it is carried out on the Owner's premises, shall be carried out at such time as the Owner may approve.





4.22.3 In the execution of the Works, no persons other than the Contractor or the duly appointed representative, sub-contractor and workmen shall be allowed to do Work on the Site, except by the special permission, in writing, of the Engineer or the the Engineer's Representative.

#### **4.23 Contractor's Site Office**

4.23.1 The Contractor upon signing of the Contract, nominate a responsible personnel as a resident representative for the overall responsibility and co-ordination of the Works to be performed at Site. Such person shall function from the Site office to be established by the Contractor.

4.23.2 Any written order or instruction of the Engineer or his duly authorised representative shall be communicated to the said authorised resident representative of the Contractor and the same shall be deemed to have been communicated to the Contractor.

#### **4.24 Cooperation with other Contractors**

##### **4.24.1 Co-operation and Interfacing with Other Contractors and Engineers**

The Contractor shall co-operate and interface with the Owner's other contractor and Engineer and freely exchange with them such technical information, data and details as is necessary to obtain the most efficient and economical design and to avoid unnecessary duplication of efforts. The Engineer shall be provided with the copies of all correspondence addressed by the Contractor to other contractors.

#### **4.25 Discipline of Workmen**

4.25.1 The Contractor shall adhere to the disciplinary procedure set by the Engineer in respect of his employees and workmen at Site. The Engineer shall be at liberty to object to the presence of any representative or employee of the Contractor at the Site if, in the opinion of the Engineer, such employee has mis-conducted himself or be incompetent or negligent or otherwise undesirable and mutually agreed by parties, then the Contractor shall remove such a person objected to and provide in the place of such employee, a competent replacement.

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4.25.2 The Contractor shall at all time take all reasonable precautions to prevent any unlawful, riotous or disorderly conduct by or amongst his employees and for preservation of peace and protection of persons and property at and in the neighbourhood of the Works.

#### **4.26 Contractor's Field Operation**

4.26.1 The Contractor shall keep the Engineer informed in advance regarding the field activity plans and schedules the Contractor has for carrying out each part of the Works. Any review of such plan or schedule or method of work by the Engineer shall not relieve the Contractor of any of his responsibilities towards the field activities. Such reviews shall also not be considered as an assumption of any risk or liability by the Engineer or the Owner or any of the representatives and no claim of the Contractor shall be entertained because of the failure or inefficiency of any such plan or schedule or method of work reviewed. The Contractor shall be solely responsible for the safety, adequacy and efficiency of plant and equipment and the installation and erection methods adopted by the Contractor for the purpose of the Contract.

4.26.2 The Contractor shall have the complete responsibility for the conditions of the Works at Site including the safety of all persons employed by the Contractor or the Sub-Contractors and all the properties under the custody of the Contractor during the performance of the Work. This requirement shall apply continuously till the completion of the Contract and shall not be limited to normal working hours. The construction review by the Engineer is not intended to include review of Contractor's safety measures in, or near the work site, and their adequacy or otherwise.

#### **4.27 Work to be open for inspection and Contractor to be present**

All Works under or in course of execution or executed under the Contract shall at all times be open to the inspection and supervision by Engineer. The Contractor shall at all times during the working hours and at other times with notice of Engineer's visit the Works shall have responsible representative available to receive instructions from the Engineer, orders/instructions given to authorised



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representative shall be considered as if they are given to the Contractor himself.

#### **4.28 Notice before Work is covered up**

The Contractor shall give adequate notice, of normally 7 (seven) days to the Engineer in writing before covering up or otherwise placing beyond the reach of inspection and measurement any work in order that the same may be measured and correct dimension thereof recorded. If the Contractor covers such Works without notice, in such event the Engineer reserves the right to get the same uncovered at the risk and cost of the Contractor.

#### **4.29 Manpower Report**

4.29.1 The Contractor shall submit to the Engineer every week (as a part of progress report), a man power schedule for the month, detailing the man power scheduled for the month, skill-wise and area-wise.

4.29.2 The Contractor shall also submit to the Engineer on the first day of every month, a manpower report of the previous month detailing the number of persons scheduled to have been employed and actually employed, skill-wise and the areas of employment of such labour.

#### **4.30 Protection of Work**

The Contractor shall have total responsibility for protecting the Contractor's Works till it is finally taken over by the Engineer. For any damage or loss to the Contractor's Works, the Owner or the Engineer shall not be bound to entertain any claim and the Contractor shall be responsible for the complete restoration of the damaged Works to its original condition to comply with the specifications and Drawings. Should any such damage to the Contractor's Works occur because of any other party not under the supervision or control of the Contractor, the Contractor shall make a claim directly with that concerned party. If disagreement or conflict or dispute develops between the Contractor and the other party or parties concerned regarding the responsibility for damage to the Contractor's Works, the same shall be resolved as per the provision of the Article 27. The Contractor shall not cause any delay in the repair of such damaged Works because of any delay in the resolution of such disputes. The Contractor shall

proceed to repair the work immediately and no cause thereof will be assigned pending resolution of such dispute.

#### **4.31 Security**

4.31.1 The Contractor shall be responsible for the proper fencing, guarding, lighting and security of all the Works on the Site and for the proper provision of temporary roadways, footways, guards and fences on the Site as far as may be necessary for the Works and so as not to endanger the owners and occupiers of adjacent property, the public and others, all in accordance with Good Industry Practice.

4.31.2 The Contractor shall have total responsibility for the Complete Plant, other equipments materials and Works at Site till Taking Over of the Complete Plant by the Owner. The Contractor shall make suitable security arrangements, employment of security personnel to ensure the protection of the Complete Plant, equipments, materials and Works from theft, fire, pilferage and any other damages and loss. All temporary equipments, machines and materials of the Contractor shall enter and leave the Site only with the written permission of the Engineer in the prescribed manner and are agreed to be taken out from the site.

4.31.3 The Contractor shall leave or completely clear Site of such temporary Works as instructed by the Owner.

#### **4.32 Contractor's Personnel and Labour**

4.32.1 The Contractor will be expected to employ on the Work only the regular skilled workmen/labour employed with the Contractor with experience of this particular work. The Contractor shall ensure not to employ any female labour after sunset. No person below the age of eighteen years shall be employed for the Works.

4.32.2 The Contractor's personnel and labour shall wear identification badges while on working at Site.

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4.32.3 In the event the Owner becomes liable to pay any wages under any of the provisions of the Minimum Wages Act, Workmen Compensation Act, Contract Labour Regulation Abolition Act or any other law due to act or omission of the Contractor, the Owner may make such payments and shall be entitled to recover the same from the Contractor from the amounts due.

4.32.4 The Contractor shall provide and maintain such temporary accommodation and amenities as may be reasonably necessary for all its and its Sub-Contractors' staff and labour employed at the Site, including all fencing, water supply (both for drinking and other purposes), electricity supply, sanitation, fire prevention and fire-fighting equipment and other agreed requirements in connection with such accommodation or amenities. As far as possible the unskilled labour shall be engaged from areas near the Site.

4.32.5 The Contractor shall in all dealings with its and its Sub-Contractors' staff and labour have due regard to all recognised festivals, days of rest and religious or other customs.

4.32.6 The Contractor shall comply with all the provisions of labour, civil, state & central laws, statutory rules, regulations under the law. In case of his non-compliance with any provision, he will indemnify the owner from and against all liabilities, damages, penalties, demand etc.

4.32.7 In the event the Contractor engages 20 (twenty) or more workmen at Site, the Contractor shall obtain an independent licence under Contract Labour (Regulation and Abolition Act) from the concerned state labour authorities for which necessary certificate (Form 2) shall be issued by an Engineer.

4.32.8 The Contractor shall at all times take all reasonable precautions to prevent any unlawful riotous or disorderly conduct by or amongst its or its Sub-Contractors' staff and labour and for the preservation of peace and protection of persons and property in the neighbourhood of the Site against the same.

#### 4.33 First Aid

The Contractor shall provide necessary first aid facilities for all the personnel.

labour employees, representatives and workmen engaged at the Site. The Contractor shall endeavour to give complete first aid training to all the personnel, labour employees, representatives and workmen.

#### **4.34 Cleanliness**

- 4.34.1 The Contractor shall be responsible for keeping the entire area allotted to him clean and free from rubbish, debris, etc. during the period of Contract. The Contractor shall employ sufficient number of special personnel to thoroughly clean his work area at least once in a day. All such rubbish and scrap material shall be stacked or disposed in a place to be identified by the Engineer. The materials and stores shall be so arranged to permit easy cleaning of the area. In areas where equipment might drip oil and cause damage to the floor surface, a suitable protective cover of a flame resistant, oil proof sheet shall be provided to protect the floor from such damage.
- 4.34.2 The offices and the residential areas of the Contractor's employees and workmen shall be kept clean and neat to the entire satisfaction of the Engineer. Proper sanitary arrangements shall be provided by the Contractor in the work areas, office and residential areas of the Contractor.
- 4.34.3 In the event Contractor fails to keep the work area clean, the Engineer shall be free to engage alternate labour, after serving written notice to that effect to the Contractor, to clean up the Contractor's work area and realise the amount spent on this account from the Contractor after 14 days from serving written notice to that effect to the Contractor.

#### **4.35 Lines and Grades**

All the Works shall be performed to the lines, grades and elevations indicated on the Drawings. The Contractor shall be responsible to locate and layout the Works. Basic horizontal and vertical control points will be established and marked by the Engineer at Site at suitable points. These points shall be used as datum for the Works under the Contract. The Contractor shall inform the Engineer well in advance of the times and places at which the Contractor wishes to do work in the area allotted so that suitable datum points may be established and checked by the Engineer to enable the Contractor to proceed with the Works. Any Works done without being properly located may be removed and/or



dismantled by the Engineer at the Contractor's expense.

#### **4.36 Fire Protection**

4.36.1 The Work procedures that are to be used during the erection shall be those, which minimise fire hazards to the extent practicable. Combustible materials, combustible waste and rubbish shall be collected and removed from the Site at least once each day. Fuels, oils and volatile or flammable materials shall be stored in safe containers away from the construction equipment and materials storage areas. Untreated canvas paper, plastic or other flammable materials shall not at all be used at site for any other purpose unless otherwise specified. If any such materials are received with the Complete Plant at the Site, the same shall be removed and replaced with acceptable materials before moving into the erection, commissioning area or storage.

4.36.2 Similarly, corrugated paper fabricated cartons, etc., will not be permitted in the Erection, commissioning area either for storage or for handling of materials. All such materials used shall be of waterproof and flame resistant type. All the other materials such as working drawings, plans, etc. which are combustible but are essential for the Works to be executed shall be protected against combustion resulting from welding, sparks, cutting flames, and other similar fire sources.

4.36.3 All the Contractor's supervisory personnel and sufficient number of workers shall be trained for fire fighting and shall be assigned specific fire protection duties. Enough of such trained personnel must be available at the Site during the entire period of the Contract.

4.36.4 The Contractor shall provide enough fire protection equipment of different types for the warehouses, temporary structures, labour colony area etc. Access to such fire protection equipment, shall be easy and kept open at all times.

#### **4.37 Contractor's Area Limits**

The Engineer will mark out the boundary limits of access roads, parking spaces, storage and erection, commissioning areas for the Contractor and the Contractor shall not trespass the areas not marked out for the Contractor. The Contractor shall be responsible to ensure that none of the labour, personnel, representatives and workmen move out of the areas marked out only for the





operations. In case of such a need for the Contractor's labour, personnel, representatives and workmen to work out of the areas marked out for the Contractor, the same shall be done only with prior written permission of the Engineer.

#### **4.38 Contractor's cooperation with the Owner**

The operations of any of the running Unit, after Taking Over by Owner, shall not be affected by the Works carried out under the Contract.

#### **4.39 Trials and Operations**

4.39.1 The trials and operations of the Complete Plant furnished and erected by the Contractor shall be the responsibility of the Contractor. Such trials and operations shall be co-ordinated with the Owner and shall be performed with Owner's explicit clearance.

4.39.2 The Contractor shall arrange all calibrated test instruments (with calibration certificate), calibrating devices and the like and the workmen required for the successful performance of the same.

#### **4.40 Materials Handling and Storage**

4.40.1 The Plant and Equipment and other materials of the Complete Plant that are arriving at Site shall be promptly received, unloaded, transported and stored in the storage spaces by the Contractor.

4.40.2 The Contractor shall be responsible for examining all the deliveries and notify the Engineer immediately of any damage, shortage, discrepancy, etc. for the purpose of Engineer's information only. The Contractor shall submit to the Engineer every month a report detailing all the receipt during the month. The Contractor shall take prompt actions for replenishments for any shortages or damage in transit, handling and/or in storage and erection of the Complete Plant at the Site.

4.40.3 The Owner reserve the right for verification of stock and condition of storage and preservation.



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4.40.4 The Complete Plant shall be handled very carefully to prevent any damage or loss. No bare wire ropes, slings, etc. shall be used for unloading and/or handling of the equipment without the specific written permission of the Engineer. The Complete Plant stored shall be properly protected to prevent damage either to the Complete Plant or to the floor where they are stored. The Complete Plant from the store shall be moved to the actual location at the appropriate time so as to avoid damage of the Complete Plant at Site.

4.40.5 All electrical panels, control gear, motor and heating shall be properly dried by such other devices before they are installed and energised. Motor bearings, slip rings, commutators and other exposed parts shall be protected against moisture ingress and corrosion during storage and periodically inspected. Heavy rotating parts in assembled conditions shall be periodically rotated to prevent corrosion due to prolonged storage.

4.40.6 All the electrical equipment such as motors, generators, etc. shall be tested for insulation resistance at least once in three months from the date of receipt till the date of commissioning and a record of such measured insulation values maintained by the Contractor. Such records shall be open for inspection by the Engineer.

4.40.7 The Contractor shall ensure that all the packing materials and protection devices used for the various equipment during transit and storage are removed before the Complete Plant is installed.

4.40.8 The consumables and other Services likely to deteriorate due to storage must be thoroughly protected and stored in a suitable manner to prevent damage or deterioration in quality by storage.

4.40.9 All the materials stored in the open or dusty location must be covered with suitable weather proof and flame proof covering material wherever applicable.

4.40.10 If the materials belonging to the Contractor are stored in areas other than those earmarked for him, the Engineer will have the right to get it moved to the area earmarked for the Contractor at the Contractor's cost after 14 days from notice received by the Contractor..



4.40.11 The Contractor shall be responsible for making suitable indoor storage facilities on the open land to be made available by the owner to store all equipment, which require indoor storage. Normally, all the electrical equipment such as motors, control gear, generators, exciters and consumables like electrodes, lubricants, etc. shall be stored in the closed storage space. The Engineer in addition, may direct the Contractor to move certain other materials, which in his opinion will require indoor storage, to indoor storage areas, which the Contractor shall strictly comply with.

4.40.12 Dismantling work shall be done with due diligence so as not to damage the Complete Plant. The dismantled materials and/or items of the Complete Plant shall be handed over to the Owner at the storage place and Site indicated by the Owner.

#### **4.41 Erection and Commissioning Management**

4.41.1 The field activities of the Contractors working at Site shall be co-ordinated by the Engineer and the mutually discussed and agreed decision shall be final in resolving any disputes or conflicts between the Contractor and other contractors and tradesmen of the Owner regarding scheduling and co-ordination of the Works.

4.41.2 The Engineer shall hold weekly meetings of all the Contractors working at Site, at a time and a place to be designated by the Engineer. The Contractor shall attend such meetings and take notes of discussions during the meeting and the decision of the Engineer and shall strictly adhere to those decisions in performing the Works in accordance with Contract. In addition to the above weekly meetings, the Engineer may call for other meetings either with individual contractors or with selected number of contractors and in such a case the Contractor, if called, will also attend such meetings.

4.41.3 The Contractor shall be responsible for performance of the Works in accordance with the specified Project schedule. If at any time, the Contractor is falling behind the schedule, he shall take necessary action to make good such delays by increasing his work force or by working overtime or otherwise accelerate the progress of the work to comply with the schedule and shall communicate such actions in writing to the Engineer, satisfying that his action will compensate for





the delay. The Contractor shall not be allowed any extra compensation for such action.

4.41.4 The Engineer shall, however, not be responsible for provision of additional labour and/or materials or supply or any other services to the Contractor except for the co-ordination work between various Contractors as set out earlier.

#### **4.42 Field Office Records**

The Contractor shall maintain at Site an office up to date copies of all drawings, specifications and other Contract Documents and any other supplementary data complete with all the latest revisions thereto. The Contractor shall also maintain drawings, specifications, supplementary data etc. effected at the field and on completion of his total assignment under the Contract shall incorporate all such changes on the drawings and other engineering data to indicate as installed conditions of the equipment furnished and erected under the Contract. Such as-built drawings and engineering data shall be submitted to the Engineer in required number of copies.

#### **4.43 Contractor's materials at Site**

4.43.1 The Contractor shall bring to Site all equipment, components, parts, materials, tools and tackles ("Goods") excluding erection and commissioning equipment, materials for temporary works, surplus material for the purpose of the Works under intimation to the Engineer. All such Goods shall, from the time of being brought vest in the Owner, but may be used for the purpose of the Works only and shall not on any account be removed or taken away by the Contractor without the written permission of the Engineer. The Contractor shall nevertheless be solely liable and responsible for any loss or destruction thereof and damage thereto.

4.43.2 The Owner shall have a lien on such Goods throughout the period of Contract for any sum or sums which may at any time be due or owing to the Owner by the Contractor, under, in respect of or by reasons of the Contract. After giving a 15 (fifteen) days notice in writing of such intention to do so, the Owner shall be at liberty to sell and dispose of any such Goods, in such manner as the Owner shall think fit including public auction or private treaty and to apply the proceeds in or



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towards the satisfaction of such sum or sums due as aforesaid.

4.43.3 After the completion of the Works, the Contractor shall remove from the Site under the direction of the Engineer the Goods brought by the Contractor for purpose of execution of the Works covered under the Contract. If the Contractor fails to remove such Goods, within 15 (fifteen) days of issue of a notice by the Engineer to do so, then the Engineer shall have the liberty to dispose off the Goods as detailed under Article above and credit the proceeds there to the account of the Contractor.

#### **4.44 Protection of Property and Contractor's liability**

4.44.1 The Contractor shall be responsible for any damage resulting from the Contractor's Sub- Contractor's operations. The Contractor shall also be responsible for protection of all persons including members of public and employees of the Owner and the employees of Sub-Contractors and all public and private property including structures, building, other plants and equipment and utilities either above or below the ground.

4.44.2 The Contractor will ensure provision of necessary safety equipment such as barriers, sign boards, warning lights and alarms and the like, to provide adequate protection to persons and property. The Contractor shall be responsible to give reasonable notice to the Engineer and the owners of public or private property and utilities when such property and utilities are likely to get damaged or injured during the performance of his Works and shall make all necessary arrangements with such owners, related to removal and/or replacement or protection of such property and utilities.

4.45 **Painting** Painting Works shall be complying with technical specification as per schedule 2.

#### **4.46 Unfavourable Working Conditions**

The Contractor shall confine all the field operations to those Works which can be performed without subjecting the Complete Plant and the Goods to adverse effects during inclement weather conditions, like monsoon, storms etc and during other unfavourable Erection, commissioning conditions. No field activities shall

be performed by the Contractor under conditions, which might adversely affect the quality and efficiency thereof, unless the Contractor takes special precautions or measures in a proper and satisfactory manner in the performance of such Works and with the concurrence of the Engineer. Such unfavourable construction conditions will in no way relieve the Contractor of his responsibility to perform the Works as per the Project Schedule.

#### **4.47 Work and Safety Regulations**

4.47.1 The Contractor shall ensure safety of all the workmen, materials and equipment either belonging to the Contractor or to others working at Site.

4.47.2 The Contractor will notify the Engineer of the Contractor's intention to bring on to Site any equipment or any container, with liquid or gaseous fuel or other substance, which may create hazard. The Engineer shall have the right to prescribe the conditions under which such equipment or container may be handled and used during the performance of the Works and the Contractor shall strictly adhere to such instructions. The Engineer shall have the right to inspect any construction plant and to forbid its use if, in the opinion of the Engineer it is unsafe. No claim due to such prohibition shall be entertained by the Owner.

4.47.3 Where it is necessary to provide and/or store petroleum products or petroleum mixtures and explosives, the Contractor shall be responsible for carrying out such provision and/or storage in accordance with the rules and regulations laid down in Petroleum Act, 1934, Explosive Act, 1948, and Petroleum and Carbide of Calcium Manual published by the Chief Inspector of Explosives of India. All such storage shall have the prior written consent of the Engineer. In case any approvals are necessary from the Chief Inspector of explosives or any statutory authorities, the Contractor shall be responsible for obtaining the same.

4.47.4 The Contractor shall be responsible for provision of all safety notices and safety equipment required both by the relevant legislation of Competent Authority and the Engineer, as required.

4.47.5 The Contractor shall be responsible for the safe storage of his and the Sub Contractor's radioactive sources, if any.



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4.47.6 The Contractor shall follow/ adopt appropriate Occupational Health, Safety and Environmental (HSE) Management System and Occupational Health, Safety and Environmental (HSE) Clauses and Specification for Contractor's Work Contract. The requirement for the same has been brought out as in Technical specifications. .

#### **4.48 Electrical Safety Regulations**

4.48.1 In no circumstances will the Contractor interfere with fuses and electrical equipment belonging to the Owner or other contractors.

4.48.2 Before the Contractor connects any electrical appliances to any plug or socket belonging to the other Contractor/Owner, he shall;

- a) Satisfy the Engineer that the appliance is in good working conditions.
- b) Inform the Engineer of the maximum current rating, voltage and phases of the appliances.
- c) Obtain permission of the Engineer detailing the sockets to which the appliances may be connected.

4.48.3 The Engineer will not grant permission to connect until the Engineer is satisfied that:

- a) The appliance is in good conditions and is fitted with a suitable plug.
- b) The appliance is fitted with a suitable cable having two earth conductors, one of which shall be an earthed metal sheath surrounding the cores.

4.48.4 No electric cable in use by the Contractor/Owner will be disturbed without prior permission. No weight of any description will be imposed on any such cable and no ladder or similar equipment will rest against or be attached to it.

4.48.5 No work shall be carried out on any live equipment. The equipment must be





made safe by the Engineer and a permit to work issued before any work is carried out.

4.48.6 The Contractor shall employ the necessary number of qualified, full time electricians to maintain all the electrical installations made.

#### **4.49 Foreign Personnel**

Any Person unsuitable and unacceptable by the Owner shall not be brought to India. Any person brought to India, if found unsuitable or unacceptable by the Owner, the Contractor shall within a reasonable time make alternate arrangement for providing a suitable replacement and repatriation of such unsuitable personnel.

#### **4.50 Facility to be provided by the Owner and arranged by the Contractor**

The following facilities alone shall be provided by the Owner to the Contractor for execution of this Works. Any other facility, whatsoever required completing the Works shall be arranged by the Contractor within the Contract Price.

##### **4.50.1 Construction power**

The Contractor shall submit to the Engineer within 30 (thirty) days from Zero Date the electrical power requirement of the Contractor at Site to allow the planning of temporary electrical distribution by the Engineer. The construction power shall be supplied at 33 kV, 3-phase, 50 Hz. The Contractor shall be provided with supply of sufficient electricity as per Contractor's requirement, at one point in the Project Site. The Contractor shall make his own further distribution arrangements. The supply of electricity shall be on chargeable basis and the payment towards consumption of electricity shall be paid to the electric company directly at actuals. The Owner shall not be responsible for restoring of electricity due to non-payment by Contractor. Owner is not responsible for the Reliability of Construction power. Contractor shall make his own back-up arrangement as per his requirements. The cost of construction Power is included in Contract Price.

*PVS*

*[Signature]*

#### **4.51 Construction water**

The Contractor shall make his own arrangement as per Contractor's requirement, for construction water. The distribution and storage arrangements for water shall be made by the Contractor. The payment towards consumption of water shall be paid to the competent authority directly by Contractor. The cost of construction Water is included in Contract Price. In case, it is needed to make application to any Competent Authorities, same shall be done by the Owner at the request of Contractor. However, the associated cost(s) shall be borne by the Contractor.

#### **4.53 Office Space, storage, labour colony**

4.53.1 Reasonable open space, office space, storage, labor colony shall be provided to the Contractor/Sub-Contractor on a leave and licence basis free of cost within the Site until completion of Scope of Works.

4.53.2 The Contractor shall make proper arrangement for safe storage and protection of the equipment/materials during storage and erection till commissioning.

4.53.3 The Contractor should provide covered storage for the protection of sensitive equipment such as electrical meters, panels, motors etc. and for fragile materials as well.

4.53.2 The Contractor shall arrange for telephone and communication facilities for the Contractor himself, his personnel and staff at Site at the Contractor's own expense.

#### **4.54 Closing of Site Office**

4.54.1 After completing the Works at Site, the Contractor shall remove all temporary works constructed for establishing the office, storage, etc. and hand over to the Owner the clear space as was allotted by the Owner while establishing the Site establishment.

4.54.2 The Contractor shall remove all installation and erection equipment brought to the Site for execution of the Contract as well as all left out Goods belonging to



the Contractor with due permission of the Owner.

4.54.3 All the balance Goods left over after completing the instalation and erection Works and belonging to the Owner shall be deposited and stacked in the stores as instructed by the Owner.

4.54.4 Unless all the temporary works are removed and clear space is handed over back to the Owner or some of the temporary works retained by Owner, release of the Performance bank Guarantee shall not be considered by the Owner.

4.54.5 On completion of the installation and erection activities, the Contractor shall return the labour licence to the labour commissioner and submit a proof of having cancelled the labour licence to the Owner.

#### **4.55 Making Good Loss or Damage to the Works**

4.55.1 In the event that any Unit, any part of the Works relating thereto or any portion of the Complete Plant intended for incorporation therein shall suffer loss or damage whilst the Contractor has responsibility therefor, the same shall be made good by the Contractor at its own expense.

4.55.2 In case the Complete Plant, any Unit thereof or any portion of the Works suffer loss or damage whilst the Contractor has responsibility for the care thereof due to any negligence, breach or default of the Contractor, the Contractor shall be liable and responsible to make good and/or replace such:

- (i) Complete Plant, any Unit, Works;
- (ii) bear any cost suffered by the Owner arising from any claim made by any other Contractor and contractor of the Complete Plant due to such breach, negligence and failure of the Contractor;

#### **4.56 Custom Clearance**

4.56.1 The Contractor shall take the entire responsibility in clearing the imported consignment on behalf of the Owner from the port of customs and further transportation to the Site.

4.56.2 All demurrage, wharfage and other expenses incurred due to delayed unloading



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or clearance of the equipment/materials and/or attributable to the Contractor shall be to the account of the Contractor.

- 4.56.3 The Owner shall submit IEC Code and Mega Power Policy benefits certificate issued by Competent Authority and other documents if any to be issued by Owner, to Contractor for clearance of imported consignment.

#### **4.57 Drawings Documents of the Complete Plant**

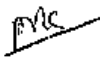
- 4.57.1 The Contractor shall submit all the Drawings and the like for approval of the Owner and general write up wherever involved. All drawings shall be properly coordinated with the electrical and mechanical drawings.

- 4.57.2 While scrutinizing the Drawings, the Owner shall indicate the corrections to be made in these Drawings which the Contractor shall incorporate or justify its correctness.

- 4.57.3 The Contractor then shall submit the revised drawings for approval of the Owner. On approval of the same, The Contractor shall furnish 8 (eight) hard copies and soft copy on CD of these approved Drawings to the Owner as per the distribution to be intimated. As the Drawings shall be approved based on the basic information furnished by the Contractor, approval by the Owner shall not absolve the Contractor of his responsibilities towards correctness of design and performance of the Complete Plant

- 4.57.4 Any delay in approval of Drawings by the Owner, due to submission of incorrect data, non-submission of data, non-updating the Drawings in line with the corrections indicated shall be to the Contractor's account. During the currency of the Contract, if any approved Drawings are required to be modified, such details of the modifications required to be carried out shall be separately maintained.

- 4.57.5 Within 1 (one) month from the successful completion of Reliability Run Test of each Unit, the Contractor shall incorporate all the changes necessitated in the drawings for the systems completed for that Unit and submit 2(two) sets of all the "As Built" drawings along with data sheets, computer data (insofar as stored in computer diskettes/ Compact Disc) other than the proprietary information, type tests as applicable, inspection reports, test reports, IBR approved third party



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commence prior to Owner's approval of such Documents. Before submission of Drawings for Owner's approval, Contractor shall obtain Owner's approval of the relevant GA (General Arrangement) drawing. In the event that the Contractor commences such construction, it shall take into account Owner's comments at its risk and expense. The Contractor shall not depart from any approved Documentation unless the Contractor has first submitted to the Owner an amended Documentation and obtained the Owner's approval thereof.

4.57.12 The documents under approval category, once approved by the Owner, shall be submitted to the Owner before start of construction activity, in 6 (six) copies and one soft copy in CD for Owner's reference and records.

4.57.13 Any errors, omissions, ambiguities, inconsistencies, inadequacies and other defects in the Documents shall be rectified by the Contractor at the Contractor's cost and without any entitlement to extension of time or any addition in the Contract Price.

4.57.14 Any approval and/or consent issued by the Owner in relation to all the Drawings and /or the Documents shall not relieve the Contractor of its obligations under the Contract. Any approval and/or consent given by the Owner shall not be considered representations concerning the propriety, fitness or usefulness of any proposed action by the Contractor, and shall not affect Contractor's obligation to strictly comply with the terms of the Contract.

## **5. OWNER'S OBLIGATIONS**

The Owner's obligations under the Contract, in addition to those set forth in the further provisions of the Contract, are as follows:

### **5.1 Make Payment**

The Owner shall be liable to make Payments to the Contractor in the manner as set forth in Article 8 to the Contract.

### **5.2 Owner's Representative**

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5.2.1 The Owner shall appoint an English-speaking employee or representative to act on its behalf as its authorized representative (the "Owner's Representative"). Owner's Representative may exercise the authority specified in or necessarily to be implied from the Contract. The Owner's Representative shall be deputed at Site who will act as an in-charge for all the Site Works. The Contractors' resident engineer shall report to the Owner's Representative for all the day-to-day works.

5.2.2 The Owner shall provide to the Contractor written notice of the name, current address, telephone and facsimile numbers of the Owner's Representative. The Contractor shall comply with instructions given by the Owner's Representative that are in accordance with the Contract.

### 5.3 Owner's Staff / Representative not Personally Liable

Neither any member of the Owner's staff / Representative nor the Engineer nor any of the staff of the Engineer, nor the Engineer's Representative shall in any way be personally liable for the acts or obligations under the Contract or answerable for any default or omission on the part of the Owner in the observance or performance of any of the acts, matters or things which are concerning the Contract.

### 5.4 Approvals / Consents

The Owner shall obtain and maintain all statutory approvals / consents for timely execution of the Contract. The Owner shall be responsible for the approvals and consent required for implementing the Project and excludes those approvals that are to be maintained by the Contractor.

### 5.5 Document Review

5.5.1 The Contractor may send to the Owner for review any data, documentation, or specifications. The Owner's review will verify the accuracy of the information and data that the Contractor has supplied. All Drawings/Documentation submitted by the Contractor to the Owner for approval must be either approved or rejected by the Owner with comments within 14 (fourteen) days from the date the Drawings/Documentation are delivered to the Owner in accordance with Articles 4.57.1 & 4.57.2, where after the Drawings shall be deemed approved. In

the event the data, documentation or specifications are rejected by the Owner, the Contractor shall resubmit the same, and the Owner shall comment within 10 days from the date the Drawings/Documentation are delivered to the Owner where after the Drawings/Documentation shall be deemed approved.

5.5.2 However, if the submission of documents is not as per the Document Submission Schedule resulting in Bunching Effect then the approval of documents within 14 (fourteen) days by the Owner shall not be applicable. In such case the time period for drawings approval shall be mutually discussed and agreed.

## **5.6 Information**

5.6.1 The Owner shall use reasonable efforts to provide to the Contractor information within its control and communicate so as to allow the Contractor to perform its obligations hereunder.

5.6.2 Land shall be provided by the Owner for erection, commissioning activities progressively meeting the Project Schedule requirements. However land shall be fully handed over to the Contractor within 6 months. In case of any delay in providing any land required for the performance of the Works, beyond the scheduled date for land handing over, Guaranteed Completion Date shall be extended by such delayed periods.

## **6. Effectiveness of Contract**

6.1. The term of the Contract shall commence and it shall be in full force and effect from the Date of Contract Signing. The Term shall continue and the Contract will remain in full force and effect, subject to early termination as provided herein, until all of the obligations under the Contract have been fully performed.

## **7. PROGRESSIVE AND FINAL CERTIFICATES**

7.2.1 The Contractor may, at the times and in the manner explained hereunder, apply to the Engineer for progressive and final certificates for the Work executed in terms of the Contract with complete supporting documentation.



- 7.2.2 The Contractor shall submit applications for progressive certificate upon completion of Milestone and each application shall be accompanied by such evidence as the Engineer may reasonably require.
- 7.2.3 The Engineer shall issue to the Contractor progressive certificate certifying completion of Works up to a said date, within a 7 days after receiving of an application, therefore, made in accordance with this Article.
- 7.2.4 Every progressive certificate shall certify the Contract Price of the Power Plant and or Works duly executed pursuant to the Contract, upto the date named in the application for the certificate. If any construction activity completed does not comply with the Contract and for which a progressive certificate has been issued earlier by the Engineer, the value of such activity shall be subtracted from the next progressive certificate.
- 7.2.5 No progressive certificate shall be relied on as conclusive evidence of any matter stated therein, nor affect or prejudice any right of the Owner or the Contractor against each other. The Engineer may, in any certificate, give effect to any corrections or modifications that should properly be made in respect of any previous certificate.
- 7.2.6 Application for the final certificate may be made by the Contractor to the Engineer at the end of the Guarantee Period, provided that the Contractor has fulfilled its obligations under the Contract in totality.
- 7.2.7 The Engineer shall issue the Contractor a final certificate 15 days after receiving an application thereof with complete documentation. The final certificate shall certify the total or all amounts comprised in progressive certificates previously issued in respect of the Works or the portion thereof to which the final certificate relates subject to such additions thereof or reductions therefrom as may be authorised in the Contract.
- 7.2.8 A final certificate shall, save in the case of fraud or dishonesty relating or affecting any matter dealt with in the certificate, be conclusive evidence as to the sufficiency of the Works and of the value thereof.





- 7.2.9 The Owner shall not be liable to the Contractor for any matter or thing arising out of or in connection with the performance of Scope of Works under the Contract unless the Contractor shall have made a claim in writing in respect thereof within 90 (ninety) days from the cause thereof.

## **8. CONTRACT PRICE AND PAYMENT**

### **8.1 Contract Price**

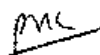
- 8.1.1 The Owner agrees to pay to the Contractor in the manner set forth in the Contract and the Contractor shall accept as full and complete compensation for Scope of Works under the Contract, the lump-sum, (the "Contract Price") INR (Indian Rupees) 11,399,000,000/- (say Indian Rupees eleven billion three hundred and ninety nine million only) inclusive of all applicable taxes and duties as on Feb 21, 2009 except entry tax/octroi duties and custom duties.

- 8.1.2 The Contract Price shall be subject to the following variations effective after Feb 21, 2009:

- (a) Any variation on account of changes in rates/input credit regulation of Taxes & Duties Included in the Contract Price;
- (b) Statutory variation in taxes/duties/levies and any new taxes / duties / levies imposed later to Feb 21, 2009 due to enactment of Applicable Law after Feb 21, 2009, but not included in the Contract Price.

The above stated variations are on account of the Owner. In the event the variation results in increase of Contract Price, the Owner shall pay the same to the Contractor. In the event the variation results in decrease of Contract Price, the Owner shall deduct the same from the balance payment to the Contractor or in the event the decrease is more than the balance payment to the Contractor, shall recover the same from the Contractor. The Contractor shall provide all documentation to establish such variations to account for the increase / decrease in the Contract Price.

### **8.2 Payments**



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8.2.1 The Owner, as per guidelines and conditions specified herein, shall arrange the payment to the Contractor only for the performance of the Works under the Contract. All payments during the currency of the Contract shall be "on account" payments only. The payments for the Works shall be made in INR.

8.2.2 It shall be the responsibility of the Contractor to effect payments to the Contractor's collaborator/associate, principal, Sub-Contractor, etc. The Contractor shall hold the Owner harmless and indemnified from and against all such claims.

### 8.3 Due Dates for Payment

The Owner shall make progressive payment as and when the payment is due as per the terms of payment set forth. Payment shall become due and payable by the Owner within 21 days from the date of receipt of the Contractor's bill/invoice/debit note by the Owner provided the documents submitted are clear and complete in all respects.

On receipt of complete set of required documents, Owner shall process the documents within 7 days. Any delay in approval / comments from Owner within 7 days, same shall be treated as approval for payment. On approval from Owner, Owner shall release the payment within 14 days.

The Owner shall make timely payments to the Contractor of all amounts due to the Contractor under the Contract in accordance with the terms and provisions of the Contract. Any undisputed amount owed to either Party hereunder that is not paid by the owing Party after the date such amount is due under the Contract shall accrue interest each day such amount is not paid at an interest rate of 7% (seven percent) per annum. Such interest will be paid in INR.

### 8.4 Payment Schedule (Billing Break-Up)

The Contractor shall prepare and submit to the Engineer, for approval, a break down of the Contract Price (Billing Break Up). Any payment under the Contract except initial advance payment, if any, shall be made only after the Contractor's Billing Break Up is approved by the Owner.



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## **8.5 Application for Payments**

- 8.5.1 Each such application shall state the amount claimed, in the order of the payment schedule, particulars of the Works completed upto the date mentioned in the application and for the period covered since the last preceding application, if any.
- 8.5.2 No sum shall be included in any payment application in respect of the Works that, according to the decision of the Engineer does not comply with the Contract, or has been performed, at the date of certificate, prematurely.

## **8.6 Terms of Payment**

- 8.6.1 The Owner shall make progressive payment as and when they are due as per the agreed payment schedule. Subject to any deductions/adjustments from the Contract Price as per the Contract, the Contractor shall be entitled to receive the Contract Price from the Owner in the following manner.

The payment for erection, commissioning Works shall be released as follows.

- 8.6.1.1 10% advance payment of the Contract Price at site against submission of Advance Payment Bank Guarantee (ABG) of equal amount at the end of ninth month from the Zero Date.
- 8.6.1.2 10% of the Contract Price on completion of the first layer of boiler structure lifting (prorated for each Unit)
- 8.6.1.3 10% of the Contract Price on boiler drum lifting (prorated for each Unit)
- 8.6.1.4 10% of the Contract Price on placement of generator stator (prorated for each Unit)
- 8.6.1.5 10% of the Contract Price on turbine box up (prorated for each Unit)
- 8.6.1.6 10% of the Contract Price on boiler hydro test (prorated for each Unit)
- 8.6.1.7 15% of the Contract Price on Boiler light up (prorated for each Unit)
- 8.6.1.8 10% of the Contract Price on back charging of Station Transformer and 11KV, 415V switchgear





8.6.1.9 5% of the Contract Price against first Synchronization (prorated for each Unit)

8.6.1.10 5% of the Contract Price against successful completion of Reliability Run Test (prorated for each Unit)

8.6.1.11 5% of the Contract Price against successful completion of PG test (prorated for each Unit)

Owner shall release any advance payment against ABGs within 7 business days from receipt of ABGs by Owner. All the other payment under the Contract will be released on milestone basis against submission of invoices and certification of progress with protocols duly certified by Owner or its representative by telegraphic transfer /any other electronic mode within 21 (twenty-one) days of the payment becoming due, the charges for such remittances to be borne by Owner in India.

8.6.2 The payment under the Contract will be released on the above milestone basis against submission of invoices and certification of progress duly certified by the Owner or Owner's Representative by telegraphic transfer or other electronic mode within 21 (twenty) days of the payment becoming due and receipt of complete and correct documents from the Contractor.

### 8.6.3 Documentation list for prorated milestone payments

(a) Signed commercial invoices (Two original + three copies) [Invoice format need to be mutually discussed & approved by Owner]. Signed Commercial invoice shall among other things contain the following:

- Works carried out are as per Erection, commissioning Contract' -----and dated -----
- Total value of the invoices shall be in INR-----
- Mode of payment giving details of the beneficiary bank;
- Invoice number and date;
- Reference of the contract
- Terms of payment - % of the Contract Price to be payable as per the contract;
- Quality Certificate issued by Engineer as per QAP and FQP;
- Reference to the insurance policy number covering the EAR risks.
- Certificates in the name of Owner by the relevant Competent Authority as

applicable for respective milestone as per Technical Specifications.

- Signed jointly (Representatives of Owner & Contractor at the site) for completion of said erection, commissioning works

8.6.4 The cumulative payment of cash flow based on Contract Price in any month shall not exceed such cumulative percentage based on Contract Price upto that month as set forth Schedule 1, Cash Flow Schedule under the Contract. In case Contractor wish to carry out the construction activities in advance compared to the project schedule then Contractor shall be permitted to do so but the payment shall be limited to cumulative percentage for that month as per the agreed cash flow statement.

#### 8.7 Bank Guarantees

8.7.1 The Contractor shall furnish Advance Payment Bank Guarantees (ABGs) and Performance Bank Guarantees (PBGs). All Bank Guarantees furnished by the Contractor shall be on demand, unconditional, irrevocable and from a bank of international repute and in a form acceptable to the Owner's banker.

8.7.2 All Bank Guarantees shall have a claim period of 60 (sixty) days from the scheduled expiry date.

8.7.3 If any extension of the validity of the Bank Guarantees is required as a result of a delay in the Reliability Test (expiry date for ABG), or as a result of an extension in the Warranty Period of the Project, for reason of the Contractor, the Contractor shall, within 7 days prior to their expiry, arrange such extension. If the Contractor fails to arrange such extension or fails to arrange substitute the Bank Guarantees (in form and substance satisfactory to the Owner), the Owner shall be entitled to call the entire amount available under the Bank Guarantees. In case such extension is due to reasons that have nothing to do with the Contractor, the Contractor shall not have any obligation for extension of the validity of the Bank Guarantees.

8.7.4 Advance Payment Bank Guarantee ("ABG") shall be furnished by the Contractor to the Owner in a form as set forth in Annexure 2 as security towards:

- (a) the initial advance payment

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(b) due performance of the Contract until the Reliability Run Test

8.7.5 The ABGs shall be furnished at the end of ninth month from the Zero Date for 10% of the Contract Price,

The ABGs shall be valid upto the completion of Reliability Run Test of the last Unit. The amount of the Guarantee shall be progressively reduced on quarterly basis in proportion to the value of progress payments received.

8.7.6 Performance Bank Guarantees ("PBG") shall be furnished by the Contractor to the Owner, in a form as set forth in Annexure 3, as security towards:

- (a) Successful completion of the Performance Guarantee Tests; and
- (b) Due performance of the Contractor's Warranty Period obligations.
- (c) Recover any Taxes applicable and payable by the Contractor which is paid by the Owner.

8.7.7 The Contractor shall furnish first PBG equivalent to 6% of Contract Price 30 days before Scheduled Date of completion of Reliability Run Test of first Unit, valid upto Warranty period completion of the third Unit. The amount of this Performance Bank Guarantee shall be reduced prorated Unit wise on completion of the respective Unit warranty period. No further payments under the Contract shall be released to Contractor if the Performance Bank Guarantee is not submitted 30 days before the scheduled date of completion of Reliability Run Test of first Unit.

The Contractor shall furnish second PBG equivalent to 4% of Contract Price 30 days before completion of Reliability Run Test of fourth Unit, valid upto Warranty period completion of the sixth Unit. The amount of this Performance Bank Guarantee shall be reduced prorata Unit wise on Scheduled Date of completion of the respective Unit warranty period. No further payments under the Contract shall be released to Contractor if the Performance Bank Guarantee is not submitted 30 days before the scheduled date of completion of Reliability Run Test of fourth Unit

8.7.8 The Bank Guarantees shall be submitted by the tested swift message in favour of an Indian bank nominated by the Owner. If the Bank Guarantee confirmation is

required, it shall be arranged by the Owner. All bank confirmation charges applicable in this regard shall be to the Owner's account.

**8.8 Payment for Octroi Duty/Entry Tax (If Any)**

Octroi duty/Entry Tax, if any, is excluded in the Contract Price and the Owner shall give the Contractor an exemption certificate issued by Competent Authority. In case such certificate is not given to the Contractor, **Octroi Duty/Entry Tax** shall be reimbursed at actual to the Contractor against documentary proof of payment by the Contractor.

**8.9 Payment not to affect the Right of the Owner**

Notwithstanding any other Article, any or all sums paid on account of the Contract by the Owner shall not affect or prejudice the rights of the Owner against the Contractor, or relieve the Contractor, under its obligations for the due performance of the Contract or be interpreted as approval of the Works rendered. No certificate by the Owner shall create liability on the Owner to pay for alteration, amendments, variations, or additional work, not ordered in writing by the Owner or discharge the liability of the Contractor for payment of Damages, whether due, ascertained or certified or not.

**9. TAXES AND DUTIES**

9.1 The Contractor shall be liable to pay all Indian taxes, duties levies lawfully assessed against the Contractor in pursuance of the Contract (except entry tax/ Octroi Duties and Customs Duties). In addition, the Contractor shall be responsible for payment of all Indian duties, levies and taxes lawfully assessed against the Contractor regarding its personal income and property as well as any corporate taxes including the personnel income tax of its supervisory personnel etc. In this connection attention of the Contractor is invited to the provisions of Indian Income Tax Act and the Circulars issued by the Central Board of Direct Taxes, Government of India, from time to time.

9.2 The Contract Price includes all taxes and duties (including variations thereof)

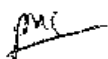
applicable to the transactions between the Contractor and its Sub-contractors/ sub-Contractors for the purpose of consumption of services for raw materials, components, assemblies finished products etc. i.e. bought out items/ components/ Equipment of the Contractor for this project and there shall be no liability to the Owner on this account.

9.3 The Contractor should note that statutory deduction towards works contract tax (WCT) and withholding tax as applicable, shall be made and necessary withholding tax certificate as required under the applicable law shall be issued by the Owner. If any other withholding tax is brought into effect by a Competent Authority during the period or for the period of the Contract then the same shall be deducted at source as per the prevailing rules and necessary certificate/s to that effect shall be issued, under the applicable law, by the Owner. However, no tax or lower rate tax will be deducted at source if a tax exemption certificate or lower rate tax certificate from the competent tax authorities is provided to the Owner by the Contractor before deduction of tax.

9.4 If Owner may be required to withhold or deduct or pay any taxes under Applicable Law under the Contract on Contractor's behalf such taxes and other sums, if any then Owner shall forthwith inform the Contractor about same. Upon receipt of such notice from the Owner, the Contractor shall promptly within the due date indicated in such notice inform in writing to Owner, the Contractors intention to either seek legal remedy or its agreement to pay the tax or other sums. In case any such tax is determined to be payable by Owner after due legal process, Owner reserves the right to deduct the same from Performance Bank guarantee available with Owner. Consequent to the above action Contractor shall restore the Bank Guarantee to the required value.

#### 9.5 Statutory Variation for Taxes and Duties

9.5.1 If any statutory variation in taxes/duties/levies and any new taxes/duties/levies are introduced by a Competent Authority applicable for the Work with effect from the next day to Feb 21, 2009 and onwards and if the Contractor is required to pay any amount towards this tax or duty then the Owner shall reimburse the Contractor such payments against documentary proof. This provision will be applicable only to the direct transactions between the Contractor and the Owner.



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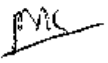
9.5.2 Any variation in the rates/input credit regulation of applicable taxes and duties with effect from the next day to Feb 21, 2009, shall also be settled between the Contractor and the Owner at actuals against documentary evidence as per statutes.

9.5.3 No claim for any increase towards the statutory variation shall be entertained by the Owner during the extended period of the Contract, if any, provided the extension of the Contract is required by causes attributable to the Contractor.

## 10. REPRESENTATIONS AND WARRANTIES

On and as of the date of the Contract, the Contractor represents and warrants to the Owner that:

- (a) **Organization and Standing:** The Contractor is a corporation duly organized, validly existing and in good standing under the laws of India, and has the requisite corporate power and authority to carry on its business as now conducted and as proposed to be conducted, to own or hold under lease its properties and to enter into and perform its obligations under the Contract. The Contractor is duly qualified or licensed to do business and is in good standing in each jurisdiction where the failure to be so qualified or licensed would have a material adverse effect on the Contractor.
- (b) **Authorization:** The Contractor has all requisite legal and corporate power to enter into the Contract and to carry out and perform all of its obligations hereunder. All corporate action on the part of the Contractor and its officers, directors and shareholders that is necessary for the authorization, execution and completion of the Contract and for the performance of the Contractor's obligations hereunder has been taken.
- (c) **Compliance with Other Instruments:** The execution, completion and performance by the Contractor of the Contract and the consummation of the transactions contemplated hereunder will not result in any violation, be in conflict with or constitute, with or without the passage of time or the giving of notice, a default under, or require any consent or waiver under,



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any provision of the Contractor's Articles of incorporation, charter documents or bylaws, any material instrument, mortgage, deed of trust, loan, Contract, commitment or obligation to which the Contractor is a party or by which the Contractor or any of its properties or assets are bound.

- (d) **Binding Obligation:** The Contract constitutes a legal, valid and binding obligation of the Contractor enforceable against the Contractor in accordance with the terms hereof, except as limited by bankruptcy, insolvency, reorganization, arrangement, moratorium and similar laws relating to and affecting the rights of creditors generally and by general principles of equity.
- (e) The Contractor represents that it has inspected the Site and has reviewed weather data, marine data and all other data provided by the Owner and as required for the Contractor to enter into the Contract. The Contractor represents that the Site is an acceptable place to perform that portion of the Works required to be performed at the Site and has sufficient lay down areas and access.
- (f) The Contractor represents that it has satisfied itself with respect to all Conditions and circumstances affecting the Works, including the general and local conditions and technical information; access and egress; disposal, handling, and storage of materials; availability and conditions of roads and rights-of-way; availability of labour and housing; climatic conditions and seasons and equipment and facilities needed for performance of the Works.
- (g) The Contractor represents that it is satisfied with the proximity of the existing road to adjacent facilities and structures as proposed mentioned in the Site and in the Contract.
- (h) The Contractor represents that it has made a complete examination of the condition of the waterfront and road, railroad and waterways that may be required to transport the Equipment and materials to the Site, including the conditions affecting transportation, access, disposal, handling, and storage of materials thereto and the local weather conditions based upon

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previous weather data.

- (i) The Contractor represents that it has made a complete examination of all other matters that might affect erection, transportation, startup, testing and Commissioning of the Project or the Contractor's performance of the Works.
- (j) The Contractor's failure to acquaint itself with any applicable condition, will neither relieve it from the responsibility for successfully performing the Contract, nor entitle the Contractor to a variation order adjusting the Contract Price or the time for performance.
- (k) Without limiting the generality of the foregoing, before the Contractor performs any applicable Works the Contractor shall check all Technical Specifications and be responsible for the correctness of the Works under the Contract. No extra charge or compensation will be allowed for duplication of Works because of an unverified difference between an actual dimension and the measurement indicated in the Technical Specifications. Any discrepancy shall be submitted in writing to the Owner for consideration before proceeding with the Works.

## 11. CO-ORDINATION MEETINGS

11.1.1 Co-ordination meetings between the Engineer and the Contractor shall be held at frequent intervals (at least once a week) to keep a close watch on the progress of Work, removal of any bottlenecks in the implementation, programme for inspection of the Equipment and materials brought on Site and witnessing of tests at Site.

11.1.2 The Contractor will also be called upon to attend to design co-ordination meetings with the Engineer, other contractors and consultants of the Owner. The Contractor shall attend such meetings at its own cost as and when required and fully co-operate with the Owner and other agencies involved.

11.1.3 In the event any of the Work or activity is not likely to be completed within the Project Schedule and for completion of such Work/activity, the Owner and the

Contractor may arrive at new date which may be beyond the Project Schedule, this Contract shall not be construed to be extension in time limit approved by the Owner but shall be agreed without any prejudice to other terms and Conditions of the Contract.

## 12. WARRANTY PERIOD

12.1.1 The Contractor warrants that the Erection, commissioning Works shall be in accordance with the Contract Documents and be free from defects in design, material and workmanship for a period of 12 (twelve) calendar months commencing immediately upon successful completion of the Reliability Run Test. If any Erection, commissioning activity is undertaken by the Contractor after the completion of Reliability Run Test for the 6<sup>th</sup> Unit, Contractor shall offer a 12 month Warranty Period from the date of successful handing over of such activity.

- (a) New Erection, commissioning. The Contractor warrants (the "New Erection, commissioning Warranty") that all Erection, commissioning works and other materials and components of the Power Plant provided in connection with the Erection, commissioning Works shall be new when first installed in the Power Plant, shall conform to all Requirements.
- (b) Materials and Workmanship. The Contractor warrants (the "Materials and Workmanship Warranty") that the Erection, commissioning Works shall be performed in accordance with all Requirements, and (i) the Erection, commissioning Works shall be free from defects in Erection, commissioning activity, workmanship, and materials; and (ii) the remainder of the Erection, commissioning Works shall be free from defects in systems engineering, Erection, commissioning, workmanship, and materials. For purposes of this Article 12.1.1(b) an item shall be considered defective if it (i) does not conform to the standards set forth in the Technical Specifications or the Requirements, including those under this The Contract relating to performance, or (ii) is not suitable for its intended use under the climatic and range of operating conditions as specified in Technical Specifications.

This warranty will cover Erection, commissioning Works only for claims for such



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defects made during the Warranty Period.

#### **12.1.2 Limitation on Warranty.**

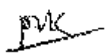
This warranty shall not apply to or include and Contractor shall not be responsible for:

- (i) Failure to operate the equipment as per the operating manual provided by the Contractor;
- (ii) failures resulting from abuse, neglect, and/or improper repair outside of Prudent Engineering Practice;
- (iii) failures resulting from unauthorized repair or adjustments;
- (iv) damage to parts, fixtures, housings, attachments, and accessory items which are not part of the Works under the Contract.

#### **12.1.3 Owner's Responsibilities under Warranty.**

Under this Warranty the Owner is responsible for:

- (i) Giving timely notice of a warrantable failure and promptly making the product available for repair;
- (ii) Performance of the required maintenance and use of proper fuel, oil, lubricants, and coolant;
- (iii) Allow Contractor access to all electronic data stored in the electronic control module at site to its personnel;
- (iv) Assist Contractor to obtain any possible exemption from taxes, levies, fees, or other charges under the laws of India.
- (v) Provide Contractor with reasonable access to the Power Plant to perform its obligations in connection with any Equipment Warranties, subject to Owner fulfilling the requirements of the consumers of power from the





Power Plant.

**12.2 Compliance with Laws, Codes and Standards.**

Contractor warrants that the Plant will conform to all those International, Government, National, State or Local Laws, Ordinances, Regulations, Codes and Standards, as applicable under Technical Specifications.

**12.3 Latent Defects.**

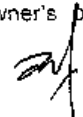
The Owner and Contractor hereby agree to mitigate and remedy the defects in the Works, if any, arising after the Warranty Period, in mutually agreed terms. Contractor acknowledges that such latent defects, to the extent not covered under insurance, would cause significant financial loss to the Owner and undertakes to cooperate with the Owner / O & M Contractor to the extent possible for remedy of such latent defects. This commitment of the Contractor shall be valid till completion of two years from the expiry of Warranty Period. In case of any delay in remedying such latent defects, the procedure as prescribed under Article 12.4, hereinbelow shall be followed.

**12.4 Remedy.**

Except as provided in Articles 12.1.2, if any Erection, commissioning works Warranty is breached during the Warranty Period, Owner's sole remedy and Contractor's sole liability (subject to Article 12) shall be as set forth in this Article:

- (a) Provide, at site, new, or reconstructed facility to correct the defect. The items replaced under this warranty become the property of Owner.
- (b) Provide reasonable or customary labor (including overtime labor) and technical direction needed to correct the defect, including labor to carry out Erection, commissioning works, if required. In the event that Contractor desires to utilize the Owner's site maintenance personnel / O & M Contractor to effect a repair, at Owner's request Contractor shall reimburse the Owner / O & M Contractor for the hourly rate of Owner's personnel / O & M





Contractor. In this case Contractor shall provide necessary technical supervision of Owner's personnel / O & M Contractor.

- (c) Provide reasonable travel expenses for authorized Erection, commissioning personnel, including meals, mileage, and lodging, when Contractor chooses to make the repair on-site.
- (d) Provide for transportation of the materials to the project Site, including cost of shipment, insurance, other taxes,
- (e) Provide special tools for the removal, replacement, reconnection, mounting and calibration of the defective components. Special tools, as necessary, may be borrowed from the Owner's stock on site. Heavy lifting tools, except for those normally kept by Owner on Site, shall be provided by the Contractor.

Any repaired or replaced Erection, commissioning work under this warranty shall carry warranties on the same terms as set forth above, except that the warranty period shall be for a period of twelve (12) months from the date of such repair or replacement or the remainder of the original Warranty Period, whichever is longer("Extended Warranty Period"). In any event the warranty period and Contractor's responsibilities set forth herein for such re-performed service or repaired or replacement part shall terminate one (1) year after the end of the Warranty Period applicable to the item of Equipment in which such repaired or replacement part was installed or in which such Services was re-performed.

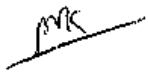
Contractor acknowledges that failure to make repairs on a timely basis after Owner's notification of a warranty claim may cause significant financial loss to the Owner. Therefore, Contractor shall make repairs in an expeditious manner. If, after notification of a breach of Erection, commissioning Warranty, Contractor shall unreasonably delay in diligently commencing, continuing or completing the remedy required by this Article 12.4, then Owner may complete said remedial action, and Contractor shall be liable for all reasonable and necessary costs, charges, and expenses incurred by Owner in connection with such remedial action, and shall pay such costs, charges, and expenses within fifteen (15) Days after receipt of verifiable invoices certified by Owner.





### 13. VARIATION/CHANGE ORDERS

- 13.1 The Contractor realizes and acknowledges the nature, magnitude of the Project and the possibility of Variation that may arise from time to time and agrees and ensures that it shall accept all the possible reasonable Variations as may be necessary for the Project to function as a whole.
- 13.2 If any changes required for completion of the Scope of Work as per specifications, the Contractor shall not be entitled to any addition in the Contract Price or to an extension of time.
- 13.3 No alterations, amendments, omissions, suspensions, or variations of the Works ("Change") under the Contract as detailed in the Contract Documents, shall be made by the Contractor except as directed in writing by the Engineer.
- 13.4 The Engineer shall have full powers, subject to the provisions hereinafter contained, from time to time during the execution of the Contract, by notice or order ("Variation / Change order") in writing, to instruct the Contractor to make such Variations, alterations without prejudice to the Contract. Any deviations in the Works executed shall be rectified by the Contractor without any extra costs.
- 13.5 If any suggested Variation / Change would, in the opinion of the Contractor, if carried out, prevent it from fulfilling any of its obligations or guarantees under the Contract, or that the same is beyond the scope of the Contract, or involves a claim for additional payment, it shall notify the Engineer thereof in writing and shall mark a copy to the Owner and the Engineer in concurrence with the Owner shall decide whether or not the same shall be carried out and if the Engineer confirms its instructions, the Contractor's obligations and guarantees shall be modified to such an extent as may be mutually agreed.
- 13.6 If any Variation / Change in Works as per Article 13.4 and/or 13.5 results in increase or reduction of Contract Price, the Parties shall agree, to the extent of any change in the Contract Price. Any agreed difference in cost occasioned by any such Variation / Change shall be added to or deducted from the Contract Price as the case may be.



- 13.7 All Change Orders shall be in writing and executed by an authorized representative of each of Owner and Contractor. Except as otherwise provided in Article 13.8 & 13.9, no Changes shall be made except in accordance with a duly issued and fully executed Change Order. Change in inflation or indexation, exchange rates etc will not construe a reason for change order.
- 13.8 Owner may submit a written request to Contractor to make a Change. Within fifteen (15) Days following receipt of such request, or such other period as shall be agreed upon by the Parties, Contractor and Owner shall agree upon adjustment to the Scope of Works, Guaranteed Values, Project Schedule, Contract Price, or other terms of the Contract, if any necessitated by the proposed Change and Owner shall issue a Change Order. The Contractor shall proceed and execute the Change Order. If Owner elects not to issue any Change Order, Contractor shall not be compensated any costs and the Contract Price stands unaltered.
- 13.9 Contractor shall provide Owner with written notice of any condition or event that Contractor becomes aware of that Contractor reasonably believes will require a Change. Such notice must be issued within five (5) Business Days following actual knowledge of such condition by an officer of Contractor or by management personnel of Contractor responsible for the performance of the Scope of Works and such notice shall describe such condition or event in reasonable detail. Within fifteen (15) Business Days following delivery of such notice, Owner and the Contractor shall decide on the notified Change. If Owner elects to proceed, Owner shall issue a Change Order and Contractor shall proceed with the Change Order and the Contractor shall not be compensated for any additional cost incurred if any, so long as the change is within the scope of Works. If the Owner elects not to proceed with the Change, the Owner shall perform the obligations under the Contract as per the Scope of Works specified in the Contract. The foregoing notwithstanding, Contractor shall not propose or carry any Change Order which keeps the Owner indifferent / neutral on financial terms and causes any financial loss to the Owner due to changes in this order resulting in defaults in other Contractual obligations of the Owner.
- 13.10 In the event and to the extent that a Force Majeure affects Contractor's ability to meet the Project Schedule, an adjustment in Project Schedule shall be made by agreement of Owner and Contractor based on the numbers of days on which the

work is effected. Contractor shall not be compensated for any additional cost or expense incurred due to the Force Majeure, except to the extent Owner receives insurance proceeds based on such costs incurred by Contractor, in which event Contractor shall be reimbursed to the extent of such related proceeds. Any dispute relating to a Force Majeure-caused Change Order may be submitted to dispute resolution pursuant to Article 27.

- 13.11 All claims by Contractor for adjustments to one or more of the Contract Price, Project Schedule, and the Guaranteed Values as a result of Changes under this Article 13 shall be supported by such documentation as is sufficient for Owner to determine the accuracy thereof.

#### 14. INSURANCE

- 14.1 The Works carried out pursuant to this Contract shall be properly and fully insured by the Contractor against theft, loss or damage etc incidental to storage and handling at site, construction and erection, testing and Commissioning and upto Taking Over in the manner specified in the Contract. Contractor shall ensure that Owner and Lenders and their respective assignees & subsidiaries shall be the beneficiary parties as per following policies. The Insurance Policies shall include but not limited to the following:

##### 14.1.1 Contractor's "All Risks" Insurance

- a. An "Erection" All Risks" ("EAR") insurance policy for the Power Plant covering all work at the Site in connection with the services and all plant, materials, and equipment at the Site intended for incorporation in the Power Plant (including temporary buildings, site huts and offices used for the purpose of the construction of the Power Plant and material handed over by Owner for testing at the battery limits of Contractor) against the risk of physical loss or damage from all insurable causes including terrorism. The EAR insurance shall be on a 'replacement value' basis (including additional customs duties) insuring the total cost of the Power Plant and would also provide, *inter alia*, surrounding property coverage and automatic increase in coverage for price escalation.
- b. Statutory Insurance Benefits

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All statutory insurance benefits and other insurance required by applicable laws, in connection with performance of the Contractor's obligations under the Contract.

#### **14.1.2. Marine Cargo Insurance (Warehouse to Site)**

For all materials, equipment, machinery, spares and other items for incorporation in the Power Plant against all risks of physical loss or damage while in transit by sea, air or the land portion of the journey from country of origin anywhere in the world, including India, to the Site in India, or vice versa, from the time of the insured items leaving warehouse or factory for shipment to the Site in India including during loading, unloading and temporary storage.

The policy shall be at full replacement value (including cost of freight, insurance, custom duties and provision for additional customs duty imposition and price escalation).

#### **14.1.3. The Contractor's or Rented Equipment**

All the Constructional Plant shall be brought to and kept at the Site at the sole cost, risk and expense of the Contractor, and the Owner shall not be liable for loss or damage thereto, and the Contractor, at its own cost, shall maintain or cause the Subcontractors to maintain adequate, appropriate and prudent insurance with respect thereto. The Contractor shall obtain, either itself or through the Subcontractors, adequate insurance to cover all equipment, tools and the Constructional Plant rented or leased from third parties. The Contractor shall obtain or cause the Subcontractors to obtain insurance for all equipments whether at Site as aforementioned or whether in transit or in storage awaiting shipment to the Site.

#### **14.1.4 Third Party Liability Insurance**

The Contractor shall insure for an amount not being less than Rupees fifty crores only (Rs.50,00,00,000/-) against liability for damage or death or personal injury or illness occurring before Hand Over of the Power Plant to any person or to any property (other than property forming part of

the Power Plant) due to or arising out of the performance or non-performance of the services by the Contractor or any Subcontractor or any tier of subcontractor of such Subcontractor or any performance or non-performance by the Other contractors under the Other Contracts. Such insurance shall be endorsed or amended as to be considered primary, and any other insurance maintained by the Owner shall be excess and not contributory with this insurance.

#### **14.1.5. Automobile Liability Insurance**

Automobile liability insurance covering all leased, owned, non-owned and hired automobiles, trucks and other vehicles used by the Contractor or its Subcontractors or any tier of subcontractor of such Subcontractor or any of the Other Contractors in connection with the services or performance under the Other Contracts. The cover in respect of death or injury shall be unlimited and maximum permissible limits would be obtained under the Motor Tariff for property damage.

#### **14.1.6. Insurance against Accident, etc., to Workmen; Other Insurance**

Insurance as required by Indian and all other applicable laws for all actions, suits, claims, demands, costs, charges and expenses arising in connection with the death of or injury to any person employed by the Contractor or its Subcontractors or any tier of subcontractor of such Subcontractor for the purpose of the performance of the Works.

#### **14.1.7. Professional Indemnity Insurance**

covering Contractors for Liability arising out of errors and omission or negligence in professional/ design/ services rendered by Contractors with appropriate limits.

- 14.2 In case the Reliability Run Test is extended due to reason attributable to the Contractor then the insurance policy shall be extended by the Contractor till successful completion of Reliability Run Test / Taking Over of each Unit and the actual premium charges along with applicable service tax and education cess towards such extension of insurance policy, shall be to the Contractor account



- 14.3 The Contractor shall take out necessary insurance policy / policies so as to provide adequate insurance cover for execution of the awarded contract work for total contract price & Contract Period compulsorily from the any Insurance Company subject to approval of the Owner.
- 14.4 It shall be the responsibility of the Contractor to notify the insurer of any change in nature and extent of the works and to ensure the adequacy and currency of the insurance cover at all times in accordance with provisions of the contract.
- 14.5 The Contractor shall, except in the manner and so far as the contract provide otherwise, indemnify Owner against all losses/damages and claims in respect of injuries or damage to any person or equipment or material or physical damage to any property whatsoever which may arise out of or in consequence of the supply, execution and operation of the equipment and works against all claims, proceedings, damages, costs, charges and expenses whatsoever in respect of or in relation thereto.
- 14.6 The Contractor shall be responsible for making good at his own cost any damage to the works howsoever caused, except to the extent that it arises from the negligence of the Owner, his agents, servants or other contractors not being employed by the Contractor. The damaged material/plant/equipment should be set right by repairs with the knowledge and to the satisfaction of the Owner or replaced immediately by the Contractor free of cost without waiting for settlement of insurance claims.

## 15. ACCIDENT OR INJURY TO WORKMEN

- 15.1 The Owner shall not be liable for or in respect of any damage or compensation payable at law in respect or in consequence of any accident or injury to any workman or other person in the employment of the Contractor or any of its Sub-Contractors, save and except an accident or injury resulting from any act or willful default of the Owner.

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15.2 The Contractor shall indemnify and keep indemnified the Owner against all such damages and compensations, save and except as aforesaid and against all claims, proceedings, costs charges and expenses whatsoever in respect thereof, or in relation thereto. The Contractor shall insure against accident etc. to workmen provided always that, in respect of a person employed by any of its Sub-Contractors, the Contractor's obligations to insure as aforesaid under this Article shall be satisfied if the Sub-Contractor shall have insured against the liability in respect of such persons in such manner that the Owner is indemnified under the policy, but the Contractor shall require such Sub-Contractor to produce to the Owner through the Contractor, when required, such policy or policies of insurance and the receipt for the payment of the current premium.

15.3 If the Contractor, in any or all cases covered under the Article 14 insurance as also its Sub-Contractor shall fail to effect and keep in-force the insurance hereof, or any other insurance which may be required to effect under the terms of the Contract, then and in any such case the Owner may effect and keep in force any such insurance and pay such premium as may be necessary for that purpose and from time to time deduct the amount so paid as aforesaid from any money due or which may become due to the Contractor, or recover the same as a debt due from the Contractor.

15.4 The Contractor should obtain such services through Indian Insurance Companies approved and acceptable to the Owner.

## 16. EXTRAORDINARY TRAFFIC

### 16.1 Damage to Highways

The Contractor shall use all reasonable endeavours to prevent damage to any of the highways or bridges on the routes to the Site by any traffic of the Contractor or its Sub-Contractors. If and to the extent that any such damage is caused to any highway or bridges by the Contractor or its Sub-Contractors, the Contractor shall immediately arrange to remedy such damage at its own expense.

### 16.2 Special Loads

Should the Contractor consider that the moving of one or more loads of Contractor's Goods is likely to damage any highway or bridge unless special protection or strengthening is carried out, then the Contractor shall before moving



the load submit to the relevant Competent Authority its proposals as to the moving of the load, including details of the weight and other particulars of the load to be moved and its proposal for protecting or strengthening the highway or bridge.

### **16.3 Extraordinary Traffic Claims**

If the Owner shall receive any claim in respect of damage or injury to highways or bridges arising out of the execution of the Works, it shall immediately report the claim to the Contractor. The Contractor shall then negotiate the settlement of and pay all sums due in respect of such claim and shall reimburse to the Owner all costs, charges and expenses reasonably incurred by the Owner in relation thereto.

### **16.4 Non-interference with Local Traffic**

The Contractor shall take all such measures as may be reasonably necessary to ensure that its arrangements and those of its Sub-Contractors with respect to the transport of goods, material and labour to the Site do not interfere with local traffic in the vicinity of the Site and where such interference is unavoidable shall make such special arrangements and obtain such permissions from the relevant Competent Authorities as may be reasonably required to minimise the effect of such interference.

## **17. LIABILITY FOR LOSSES AND DAMAGES**

Under the Contract, the Contractor shall be responsible for any loss or damage to the Complete Plant from the time the Services are rendered until the Complete Plant is taken over by the Owner in accordance with the Contract. The Contractor shall be responsible for making good the damage or loss by way of repairs and or replacement of the portion of the Works damaged or lost. The transfer of title shall not in any way relieve the Contractor of the above responsibilities.

## **18. LIMITATION OF LIABILITY**



**18.1 No Consequential Damages.**

Except for Liquidated Damages, the proceeds of insurance, any interest paid on delayed payments, disputed amounts under Article 27 and all liabilities and amounts as provided in the Contract, in no event, whether as a result of breach of Contract, tort liability (including negligence or strict liability), strict liability, warranty, indemnity, or otherwise, and whether arising before or after completion of the Scope of Works, shall either (a) Contractor or the Sub Contractors be liable to Owner or Lender or (b) Owner or Lender be liable to Contractor or Sub Contractors, for special, indirect, or consequential damages of any nature whatsoever, including losses or damages caused by reason of unavailability of the Power Plant, shutdowns or service interruptions, loss of use, loss of profits or revenue, loss due to variation in currency exchange rates, inventory or use charges, cost of purchased or replacement power, interest charges or cost of capital or claims of Owner's or Owner's customers.

**18.2 Limitation on Liquidated Damages.**

The total liability of Contractor for the payment of Liquidated Damages shall be pursuant to Article 23 of the Contract.

This Article 18.2 shall not be construed to limit Contractor's other liabilities and obligations arising under or in connection with the Contract (including without limitation (i) achieve minimum performance standards, (ii) the plant to meet the emission standards, (iii) indemnification to the Owner under Article 19.

This Article 18.2 shall survive the termination of the Contract.

**18.3 Maximum Liability.**

Notwithstanding any other provisions contained in the Contract, the aggregate liability of Contractor to the Owner with respect to any and all claims arising out of the performance or non-performance of obligations in connection with the, transportation, storage, or use of the Works (including the Equipment and the remaining portions of the Power Plant) or the rendition of other services in connection therewith, whether based on Contract, warranty, tort (including negligence), strict liability or otherwise, liability to third parties for property

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*[Signature]*

damage to property other than the Equipment and liability for personal injury, shall not exceed the total Contract Price

This Article shall survive the termination of the Contract.

#### **18.4 Releases Valid in All Events.**

Any releases, disclaimers and limitations on liability expressed herein shall apply even in the event of the negligence, strict liability, fault or breach of Agreement (including other legal bases of responsibility such as fundamental breach) of the Party whose liability is released, disclaimed or limited

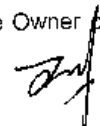
Except in the case of criminal neglect or willful misconduct:

- (a) The Contractor shall not be liable to the Owner, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, provided that this exclusion shall not apply to any obligation of the Contractor to pay Performance Liquidated Damages to the Owner, and
- b) The aggregate liability of the Contractor to the Owner under the Contract shall not exceed the Total Contract Price, provided that this limitation shall not apply to any obligation of the Contractor to repair or replace defective erection or to indemnify the Owner with respect to patent infringement.

#### **19. INDEMNIFICATION**

##### **19.1-A. Contractor's Indemnity**

The Contractor shall protect, defend, indemnify and hold harmless Owner, Lenders and the O & M Contractor each of their respective Affiliates, and the agents, officers, directors, shareholders, employees, permitted successors and permitted assigns (each, a "Contractor Indemnified Party"), from and against any and all losses, costs, damages, injuries, liabilities, claims, demands, penalties, interest and causes of action, including reasonable attorneys' fees and court costs (collectively, the "Damages"), directly or indirectly arising out of, resulting from or related to claims for personal injury or death, or for damage to or loss of tangible property of persons other than the Owner or the Contractor



resulting from, or in connection with, performance or non-performance of the Works by the Contractor, its Sub-Contractors or Contractors, including claims regarding negligence, whether caused in whole or in part by the Contractor, its Sub-Contractors or Contractors; provided, that the Contractor shall not be liable for, and shall not be obligated to indemnify any Contractor Indemnified Party against, any such claims to the extent such claims result from (a) the negligence or willful misconduct of any Contractor Indemnified Party or (b) any failure of the Owner to perform under the Contract.

#### **19.1-B. Owner's Indemnity**

Owner shall protect, defend, indemnify and hold harmless Contractor, each of its Affiliates and the agents, officers, directors, shareholders, employees, permitted successors, and permitted assigns (each, an "Owner Indemnified Party") from and against Damages, directly or indirectly arising out of, resulting from, or related to claims for personal injury or death, or for damage to or loss of tangible property of persons other than Owner or Contractor resulting from, or in connection with, performance or non-performance by Owner of its obligations under the Contract or its engineering of, erection of and commissioning of the Power Plant, including such claims regarding negligence, whether caused in whole or in part by Owner or any other Contractor Indemnified Party; provided, that Owner shall not be liable for, and shall not be obligated to indemnify any Owner Indemnified Party against, any such claims to the extent such claims result from (a) the negligence or willful misconduct of any Owner Indemnified Party or (b) any failure of Contractor to perform hereunder.

#### **19.2 Patent and Copyright Indemnification**

The Contractor shall protect, defend, indemnify, and hold harmless the Contractor Indemnified Parties from and against any and all damages that the Contractor Indemnified Parties may hereafter incur or pay by reason of any claims or suits arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other intellectual property, proprietary or confidential rights with respect to materials and information used by the Contractor or any Sub-Contractor in performing the Works.



### 19.3 Notice and Legal Defense

In the event a Person indemnified pursuant to Articles 19.1 above (an "Indemnified Party") receives notice of any claim or notice of the commencement of any action, administrative or legal proceeding, or investigation as to which the indemnity under which it is indemnified may apply, the Indemnified Party shall promptly notify the Indemnifying Party<sup>1</sup> in writing of such fact. The Indemnifying Party shall assume on behalf of the Indemnified Party and conduct with due diligence and in good faith the defense thereof; provided, however, that the Indemnified Party shall have the right to be represented therein by advisory counsel of its own selection and at its own expense; and provided further, that if the defendants in any such action include both the Indemnifying Party and the Indemnified Party and the Parties have reasonably concluded that there may be legal defenses available to the Indemnified Party that are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the indemnifying Party shall select separate counsel reasonably satisfactory to the Indemnified Party to participate in the defense of such action on the Indemnified Party's behalf and at the Indemnifying Party's expense.

### 19.4 Failure to Defend Action

If any claim, action, proceeding or investigation arises to which any indemnity provided for in apply, and the Indemnifying Party fails to assume the defense of such claim, action, proceeding or investigation, then the Indemnified Party may, at the Indemnifying Party's expense, and without affecting the Indemnifying Party's obligation to indemnify under contest such claim.

### 19.5 Survival

The provisions of this Article 19 shall survive the full performance or termination of the Contract, as applicable, until the later of (i) the date 4 (four) years after i.e. successful completion of Performance Guarantee Test or (ii) the date 4 (four) years after the date the Contract is terminated.

## 20. SECRECY AND CONFIDENTIALITY

### 20.1 Confidential Information

20.1.1 The Owner and the Contractor shall treat the details of the Contract and any information made available in relation thereto as private and confidential and neither of them shall publish or disclose the same or any particulars thereof (save insofar as may be necessary for the purposes of the Contract including the appointment and use of Sub-Contractors), without the previous written consent of the other Party, provided that nothing in this Article 20.1.1 shall prevent the publication or disclosure of any information that has come within the public domain otherwise than by breach of this Article.

20.1.2 The technical information, drawings, specifications and other related documents forming part of the Contract are and shall always remain the property of the Owner and shall not be used by the Contractor or the Sub-Contractor or any other the employees, agents, Contractor, labours of the Contractor or the Sub-Contractor for any other purpose, except for execution of the Works under the Contract. All rights, including rights in the event of grant of a patent and registration of designs are reserved. The technical information, drawings, specifications, records and other documents shall not be copied, transcribed, traced or reproduced in any other form or otherwise in whole and/or duplicated, modified, divulged and/or disclosed to a third party nor used in any other form whatsoever, without the Owner's previous consent in writing, except to the extent required for the execution of the Contract. All the technical information, drawings, specifications and other related documents shall be returned to the Owner with all approved copies and duplicates, if any, immediately after they have been used for the agreed purpose.

20.1.3 In the event of any breach of this provision, the Contractor shall indemnify the Owner from any loss, cost or damage or any other claims whatsoever from any parties claiming from or through them in respect of such breach.

### 20.2 Disclosure of Confidential Information

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Either Party shall be entitled to disclose the terms and Conditions of the Contract and any data or information acquired by it under or pursuant to the Contract without the prior written consent of the other Party:

- (a) to any Affiliate of such Party or, in the case of the Owner, to any Competent Authorities having jurisdiction over the implementation of the Project;
- (b) to any outside consultants, Contractors, Contractors or advisers engaged by or on behalf of such Party in connection with the Scope of Work or the implementation of the Project and acting in that capacity;
- (c) to any Persons or Sub-Contractors from whom the Contractor intends to invite tenders in respect of the sub-contracting of any element of the Scope of Work;
- (d) to any security trustee, any bank or other financial institution and its advisers from which such Party is seeking or obtaining finance;
- (e) to the extent required by the Applicable Law or pursuant to an order of any court of competent jurisdiction, provided that the original disclosing Party is given notice and adequate time to seek a protective order applicable to the information before it is disclosed;
- (f) to any insurer under a policy of insurance required to be taken out by either Party under the Contract; or
- (g) to the directors, employees and officers of such Party;

provided that:

- (i) the disclosing Party determines in good faith that the recipient has a legitimate need to see such data or information;
- (ii) the recipient has been made aware of and has agreed to be bound by the requirements of this Article.

## 21. PROPRIETARY INFORMATION

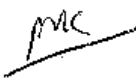
21.1 Contractor's Proprietary Information at the time of furnishing confidential or proprietary information, Contractor will expressly designate by label, stamp, or other written communication that the information or documentation furnished is confidential.

(a) Owner agrees (i) to treat such information as confidential, (ii) to restrict the use of such information to matters relating to Contractor's performance of the Contract, and (iii) to restrict access to such information to employees of Owner and its agents whose access is necessary in the implementation of the Contract. Confidential information will not be reproduced without Contractor's prior written consent, and all copies of written information will be returned to Contractor upon request except to the extent that such information is to be retained by Owner pursuant to the Contract.

(b) The foregoing restrictions do not apply to information which: (i) is contained in a printed publication which was released to the public by Contractor prior to the date of the Contract; (ii) is, or becomes, publicly known otherwise than through a wrongful act of Owner, its employees, or agents; (iii) is in possession of Owner, its employees, or agents prior to receipt from Contractor, provided that the person or persons providing the same have not had access to the information from Contractor; (iv) is furnished to others by Contractor without restrictions similar to those herein on the right of the receiving party to use or disclose;

21.2 Software License Owner is granted a limited license for any Software delivered by Contractor, whether as part of any equipment or separately. Owner is not granted a license for any other Software. This license allows Owner to:

- (a) Use the Software only on the equipment on which it is installed at the time of delivery or, if Software is supplied separately, in connection with equipment supplied by Contractor. Owner must obtain a supplementary license from Contractor before using the Software in connection with any other equipment or for any other purpose.
- (b) Make one copy of the Software in machine-readable form solely for backup purposes. Owner must reproduce on each copy the copyright notice and any other proprietary legends that were on the original copy.
- (c) Transfer the Software and all rights under this license to another party as part of the sale of the equipment with which it is used.





- (d) Owner may not distribute copies of the Software to others or electronically transfer the Software from one computer to another over a network. The Software contains trade secrets. In order to protect them Owner may not decompile, reverse engineer, disassemble, or otherwise reduce the Software to a human-perceivable form. Owner may not modify, adapt, translate, rent, lease, loan, resell for profit, distribute, network, or create derivative works based upon the software or any part thereof.
- (e) All Software is protected by the copyright laws of the India. No rights under copyrights are transferred to Owner, except as specifically provided above.
- (f) "Software" means a computer program supplied with the equipment for performance of the equipment, including data recording, storage and retrieval.

## **22.0 COMMISSIONING, ACCEPTANCE TESTS :**

- 22.1 The entire commissioning and taking over of the Power Plant is dependent on the quality and effectiveness of the Works that are undertaken by the Contractor. The Contractor shall ensure that the Works done shall be of such quality that it meets the Performance Guarantee Tests as have been indicated herein below.
- 22.2 The Liquidated Damages for not meeting the Performance Guaranteed Values during the Performance Guarantee Test shall be assessed and recovered from the Contractor. Such liquidated damages shall be levied, in accordance with stipulations made in Article 23 and shall be without prejudice to all the other conditions of the Contract.
- 22.3 If the Rejection Criteria specified below are not achieved due to reasons attributable to Contractor, within 120 days after successful completion of Reliability Run Test, the Owner at their discretion may reject the Unit/s or accept it after levying and recovering Liquidated Damages.
- 22.4 Any recoveries by the Owner from the Contractor due to shortfall in guaranteed performance shall be independent of provisions of Article 23 herein below.



22.5 The Acceptance Tests for the successful Commissioning and Taking Over of the Power Plant shall comprise of the following:

#### 22.6 Trial Run

On completion of the installation and erection of the complete Unit each Item of the Complete Unit shall be thoroughly cleaned and inspected jointly for correctness and completeness of installation and acceptability for the Trial Run of the Complete Unit. The list of tests to be performed prior to the Trial Run shall be determined and decided between by the Owner and the Contractor mutually and shall be based on the Manuals furnished by the Contractor of the Complete Unit. The purpose of this Trial Run is to ensure integrity of each individual Item for its operation in the system for Initial Operation.

#### 22.7 Initial Operation

After successful Trial Run of all the individual Item/s all the Item/s together shall be operated together as a Unit. Based on the observations made during Initial Operation, necessary corrections shall be effected in the Items to ensure proper integrated operation of the Unit and/or the Complete Plant as the case may be. After satisfactory completion of Initial Operation for each Item, the Unit, the Complete Unit shall be considered ready for Reliability Run Test. During Initial Operation, any adjustments/calibrations to the instruments fitted in the Unit/ Complete Plant shall be done in the presence of testing staff of the Owner so as to enable them to familiarize themselves with its adjustments and maintenance except that the testing staffs of the Owner are not timely present after the notice of the Contractor.

#### 22.8 Reliability Run Test

After satisfactory Initial Operation, the Plant and Equipment shall be put on Reliability Run Test (RRT) as mentioned below and as per Technical Specifications:

- (a) RRT of first Unit shall start not later than 37.5 months from Zero Date. RRT of subsequent Units shall start at 4 months gap (like 41.5 m for second Unit, 45.5 m for third Unit, etc.).

- (b) Each Unit RRT shall be conducted within 14 days of operation. Each RRT shall consist of 72 hours of continuous operation at full load (or any other load at Owner's discretion) and further demonstrate operation at various other loads like 80%, 60%, 40% or any other load mutually agreed. Any minor failure of auxiliary equipment (which shall be set right immediately), which does not force the Unit shut down, will not be treated as failure of RRT.
- (c) Each RRT may have maximum two shut downs of Unit with total hours of interruption not exceeding 8 hours.
- (d) In case total number of hours of interruption of operation exceed 8 hours, such RRT shall be treated as unsuccessful.
- (e) If RRT of any Unit is not successful based on above criteria, the Contractor shall repeat the RRT. In case the Contractor could not conduct RRT successfully within 38 months, the Contractor shall be liable for Liquidated Damages (LD) on account of delay.
- (f) However, in case the Contractor could not conduct RRT successfully within 38 months, the Owner would permit one additional RRT without levying LD. In case of major shut down due to 'Boiler tube leakage' in any Unit, the repeat RRT shall start immediately after repair but not later than 36 hours from the time of Unit shut down.
- (g) In the event such repeat RRT is also not successful, the Owner may permit one more additional RRT without levying LD. In case of major shut down due to 'Boiler tube leakage' in any Unit, provided the repeat RRT starts immediately after repair but not later than 36 hours from the time of Unit shut down. But, in any Unit not more than two additional RRTs are permitted.
- (h) In any case, all the additional RRTs for the total six Units shall not exceed 8 tests. The cost of consumables in such additional tests shall be borne by the Owner.



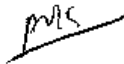
## 22.9 Performance Guarantee Test

22.9.1 The Contractor shall carry out Performance Guarantee Tests as per Annexure A Clause No. 6.00.00 of the Technical Specification/specifications

The Contractor shall ensure the following Performance Guaranteed Values for the Power Plant:

Sr. No.	Parameter description	Performance guaranteed values
1	Unit GROSS HEAT RATE:- Unit gross heat rate in kcal / kWh at rated steam parameters & 0.1 ata as exhaust pressure, with zero percent make up, at TMCR condition and at reference ambient parameters as per Technical specifications	2239.77
2.	Total auxiliary power consumption of all auxiliaries at TMCR condition (%)	7.017
3.	SPM – mg/Nm <sup>3</sup> (with one field in each gas path out of service)	50
4.	Gross electrical power output at Generator terminals (MW)	600
5.	Boiler steaming capacity at BMCR condition (tph)	2068
6.	Unburnt Carbon in fly ash by weight (%) (Max)	1

The Contractor guaranteed Turbine cycle Heat Rate as 1950 kcal/kWh. The Contractor agreed to guarantee Unit Gross Heat Rate as 2239.77 kcal/kWh, considering (minimum) 99.5% piping efficiency. However improved piping efficiency shall be considered later based on the actual Main steam parameters measured during PG Test. Formula to be used for calculating piping efficiency shall be  $\{ (1 - (i_B - i_T)/i_B) \times 100 \}$ , where  $i_B$ ,  $i_T$  are values of enthalpy of main steam at Boiler outlet & Turbine inlet respectively. Contractor indicated that piping loss is not considered on BE calculation. The Unit gross heat rate shall be calculated by the formula,  $UHR = THR/BE/PE$ .



22.9.2 After satisfactory completion of the Reliability Run Test, the Performance Guarantee Test shall be conducted on the Plant and Equipment. The duration of the Performance Guarantee Test of the Plant and Equipment at the rated capacity shall be decided by the Owner on the basis of the Manuals provided by the Contractor. However, a stability period of 2 (two) hours before commencement of Performance Guarantee Test and 2 (two) hours test period followed by another 2 (two) hours stable period shall be maintained. Performance Guarantee Test shall be conducted within 30 (thirty) days of intimation from the Contractor about the readiness for conducting Performance Guarantee Test and within 90 (ninety) days of successful completion of Reliability Run Test.

22.9.3 All the tests shall be binding on both the Owner and the Contractor to determine the Plant and Equipment with the Performance Guaranteed Values.

22.9.4 The tests shall be conducted at the specified load conditions or as near the specified conditions as practicable. The suitable correction curves mutually agreed by the Owner and the Contractor shall be used.

22.9.5 Any special equipment, tools and tackles required for the successful completion of the Performance Guarantee Tests shall be provided by the Contractor free of cost.

22.9.6 Should the results of these tests show any decrease from guaranteed values, the Owner shall intimate the Contractor and the Contractor shall replace or repair such Item of the Plant and Equipment as required to bring it to meet the guarantees. In such cases, the Performance Guarantee Tests shall be repeated within 1 (one) month from the date on which the Unit/s is made ready again for tests.

22.9.7 The provisions outlined in the ASME performance test codes or other International and Indian approved equivalents shall generally be used as a guide for all the above test procedures unless specified otherwise in the Technical Specification.

22.9.8 In the event each of the Unit is capable of conducting the Reliability Run or Performance Guarantee Test, but the Contractor is unable to perform the test due to the reasons not attributable to the Contractor, the portion of the Contract

Price due upon Reliability Run or Performance Guarantee Test of the Unit shall be paid to the Contractor not later than 2 (two) months after the date upon which it was otherwise available for a Reliability Run or a Performance Guarantee Test.

## **22.10 Final Acceptance**

22.10.1 On successful completion of the Acceptance Tests as specified in Article 22 herein above the Owner shall give the Contractor a Final Acceptance Certificate indicating the date from which the Plant and Equipment or Unit/s thereof has been successfully Commissioned.

22.10.2 On conducting the Performance Guarantee Test, if it is established by the Owner as per contract guarantees that each Item, Unit and the Complete Plant is performing as specified in the Technical Specifications, the Owner shall issue to the Contractor a Final Acceptance Certificate

22.10.3 Such a Final Acceptance Certificate shall be given within 30 (thirty) days after satisfactory completion of the Performance Guarantee Test and shall not be unreasonably withheld nor will the Owner delay the issuance thereof on account of minor omissions or defects which do not affect the safe and reliable operation and/or cause any risk to the Plant and Equipment. The Final Acceptance Certificate shall, however, not relieve the Contractor of any of his obligations which otherwise survive by the terms and conditions of the Contract.

## **23.0 LIQUIDATED DAMAGES**

### **23.1 Liquidated Damages for Delay/ (Delay Liquidated Damages)**

23.1.1 All the Works shall be started and completed in accordance with the Project Schedule as per Article 4.14

23.1.2 Subject to Article 4.14, no necessity for an extension of time is anticipated, but if untoward or extraordinary circumstances arise beyond the control of the Contractor, Owner should entitle the Contractor to a reasonable extension of time, such extension may be granted but shall not operate to relieve the Contractor of any of the Contractor's obligations under the Contract.

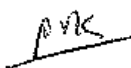
23.1.3 The Contractor shall promptly notify the Owner any event of conditions which might delay the completion of Works in accordance with the Project Schedule and the steps being taken to remedy such situation.

23.1.4 The time stipulated in the Project Schedule for the completion of the Reliability Run Test shall be deemed to be the essence of the Contract. In the event, the Contractor fails to complete the Reliability Run Test of the Unit and/or the Plant and Equipment, as the case may be, within the time period specified in it, it shall be viewed seriously and the Contractor shall be bound to pay the Owner Liquidated Damages as stated herein. The Owner may, without prejudice to any method of recovery, deduct the amount for such damages from any amounts due or which may become due to the Contractor. In the event any extension of time is granted by the Owner, in writing, for the Reliability Run Test according to the provision of 22.8 above, the Liquidated Damages shall be applicable for any further delay beyond such extended period.

23.1.5 If the Contractor fails to achieve Reliability Run Test of the Unit/s within the time period specified within Guaranteed Completion Date due to reasons attributable to the Contractor, the Owner shall levy Liquidated Damages and not as a penalty, equivalent to 0.5% (Zero point five percent) of Unit Price (excluding taxes and duties) per week (7 days) of delay or part thereof of each Unit subject to the maximum 10% of the Unit Price (excluding taxes and duties).

23.1.6 The provision of Liquidated Damages as stipulated above or wherever stipulated is to be viewed in strict sense as any delay in executing the Works as stipulated will result in considerable cost overrun for the Owner, and as such these Articles will be a deterrent to the Contractor from delays being caused. Accordingly, the Liquidated Damages would be levied by the Owner and become applicable once the delay on the part of Contractor has been established.

23.1.7 The payment or deduction of any sums under the provisions of this Article shall not relieve the Contractor from the obligations to complete the Works or from the other obligations the Contractor has to complete the Works or from the other obligations the Contractor has under the Contract of providing supervision during erection, testing and commissioning.



23.1.8 For the purpose of deciding the amount of the Liquidated Damages on the Contract, the Contract Price shall be considered. Further, Liquidated Damages for each Unit shall be levied separately.

## 23.2 Liquidated Damages for Poor Performance/Performance Liquidated Damages

23.2.1 The Contractor shall furnish Performance Guaranteed Values in accordance with Sub-Article 23.2.2. These guarantees shall be met by the Contractor.

23.2.2 The Liquidated Damages for not meeting the Performance Guaranteed Values during the Performance Guarantee Tests shall be assessed and recovered from the Contractor as under.

### Liquidated damages towards shortfall in Performance Parameters:

Sr. No.	Variation Factor	Liquidated Damages for shortfall in performance
1.	Unit GROSS HEAT RATE:- Unit gross heat rate in kcal / kWh at rated steam parameters & 0.1 ata as exhaust pressure, with zero percent make up, at TMCR condition and at reference ambient parameters as per Technical Specifications	Unit Gross Heat rate – INR 1683386.74 per kcal / kWh or part thereof of increase in heat rate from guaranteed value.
2.	Total auxiliary power consumption of all auxiliaries at TMCR condition (%)	INR 8767.64 per kW (or part thereof) of increase in guaranteed value.
3.	Unit Gross electrical power output at Generator terminals (MW)	INR 8767.64 for every kW or part thereof by which output determined during the tests, falls short of guaranteed rated output
4.	Each Boiler steaming capacity at BMCR condition (tph)	INR 252508.01 for each one tonne/hr. or part thereof decrease in steam generating capacity.

Sr. No.	Variation Factor	Liquidated Damages for shortfall in performance
5.	Unburnt Carbon in fly ash by weight (%)	<p>INR1753527.89 for every 1% ( or part thereof) increase of unburnt Carbon in fly ash beyond the guaranteed value.</p> <p>For Ex. Guaranteed value is 1.5%. Actual value is 1.9%.</p> <p>LD value shall be = <math>(1.9-1.5) \times \text{INR } 1753527.89 = \text{INR } 701411.16</math></p>

The Performance Guarantee test shall be conducted separately for each Unit and also for the first three Units together and the subsequent three Units together for measuring the Gross Guaranteed electrical power output at Generator terminals for the respective three Units (MW) and corresponding guaranteed auxiliary power consumption.

23.2.3 The aggregate liability under performance liquidated damages shall not exceed 10% of the Contract Price (excluding taxes & duties).

23.2.4 The PG tests shall be witnessed & the results shall be approved by Owner's engineers.

#### 23.2.5 Noise Level Guarantees

The Contractor shall guarantee the noise level of any equipment in the Power Plant not to exceed the limits specified below, unless otherwise indicated elsewhere in the tender specifications.

Criterion	Guaranteed Value
Noise Pressure Level	Average 85 dB(A) at 1m distance measured at 1.5m above ground in a free field condition

No Liquidated damages/Rejection shall be applied on the increase in the Noise level beyond guaranteed values. Contractor shall take necessary measures and to attenuate the noise levels within the limits specified.





23.2.6 The Liquidated Damages indicated above are in addition to the Liquidated Damages as stipulated in Article 23.1. The Liquidated Damages indicated above shall be levied for each Unit separately.

The overall cap for performance liquidated damages shall be 10% of basic contract price (excluding taxes and duties)

The overall aggregate liability under the Contract for delay in completion and performance liquidated damages shall not exceed 17.5% of the Contract Price (excluding taxes and duties).

23.2.7. If the performance shortfall is such that the shortfall exceeds Rejection Criteria below in Article 24.2, then the Owner will be entitled at the Owner's own discretion to reject the Item, Unit and/or the entire Plant and Equipment as the case may be, terminate the Contract and recover from the Contractor any loss the Owner has suffered.

### **23.3 Set-off; Payment of Liquidated Damages**

Owner, whether original or assignee, shall at Owner's discretion, (a) subject to set-off against any undisputed amount that is due and owing by Owner to Contractor, though running bills and/or (b) liquidate the Performance Bank Guarantee. The Contractor shall replace the Performance Bank Guarantee for the required quantum under Article 8.7 for maintaining the Bank Guarantee during the Warranty period.

## **24. REJECTION OF SERVICES**

24.1 If Contractor fails to demonstrate to the Owner, the Performance Guaranteed Values, subject to the tolerance(s)/limits agreed hereinbelow, and as is recorded during the first PG test carried out as per Annexure A Clause No. 6.00.00 of the Technical Specification/specifications, the Contractor shall be given a further period of 30 days subsequent to the first PG test to make corrections and conduct any retest. In the event of failure of the Contractor to demonstrate the performance parameters even during such re-tests, the particular Services under the Scope of Work will stand rejected. In such case, the said Services could not be rectified,

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within the reasonable time, the Contractor shall re-do the such Services at no extra cost basis to the Owner.

#### **24.2 Rejection Criteria of On-shore Services of the Power Plant:**

The Owner may reject complete or any part of the on-shore Services under any of the following circumstances:

- a) **Output:** Shortfall in excess of 5% in guaranteed output (of all major equipments and complete Power Plant)
- b) **Auxiliary power Consumption:** In excess of 5% over the guaranteed auxiliary power consumption value.
- c) **Unit Gross Heat Rate:** In excess of 5% over the guaranteed value.
- d) **Emission Level:** In excess of guaranteed Emission level value.
- e) **Unburnt Carbon in fly ash % by weight:** in excess of 2%

#### **24.3 Payment after Rejection**

If the Owner exercises the option to reject the Services on the basis of the rejection criteria as stated above then the Owner shall be entitled to all the payments made by Owner to Contractor in reference to the Contract and other allied payments related to the Contract.

### **25. FORCE MAJEURE**

#### **25.1 Definition of "Force Majeure"**

(A) "Force Majeure" shall mean any event or circumstance or combination of events or circumstances beyond the reasonable control of Contractor and Owner which, or the effects of which, materially and adversely affects the performance by that Party of its obligations under or pursuant to the Contract.



- (vi) air crash or ship wreck.

(C) Notwithstanding the foregoing, Force Majeure shall expressly not include conditions caused by the negligence or wrongful acts of the Party claiming Force Majeure. Force Majeure shall also expressly not include the following conditions, except and to the extent that the following conditions result directly from Force Majeure:

- (i) late delivery to Owner of Services for machinery, Equipment, materials, spare parts or consumables;
- (ii) a delay in the performance of Contractor to comply with, and complete, the obligations specified in the Contract in a timely manner;
- (iii) normal wear and tear or random flaws in materials and Equipment or breakdowns in Equipment; and
- (iv) the ability of a Party to pay any monies due pursuant to the Contract.

## 25.2 Procedure for Force Majeure

- (a) If by reason of Force Majeure a Party is wholly or partially unable to carry out its obligations under the Contract, the affected Party shall (a) give the other Party notice of such Force Majeure as soon as reasonably practicable, and (b) give the other Party a second notice, describing the Force Majeure in reasonable detail and, to the extent that can be reasonably determined at the time of the second notice, providing an evaluation of the obligations affected (including the anticipated effect on critical activities (if the Force Majeure is ongoing) or actual effect (if the Force Majeure has ended)), a preliminary estimate of the period of time that the affected Party will be unable to perform the obligations, and other relevant matters as soon as practicable, but in any event, not later than the later of (i) seven (7) Business Days after the initial notice of the occurrence of the Force Majeure is given by the affected Party, or (ii) twenty-four (24) hours after the resumption of any means of providing such notice between the Contractor and the Owner. When appropriate or when reasonably requested to do so by the other Party, the affected Party shall provide further notices to the other Party more fully describing the Force Majeure and its cause(s) and providing or

updating information relating to the efforts of the affected Party to avoid and/or to mitigate the effect(s) thereof and estimate, to the extent practicable, the time that the affected Party reasonably expects it will be unable to carry out any of its affected obligations due to the Force Majeure. The affected Party shall also provide notice to the other Party of (A) the cessation of the Force Majeure and (B) the affected Party's ability to recommence performance of its obligations under the Contract by reason of the cessation of the Force Majeure as soon as possible, but in no event later than seven (7) Business Days after the occurrence of each of (A) and (B) above.

- (b) The affected Party shall use all commercially reasonable efforts to mitigate the effects of Force Majeure, including (A) minimizing Project Schedule delays, (B) limiting/reducing property damage to the Power Plant, and (C) minimizing the Parties' cost of compliance with the terms and conditions set forth in the Contract.

### 25.3 Failure to Provide Notice

Failure by the affected Party to give written notice of a Force Majeure to the other Party within the period required by Article 25.2 shall not prevent the affected Party from giving such notice at a later time; provided, however, that in such case the affected Party shall not be excused pursuant to Article 25.4 for any failure or delay in complying with its obligations under or pursuant to the Contract until such notice has been given. If said notice is given within the period required by Article 25.2(a), the affected Party shall be excused for such failure or delay pursuant to Article 25.4 from the date of commencement of the relevant Force Majeure.

### 25.4 Excused Performance

So long as the affected Party has at all times since the occurrence of Force Majeure complied with the obligations of Article 25.2(b) and continues to so comply, then the affected Party shall not be liable for any failure or delay in performing its obligations under or pursuant to the Contract, and any performance deadline that the affected Party is obligated to meet under the Contract, including the Guaranteed Completion Date shall be extended, one (1) day for a disruption / delay of one (1) day; provided that:

- (a) The period of non-performance or Guaranteed Completion Date extension shall be of no greater scope and of no longer duration than is required due to the Force Majeure, including time for demobilization, remobilization.
- (b) Unless otherwise agreed to by Owner in writing, in cases where Contractor is the affected Party, Contractor shall continue to perform the Works in good faith and with due diligence and use all reasonable efforts to (i) limit and remedy its inability to perform during and after the Force Majeure, and (ii) to complete the Scope of Works in accordance with the Project Schedule, as revised.
- (c) It is the duty of the claiming Party to demonstrate through reasonable

## 26 EVENTS OF DEFAULT; TERMINATION; SUSPENSION

### 26.1 Contractor Event of Default

A "Contractor Event of Default" under the Contract shall be deemed to exist upon the occurrence of any one or more of the following events:

- (a) Failure by Contractor to (i) make payment of any undisputed amounts due to Owner under the Contract, or (ii) timely submission of a Advance Bank Guarantee as required for Performance Security under the Contract;
- (b) Contractor is in breach of any material provision of the Contract, other than a breach constituting a Contractor Event of Default under subsection (a) immediately above, including any violation of any Requirement, if (i) such breach continues for a period of thirty (30) Days after notice of such breach or (ii) if Contractor shall commence within such thirty (30) Days and shall thereafter proceed with all due diligence to cure such breach, such breach is not cured within such longer period as shall be necessary for Contractor to cure the same with all due diligence, such longer period not to exceed forty five (45) Days after notice;
- (c) Contractor files, or consent to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy, for liquidation or to take advantage of any bankruptcy or insolvency law of any jurisdiction; or Contractor makes an assignment for the benefit of its creditors' or Contractor consents to the appointment of a custodian, receiver, trustee, or other officer with similar powers, for substantially all its property, or be adjudicated insolvent; or an order for relief shall be entered against Contractor in any case or proceeding for liquidation or reorganization or otherwise to take advantage of any bankruptcy or insolvency law of any jurisdiction, or ordering the dissolution, winding up or liquidation of all or any part of Contractor's property; or any petition for any such relief is filed against Contractor; or any reerection or amalgamation where by the resultant entity does not assume the obligations under the Contract;



- (d) Failure to achieve the dates for completion of successful Reliability Run Test and Performance Guarantee Tests and guarantee parameters within 150 days from respective stipulated completion date;
- (e) Contractor abandons the Contract and such abandonment on an aggregate basis exceeds sixty (60) Days.

## 26.2 Owner Event of Default

A "Owner Event of Default" under the Contract shall be deemed to exist upon the occurrence of any one or more of the following events:

- (a) Failure by Owner to (i) make payment of any undisputed amounts due to Contractor under the Contract, or failure continues for a period of thirty (30) Days after written notice of such nonpayment from Contractor to Owner provided, any amount disputed by Owner must be disputed in good faith;
- (b) Owner is in breach of any material provision of the Contract, other than a breach constituting an Owner Event of Default under subsection (a) immediately above, (i) if such breach continues for a period of thirty (30) Days after notice of such breach to Owner and Lender or (ii) if Owner, or Lender shall commence within such thirty (30) Days and shall thereafter proceed with all due diligence to cure such breach, such breach is not cured within such longer period as shall be necessary for such Person to cure the same with all due diligence, such longer period not to exceed forty five (45) Days after notice; or
- (c) Owner files, or consents to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy, for liquidation or to take advantage of any bankruptcy or insolvency law of any jurisdiction; or Owner consents to the appointment of a custodian, receiver, trustee, or other officer with similar powers, for substantially all its property, or be adjudicated insolvent; or an order for relief shall be entered against Owner in any case or proceeding for liquidation or reorganization or otherwise to take advantage of any bankruptcy or insolvency law of any jurisdiction, or ordering the dissolution, winding up or liquidation of all or any part of Owner's property; or any petition for any such relief is filed

against Owner or any reerection or amalgamation where by the resultant entity does not assume the obligations under the Contract.

### 26.3 Remedies for Breach

- (a) Subject to Articles 26.1, upon the occurrence and during the continuation of any Contractor Event of Default, Owner may give written notice to Contractor specifying such Contractor Event of Default; and Owner shall have the right, at Owner's election, to terminate the Contract and/or, subject to Article 27, sue Contractor for damages and/or injunctive or other equitable relief arising in connection with such Contractor Event of Default or pursue any other remedy to which it is entitled under either law or equity.
- (b) Upon the occurrence and during the continuation of any Owner Event of Default, Contractor may give written notice to Owner, specifying such Owner Event of Default; and thereafter Contractor shall have the right, at Contractor's election, to terminate the Contract and/or, subject to Article 27, sue Owner for damages and/or injunctive or other equitable relief arising in connection with such Owner Event of Default or pursue any other remedy to which it is entitled under either law or equity. Notwithstanding the foregoing, Contractor shall pursue no remedy against Owner without first (i) giving Lender a second notice (in addition to that set forth in Article 26.2) specifying the nature of the Owner Event of Default, and (ii) allowing Lender sixty (60) Days after the receipt of said second notice in which to either cure the Owner Event of Default or assume Owner's obligations under the Contract. If Lender assumes the Contract, Contractor shall treat the assumption as if it were a fresh notice to Owner under Article 26.2, shall give the assuming party all of Owner's rights to cure under such Article 26.2 and shall perform all obligations herein for the benefit of the assuming party as if for Owner. Without the prejudice to Article 26.4, despite the existence of a Owner Event of Default, Contractor shall expeditiously continue with its performance of the Scope of Works until such time as it is allowed to exercise its remedies under this paragraph.
- (c) If Owner elects to terminate the Contract pursuant to a Contractor Event of Default, Contractor shall provide Owner and Lender, at Contractor's expense, with the right to continue to use any and all patented and/or

proprietary information (subject to reasonable proprietary restrictions, including, without limitations, confidentiality agreements and agreements which limit the use of the information to the completion of the Power Plant) reasonably necessary to complete and/or operate the Power Plant; provided that such information (i) shall be used only for purposes of completing and/or operating the Power Plant and not for any other purpose, and (ii) shall not be distributed to any Persons other than those who need to know such information in order to complete and/or operate the Power Plant. Owner shall be required to mitigate reasonably the cost for completion of such Works but may make such expenditures as in Owner's reasonable judgment will best accomplish the timely completion of the Power Plant; provided, Owner shall not be required or expected to mitigate any such costs by breaching, terminating, repudiating or renegotiating any agreement entered into between Contractor and any Sub Contractor (including, without limitation, any Sub Contractor that is an Affiliate of Owner). Contractor shall be entitled to receive any further payments under the Contract only as provided in Article 26.3(f).

- (d) If Owner elects to terminate the Contract pursuant to a Contractor Event of Default, the Owner shall, without prejudice to any other right he may have under the Contract, shall be free to use the equipment of the Contractor for the purpose of completion of Work (without being responsible for any wear and tear to the equipment), which the Contractor shall allow without any hindrance and (ii) if the termination be due to reason(s) mentioned in Article 26.1(d), be entitled to have the RRT and/or PGT performed by any reliable third party of its choice, recover the costs thereof from the Contractor, bind the Contractor by the results achieved thereby and consider the same for the purpose of levy of Delay Liquidated Damages and Performance Liquidated Damages, as applicable, pursuant to Article 23.2.
- (e) If Owner elects to terminate the Contract upon a Contractor Event of Default, Contractor shall, at Owner's request and at Contractor's expense, perform the following services, in addition to those required under Article 26.3(c) and (d), relating to the Works so affected:



- (i) deliver to Owner all information as may be requested by Owner that is reasonably necessary for the completion of the Works and/or, to the extent such information was to be provided as part of the Works, reasonably necessary to the operation of the Power Plant, and
  - (ii) supply any proprietary components requested by Owner and reasonably necessary for the completion and operation of the Power Plant.
  - (iii) compensate the Owner for all financial losses suffered, other than consequential damages, limited to value of the contract, Subject to Article 26.3(g), if Owner terminates the Contract pursuant to a Contractor Event of Default, Owner shall pay to Contractor as a "Termination Payment under Contractor Default".
  - (iv) final payment of an amount equal to the value of that portion of the Services rendered at Site prior to termination to the extent not already paid for by Owner.
- (f) The amounts payable to the Contractor on the above Services shall be upon Contractor providing adequate proof of documentation relating to delivery of the said items at the Site. In any case of disagreement on the specific price and amount of completion / Fitness of use of such delivered items, the certification by Lenders Engineer shall be taken as conclusive subject to and in accordance with the contract. Such payment shall be the sole and exclusive liability of Owner, and Contractor's sole remaining compensation and reimbursement under the Contract. The Owner shall be entitled to retain payments to the Contractor and apply the balance which may otherwise be due to the Contractor for completion of the Works. The Owner shall be entitled to recover any excess amount expended, over and above the balance amount, on the execution of Works. Such excess amount shall be over and above the Liquidated Damages as per terms of the Contract. The Contractor shall make all the payments due to the Owner within thirty (30) days after Owner gives Contractor notice of the amounts due from the Contractor.

- (g) If Owner terminates the Contract pursuant to a Contractor Event of Default, then as soon as practicable after Owner has received all substituted equipment and materials that were intended to be delivered under the Contract as part of the Works, Owner shall determine the total reasonable and necessary expense incurred and accrued in completing the Works, including all amounts charged by any substitute provider of equipment and/or material to finish the Works and additional reasonable and necessary overhead incurred and accrued by Owner to effect such takeover and to complete the Scope of Works. If the total reasonable and necessary expenses incurred by Owner in completing the Works exceeds the balance of the Contract Price unpaid at the time of the Contractor Event of Default, then Contractor shall be liable for and shall pay to Owner the amount of such excess within thirty (30) Days following receipt of Owner's demand for such payment; provided, that Contractor's liability shall be subject to (and limited by) Article 18.3.
- (h) If Contractor terminates the Contract pursuant to a Owner Event of Default, Owner shall pay to Contractor as a final payment an amount equal to the sum of (i) amount payable for any Work finished with price specified in the Contract and (ii) expenses incurred in relation to the Services ordered for the Project, rendered to the Owner; (iii) cost for the Contractor to demobilize from the site the temporary facilities and send them back home; (iv) cost for demobilization of personnel employed solely for the Project at the date of termination, provided however, that the title of the Services will be passed on to the Owner. The Contractor shall raise a substantiated invoice (subject to satisfaction of the Owner, who may choose to have the same certified by the Lenders Engineer and whose certification subject to and in accordance with the contract shall be final of any such Equipment, as "Termination Payment under Owner's Default".
- (i) With respect to any Owner Event of Default or Contractor Event of Default arising out of a late payment, besides the due amount, the remedy for such Event of Default shall be the interest on the overdue amount accruing at the stipulated Rate from and after the day the payment became overdue until the day it is paid.

#### 26.4 Termination by Contractor under Special Circumstances

- (a) Rights. If, and only if, Owner abandons or suspends the Contract for a period more than 90 days as per Article 26.7, Contractor may terminate the Contract in whole or in part at any time by written notice thereof to Owner. Upon such notice, the Contractor shall, unless the notice mentions otherwise: (i) immediately discontinue the Works on the date and to the extent specified in such notice; (ii) place no further orders or subcontracts for Works; (iii) promptly make every reasonable effort to procure cancellation upon terms reasonably satisfactory to Owner of all orders, subcontracts and rental agreements to the extent they relate to the performance of the Scope of Works that is discontinued; and (iv) thereafter execute only that portion of the Scope of Works as may be necessary to preserve and protect Scope of Works already in progress and to protect Equipment at the Site or in transit thereto.
- (b) Payments for such termination under this Article 26.5 shall be made to Contractor within Forty Five (45) Days after Owner's receipt of a substantiated invoice (subject to satisfaction of the Owner, who may choose to have the same certified by the Lenders Engineer and whose certification subject to and in accordance with the contract shall be final of any such Equipment, as "Termination Payment under Special Circumstances". The substantiated invoice will be for an amount equal to the sum of (i) amount payable for any Work finished with price specified in the Contract and (ii) expenses incurred in relation to the Services ordered for the Project, rendered to the Owner; (iii) cost for the Contractor to demobilize from the site the temporary facilities and send them back home; (iv) cost for demobilization of personnel employed solely for the Project at the date of termination, provided however, that the title of the equipment and Services will be passed on to the Owner.

#### 26.5 Termination for Owner's Convenience

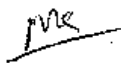
- (a) The Owner may for its own convenience terminate the Contract, in full or part any time upon 90 days notice to the Contractor specifying the details of such termination and effective date of termination. Upon such notice, Contractor shall, unless the notice mentions otherwise: (i) immediately discontinue such

part of Works on the date and to the extent specified in such notice; (ii) place no further orders or subcontracts for part of Works; (iii) promptly make every reasonable effort to procure cancellation upon terms reasonably satisfactory to Owner of such orders, subcontracts and rental agreements to the extent they relate to the performance of such Scope of Works that is terminated; and (iv) thereafter execute only that portion of the Scope of Works that is not terminated.

- (b) Payments for such termination under this Article 26.4 shall be made to Contractor within Forty Five (45) Days after Owner's receipt of a substantiated invoice (subject to satisfaction of the Owner, who shall choose the Lenders Engineer for due certification) of any such Equipment, as "Termination Payment upon Owner Convenience". The substantiated invoice will be for an amount equal to the sum of (i) amount payable for any Work finished with price specified in the Contract and (ii) expenses incurred in relation to the Services ordered for the Project, rendered to the Owner; (iii) cost for the Contractor to demobilize from the site the temporary facilities and send them back home; (iv) cost for demobilization of personnel employed solely for the Project at the date of termination, provided however, that the title of the Services will be passed on to the Owner.

#### **26.6 Termination upon Prolonged Force Majeure**

- (a) If, and only if, the Contract is terminated as per provisions of Article 26.5 Contractor shall be entitled as a final payment ("Termination Payment under Force Majeure") an amount equal to the sum of (i) amount payable for any Work finished with price specified in the Contract and (ii) expenses incurred in relation to the Services ordered for the Project, rendered to the Owner; (iii) cost for the Contractor to demobilize from the site the temporary facilities and send them back home; (iv) cost for demobilization of personnel employed solely for the Project at the date of termination, provided however, that the title of the work will be passed on to the Owner. The Contractor shall raise a substantiated invoice subject to satisfaction of the Owner, who may choose to have the same certified by the Lenders Engineer and whose certification subject to and in accordance with the contract shall be final of any such work, as "Termination Payment under Force Majeure".



- (b) Upon such termination, the Contractor shall cease and cancel all activities related to the scope.

## 26.7 Suspension of the Work

- (a) General. Owner may at any time or from time to time, and for any reason, suspend the Works or any portion thereof by giving ten (10) Business Days prior notice to Contractor (a "Suspension Notice"). Such suspension shall continue for the period (the "Suspension Period") specified in the Suspension Notice; provided, however, the aggregate duration of all Suspension Periods shall not exceed 90 Days. At any time after the effective date of the suspension, Owner may require the Contractor to resume the Works.
- (b) Extension of Time. In the case of any suspension under this Article 26.7, Guaranteed Completion Date for performance by Contractor shall be extended by one Day for each Day of the Suspension Period the Parties acknowledge that the time required for subsequent completion of the Works may exceed the number of days of suspension or delay due to Contractor's scheduling constraints and the time required for demobilization and remobilization of the Works effort.
- (c) Compensation to the Contractor. In the event that suspension is solely attributable to the Owner, any necessary and demonstrable costs incurred by the Contractor as a result of such suspension of the Works shall be paid by the Owner, provided the costs are sustained to the satisfaction of the Owner Engineer subject to and in accordance with the contract.
- (d) Suspension arising out of Contractor / Other Contractor defaults. The Owner shall not be liable and responsible for any suspension or delay arising out of default due to the Contractor, its Sub Contractors and other Contractors. No compensation shall be paid to the Contractor due to Suspension under this Article.
- (e) Suspension arising out of Owner defaults. If the Owner fails to pay to the Contractor any undisputed payment and such failure continues for 60 (sixty) days after written notice thereof has been given to the Owner by the



Contractor, then the Contractor may suspend any Works or part thereof. After the payment is made, the Contractor shall resume the Works.

- (f) Special Suspension Provisions. If a suspension is more than ninety (90) Days in duration, Owner will pay Contractor pro rata for the portion of the Works completed when the suspension was notified. In the event that production / fabrication has proceeded to the point that Contractor and Owner deems it cannot reasonably reschedule completion or the request for suspension is received less than ninety (90) Days prior to the date by which Services are rendered, the Works shall be completed, invoiced and the equipment, or the portions thereof completed, placed in storage at Owner's expense. In the event Contractor is otherwise unable to deliver the equipment when ready due to the action or inaction of Owner, Contractor shall so notify Owner and such inability to deliver shall also be subject to the above provisions.
- (g) Termination. If the suspension continues for an aggregate period exceeding 120 Days, due to reasons solely attributable to Owner, the Contract shall be terminated. Any termination under this Article 26.7 shall be handled in accordance with the procedures set forth in Article 26.4 for a termination of the Contract.

## **27. DISPUTE RESOLUTION**

### **27.1 General Provisions**

Every dispute of any kind or nature between the Parties arising out of or in connection with the Contract (each a "Dispute") shall be resolved in accordance with this Article, to the extent permitted by the laws governing the interpretation and enforcement of the Contract. All dispute resolution proceedings provided hereunder shall be conducted in the English language.

### **27.2 Referral to Senior Management**

Upon the occurrence of a Dispute, either Party may deliver a written notice to the other Party requesting that the Dispute be referred to the senior management of the Parties. Any such notice shall include the names of the senior management of the Party nominated to attempt to resolve the Dispute, and a schedule of their

availability during the twenty (20) Day period following the date of the notice. Any such notice shall be delivered within a reasonable time after the Dispute arises, but in no event shall it be delivered later than thirty (30) Days. Within seven (7) Business Days after receipt of a written notice pursuant to this Article 27.2, the other Party shall provide a written notice to the requesting Party indicating the names of the senior management of the Party nominated to attempt to resolve the Dispute, and a schedule of their availability during the remainder of the twenty (20) Days period following the date of the notice. During the remainder of the twenty (20) Days period following delivery of the notice, the nominated members of the senior management of the Parties shall meet as frequently as necessary, and shall attempt in good faith to resolve the Dispute.

### 27.3 Technical Disputes

- (a) In the event of a Dispute between the Parties that both Parties mutually agree in writing is a dispute of a technical nature (a "Technical Dispute"), then the Parties shall appoint a technical expert (the "Technical Expert"), to resolve the Technical Dispute. If the Parties are unable to agree to the appointment of the Technical Expert, then each Party shall choose an expert and the two (2) experts shall choose the Technical Expert jointly. Once appointed the Technical Expert shall (i) render his decision in writing with full reasons within thirty (30) Days after the date of his appointment, (ii) promptly fix a reasonable time and place for receiving representations, submissions, or information from the Parties, and (iii) issue directions to the Parties for the proper conduct of his determination and any hearing.

The Parties shall provide the Technical Expert with all evidence and information within their respective possession or control (i) that the Technical Expert may consider necessary for determining the Technical Dispute or (ii) that is relevant to and bears upon the matter to be determined, regardless of whether the Technical Expert or the other Party is aware of such relevant evidence or information.

- (b) Each Party may appoint such lawyers, consultants, and advisers as it feels appropriate to assist the Technical Expert in his determination and to present their respective cases, provided that the Parties shall cooperate and seek to narrow and limit the issues to be determined. If within thirty (30) Days of his

appointment the Technical Expert shall not have rendered a decision in accordance with his appointment, a new Technical Expert may (at the request of either Party) be appointed and the appointment of the existing Technical Expert shall cease for the purpose of determining the Technical Dispute, provided, that if the existing Technical Expert renders his decision in writing with full reasons prior to the appointment of a new Technical Expert, then the decision shall have effect and the proposed appointment of the new Technical Expert shall be without effect. The determination of the Technical Expert shall, except in the event of fraud or material mistake or misreading of justice, be final and binding upon the Parties. The procedure for conduct of the proceedings by the Technical Expert/Panel shall in the same manner as prescribed in case of Arbitration in Article 27.4 below. Judgment upon such determination may be entered on behalf of the prevailing Party in any court having jurisdiction thereof, and application may be made by such Party to any such court for judicial acceptance of such determination and an order of enforcement.

- (c) Each Party shall bear the costs and expenses of all lawyers, consultants, advisers, and witnesses retained by it in any Technical Dispute referred to a Technical Expert, and the costs and expenses of the Technical Expert shall be shared equally by the Parties.

#### **27.4 Arbitration**

- (a) Any Dispute that has not been resolved within twenty (20) Days of the delivery of a notice in accordance with Article 27.2, or that is not subject to resolution pursuant to Article 27.3 shall be resolved by final and binding arbitration in Singapore in accordance with UNICITRAL (United Nations Commission on International Trade law) model law on International commercial arbitration in 1985 and the UNICITRAL conciliation rules in 1980. There shall be three arbitrators, each of whom shall be neutral, independent and impartial. Either Party may make demand for arbitration in writing to the other Party, setting forth the nature of the Dispute, the amount involved, if any, the remedies sought, and the name of the arbitrator appointed by the Party demanding arbitration. The demand for arbitration shall be made within a reasonable time after the expiration of the twenty (20) Day period set forth in Article 27.2, and in no event shall it be made after forty five (45) days after the expiration of the

twenty (20) Day period set forth in Article 27.2. Within twenty (20) Days after any demand for arbitration under this Article 27.4, the other Party shall name its arbitrator, or in default thereof, such arbitrator shall be named pursuant to the Arbitration Rules. The two (2) arbitrators so selected shall name a third arbitrator within seven (7) days after selection of the second arbitrator, or, in the absence of agreement on a third arbitrator by the two (2) arbitrators so appointed, a third arbitrator shall be appointed pursuant to the Arbitration Rules. The arbitration hearing shall commence not later than seventy five (75) days after the date of the original demand under this Article 27.4. The language of the arbitration shall be English.

- (b) The award of the arbitrators shall be made not later than thirty (30) days after the date of closing of the hearing, or if oral hearings have been waived, after the date of transmitting the final statements and proof to the arbitrators; provided, however, that in no event shall any award be made later than one hundred and twenty (120) Days after the date of the original demand for arbitration under this Article 27.4. In the event the arbitrators find a breach of the terms and conditions of the Contract to have occurred and be continuing, the arbitrators shall have express authority to order the payment of damages in accordance with the provisions of the Contract.
- (c) Any payment of damages ordered by the arbitrators shall bear interest at the Stipulated Rate, which interest shall accrue daily, from the date as of which such damages are calculated to the date on which the Party entitled thereto receives payment thereof in full. The award of the arbitrators shall be final, except as otherwise provided by Applicable Law.
- (d) Judgment upon such award may be entered on behalf of the prevailing Party in any court having jurisdiction thereof, and application may be made by such Party to any such court for judicial acceptance of such award and an order of enforcement. The expenses of the arbitration, including attorney's fees, shall be borne by the unsuccessful Party unless the arbitrators by their award shall otherwise provide.
- (e) Contractor and Owner each hereby consents to the submission of any dispute for settlement by final and binding arbitration in accordance with this Article.





#### **27.5 Continuance of Work**

Notwithstanding any action, arbitration, Dispute, claim or other controversy (a "Claim") between Contractor and Owner or between Contractor and any Sub Contractor, Contractor and Owner shall each continue to perform their respective obligations under the Contract in the manner provided herein and shall have no right to suspend or delay performance thereof on account of such Claim.

#### **27.6 Survival of Provisions / Limitation on Actions**

The provisions of this Article shall survive the termination or expiration of the Contract. No Party shall institute any action or arbitration under this Article, unless filed within two (2) years after the event giving rise to the action or arbitration.

### **28. GENERAL PROVISIONS**

#### **28.1 Waiver**

The failure of either Party to insist in any one or more instances upon strict performance of any provisions of the Contract or the waiver with respect to any default or any other matter hereunder, shall not be construed as a waiver with respect to any subsequent performance, default or matter. No waiver of any of the terms or conditions hereof shall be valid or binding unless made in writing and duly executed by both the parties.

#### **28.2 Independent Contractor**

The Parties are independent. The Contractor shall perform and execute the provisions of the Contract as an independent Contractor to Owner and shall not be an agent, representative or employee of Owner. Subject to the terms of the Contract, the Contractor shall be solely responsible for all methods, techniques, sequences, quality procedures, and safety programs applicable to the performance of the Scope of Works.



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Further, the Contract shall not be interpreted or construed to create an association, joint venture, or partnership between the Parties or to impose any partnership obligation or liability upon either Party. Neither Party shall have any right, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party, unless expressly agreed otherwise.

### **28.3 Survival**

All provisions of the Contract that are to come into or continue in force and effect after the expiration or other termination of the Contract and the consummation of the transactions contemplated hereby, shall remain in effect and be enforceable following such expiration, termination or consummation. All statements as to factual matters contained in any certification, Exhibit or instrument delivered by or on behalf of a Party hereto or in connection with the transactions contemplated hereby shall be deemed to be a statement of such Party as of the date of such certificate, Exhibit, or instrument.

### **28.4 Language**

All notices, demands, requests, statements, instruments, certificates, drawings, documents or other communications given, delivered or made by, or on behalf of, either Party to the other under or in connection with the Contract shall be in English. The Contractor shall be responsible for the accuracy of the translation of any document submitted by it to the Owner.

### **28.5 Severability**

Any provision hereof which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof and without affecting the validity or enforceability of any provision in any other jurisdiction.

### **28.6 Entire Contract**

Entire Contract shall mean the Contract, now exist and may be hereafter modified by mutual written consent of the Parties.

#### **28.7 Amendments**

No amendments, supplements or modifications of the Contract shall be valid unless (a) evidenced in writing and signed by duly authorized representatives of both Parties or (b) when by way of a Variation Order by the Owner in terms of Article 13.

#### **28.8 Third Parties**

Except as expressly provided, the Contract and each and every provision hereof is for the exclusive benefit of the Owner, permitted assigns and the Contractor as applicable, and not for the benefit of any third party (including any sub-Contractors)

#### **28.9 Headings**

All the headings or captions are merely for convenience and are not part of the Contract and shall not in any way modify or affect the provisions of the Contract.

#### **28.10 Site**

All the Items of the Scope of Work shall be rendered at:

WPCPL  
Nariyara Village  
Janjgir-Champa District  
Chhattisgarh State, India

#### **28.11 Governing Law & Jurisdiction**

The Contract shall be governed by and construed in accordance with, the Laws of India. Subject to the provisions of Articles 27, the Owner and the Contractor each hereby submits to the jurisdiction of the relevant courts in India as per Law and for the purposes of all legal proceedings arising out of or relating to the Contract or the transactions contemplated hereby. Owner and Contractor each

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hereby irrevocably waives, to the fullest extent permitted by the laws governing the interpretation and enforcement of the Contract, any objection which it may now or hereafter have to the laying of the venue of any such proceeding brought in such a court and any claim that such proceeding brought in such a court has been brought in an inconvenient forum. The Owner and the Contractor each hereby irrevocably consents to the service of any and all process in any such action or proceeding by a mailing of copies of such process to it at its address specified in the Contract.

**28.12 Counterparts**

The Parties hereto may sign the Contract in any number of counterparts, all of which taken together shall constitute one and the same instrument.

**28.13 Attorneys' Fees**

If the Parties resort to arbitration, or legal action for the enforcement or interpretation of the Contract or for damages on account of a breach hereof, the succeeding Party in any such arbitration or action shall be entitled to recover all costs and attorneys' fees incurred therein from the losing Party.

**28.14 Binding Effect**

The Contract shall be binding upon and inure to the benefit of the Parties hereto and their respective permitted successors and permitted assigns.

**28.15 Specific Performance**

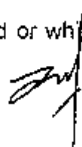
Without first having to proceed to dispute resolution pursuant to Article 28 each Party shall not be entitled to seek a decree compelling specific performance with respect to any actual or threatened breach of, any material covenant or obligation of the other Party under the Contract.

**28.16 Notices**

(a) Unless explicitly stated to the contrary elsewhere herein, notices, demands, approvals, disapprovals or requests required or which may be given hereunder

  
Onshore Services Contract

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to the respective Parties shall be in writing in the English language and either (i) delivered personally, (ii) sent by facsimile or telex with confirmed answerback, (iii) sent by registered or certified mail, return receipt requested, or (iv) sent by recognized overnight courier; addressed as follows:

**Owner Contact Persons:**

Company: Wardha Power Company Private Limited

Name: G.P.Rao

Position: Project Head

Phone: 0091 40 23559922

Fax: 0091 40 23559930

Mobile: 0091 9959911039

E-mail: gpao@ksk.co.in

**Contractor Contact Person:**

Company: SEPCO Electric Power Construction Corporation

Name: Mr. Peng Lianrong

Position: Project Manager

Phone: 0086 531 88623175

Fax: 0086 531 88609977

Mobile: 0086 13964146717

E-mail: wpcpls-dcc@sepcos.net

- (b) Notices shall be deemed delivered when actually received by the Party to whom they are addressed. Each Party shall have the right to change the place to which notice shall be sent or delivered by notice to the other party in compliance with this Article.

**28.17 Rights / Ownership on the accruing Intellectual Property Right**

The whole right title and interest in and to any designs, copyrights, patents, trademarks, technology, know-how and other intellectual property developed by the Owner post receipt of the Services from the Contractor shall remain with the Owner only and the Contractor has no right to claim any interest/share therein.



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#### **28.18 Convenience of Public**

All operations necessary for the execution of the Works and for the construction of any temporary Works shall so far as compliance with the requirements of the Contract permits be carried on so as not to interfere unnecessarily or improperly with the public convenience or the access to use and occupation of public or private roads and foot paths or to properties whether in the possession of the Owner or of any other person and the Contractor shall save harmless and indemnify the Owner in respect of all claims, demands, proceedings, Damages, costs, charges and expenses whatsoever arising out of or in relation to any such matter.

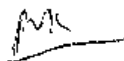
28.19 The Contractor shall provide all necessary fencing and lights required to protect the public from accident and shall also be bound to bear the expenses of defence of every suit, action or other legal proceedings at law that may be brought by any person for injury sustained owing to neglect of the above precautions and to pay Damages and costs which may be awarded in any such suit, action or proceedings to any such persons or which may with the consent of the contract be paid in compromising any claim by any such person.

28.20 The Contractor shall bear the expenses of defending any action or other legal proceedings that may be brought by any person for injury sustained by him owing to neglect of precautions to prevent the spread of fire and it shall also pay any Damages and cost that may be awarded by the court in consequences.

#### **28.21 Right to Delete and/or Relax Specification Articles**

The Owner's Engineer can delete and/or relax any of the Articles of the Technical Specifications and/or other contract document and the cost tendered shall be suitably reduced by the Engineer with the mutual discussion and agreement based on the actual financial implications due to such deletions and/or relaxations. Such deletion / relaxation shall be finalised before the commencement of the activity.

#### **28.22 Temporary Works**



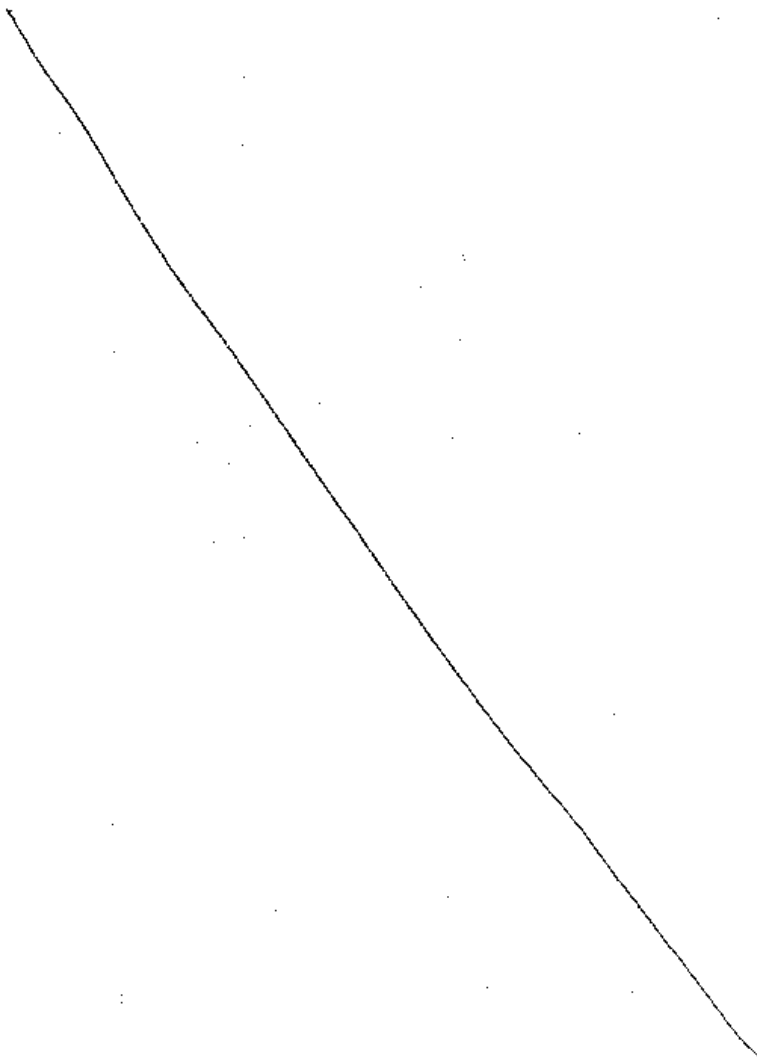
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The Contractor at its own cost and inclusive of all materials, labour, supervision and other facilities, shall provide all necessary temporary works required for proper execution of the Works. The layout and detail of such temporary works shall have the prior approval of the Engineer, but the Contractor shall be responsible for proper strength and safety of the same. All temporary works shall be so constructed as not to interfere with any permanent work of other agencies.

PVK


SNK



IN WITNESS WHEREOF, the undersigned have each caused the Contract to be duly executed and delivered as of the date signed below:

**WARDHA POWER COMPANY PRIVATE  
LIMITED**

**SEPCO ELECTRIC POWER CONSTRUCTION  
CORPORATION**



S. Kishore  
Director



Wang Yifei  
President

duly authorised representative for and  
on behalf of WARDHA POWER  
COMPANY PRIVATE LIMITED

duly authorised representative for and  
on behalf of SEPCO ELECTRIC POWER  
CONSTRUCTION CORPORATION

**Witness:**

1)



G.P. Rao  
Project Head

**Witness:**

1)



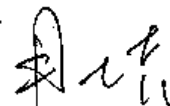
Hou Zuoxin  
Chairman (SEPCO I)

2)



Anil Kumar Kuttu  
Director

2)



Yin Shijie  
Dy. General Manager

*PVS*

**SCHEDULE 1**  
**Cash Flow**  
**(Total 2 pages)**

MONTH	Cumulative Percentages of the Contract Price
0	0.00%
1	0.00%
2	0.00%
3	0.00%
4	0.00%
5	0.00%
6	0.00%
7	0.00%
8	0.00%
9	10.00%
10	10.00%
11	10.00%
12	10.00%
13	10.00%
14	10.00%
15	10.00%
16	11.67%
17	11.67%
18	11.67%
19	11.67%
20	13.33%
21	13.33%
22	13.33%
23	15.00%
24	16.67%
25	16.67%
26	16.67%
27	20.00%
28	21.67%
29	21.67%
30	21.67%

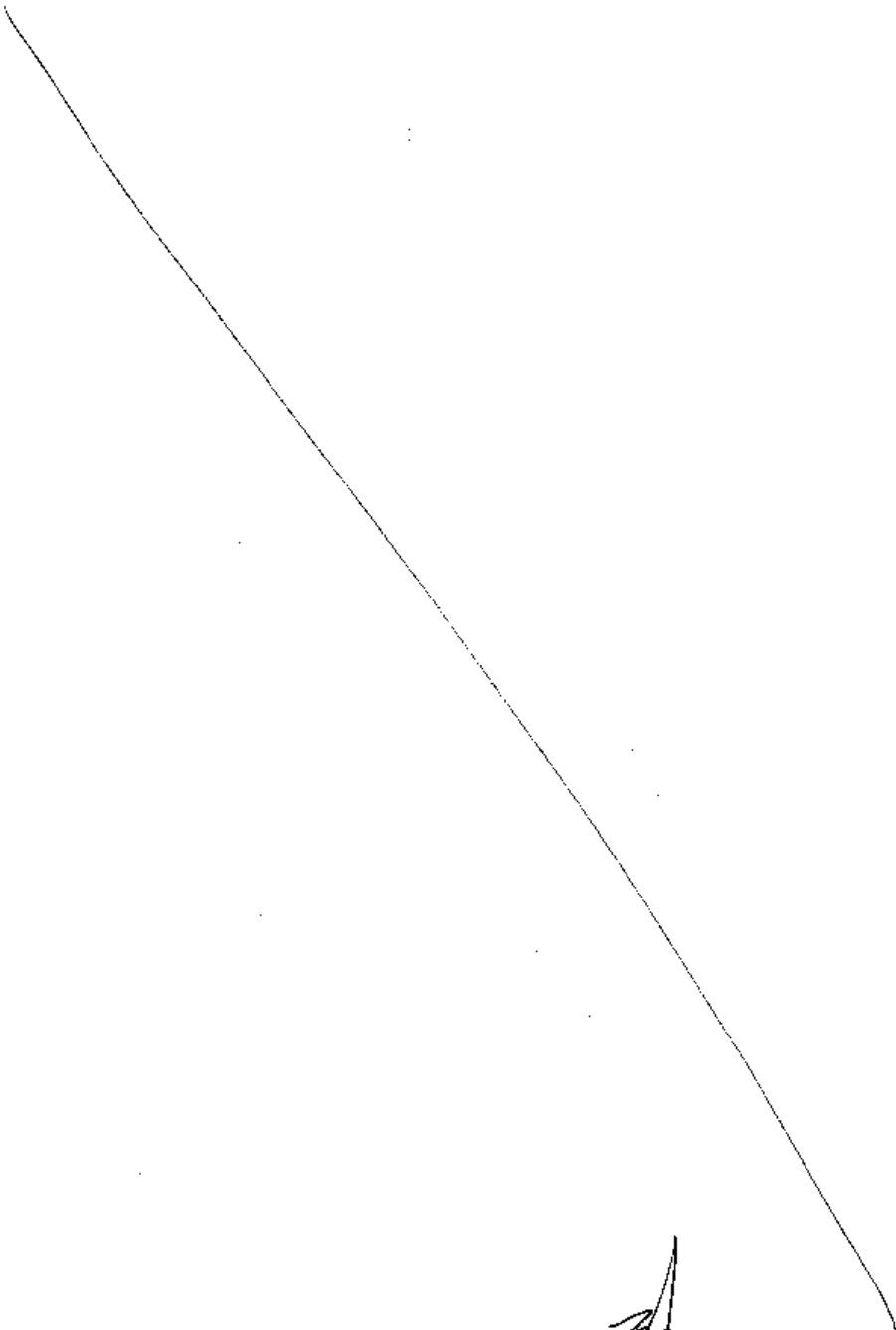
MONTH Cumulative Percentages of the Contract Price

31	28.33%
32	31.67%
33	31.67%
34	31.67%
35	40.83%
36	45.00%
37	45.00%
38	45.83%
39	55.83%
40	58.33%
41	58.33%
42	59.17%
43	69.17%
44	71.67%
45	71.67%
46	72.50%
47	80.83%
48	83.33%
49	83.33%
50	84.17%
51	90.83%
52	93.33%
53	93.33%
54	94.17%
55	97.50%
56	98.33%
57	98.33%
58	99.17%
59	100.00%

PVC

*[Handwritten signature]*

**SCHEDULE 2**  
**Technical Specification**  
(Total .....Pages)



PM

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**Annexure 1**  
**Letter of Award**  
(Total 10 Pages)

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*PK*

*[Handwritten signature]*



## Wardha Power Company Private Limited

### Works

Near Nariyara Village,  
Akaltara Tehsil,  
Janjgir - Champa District,  
Chhattisgarh

### Registered Office

8-2-293/82/A/431/A,  
Road No. 22, Jubilee Hills,  
Hyderabad - 500033  
Tel: +91-40-23569922-25  
Fax: +91-40-23559930

Ref. No. : SEPCO,CHINA/GPRAO/1160201/159

### Letter of Award for Onshore Services

THIS Letter of Award (the "LOA") is made and entered into on the 26<sup>th</sup> February 2009 by and between -

**WARDHA POWER COMPANY PRIVATE LIMITED**, a company incorporated and existing under the laws of India with its business address at 8-2-293/82/A/431/A, Road No.22, Jubilee Hills, Hyderabad-500033, India (hereinafter known as "WPCPL") on one part;

and

**SEPCO ELECTRIC POWER CONSTRUCTION CORPORATION**, a company incorporated and existing under the laws of China with its business address at No.150, Jinger Road, Jinan, Shandong 250001, China (hereinafter known as "SEPCO") on the other part.

### RECITALS

- A. WHEREAS WPCPL is setting up a 3600 MW Coal based Power Plant ("Power Plant") on build, own and operate basis at Nariyara, Janjgir - Champa Dist, Chattisgarh State, India ("Site") for the purpose of generating electrical energy.
- B. AND WHEREAS SEPCO is a reputed business house engaged in, erection and commissioning of various kinds of plant and equipments for large power plants.
- C. AND WHEREAS WPCPL has proposed to and SEPCO has agreed to render onshore services such as customs clearance, inland transportation unloading, unpacking, erection, commissioning, trial run, reliability run test, performance guarantee test and complete insurance till plant handover ("On-shore Services") for and in relation to the setting up of the complete Power Plant in accordance with agreed Technical Specifications;
- D. AND WHEREAS, pending finalisation and execution of a detailed Contract for the aforesaid services, Parties desire to enter into this Letter of Award to confirm the said agreement for On-shore Services;

NOW THE PARTIES HEREBY AGREE AS FOLLOWS:

### 1. SCOPE OF THIS AWARD :

This award covers the On-shore Services, based on and read with the tender specifications, mails exchanged and the resolutions reached through various meetings

held till date ending with the meeting held upto and including 26.02.2009 in China and in India as cited in the references enclosed herewith.

## **2. CONTRACT PRICE**

The Price of On-shore Services ("Contract Price") shall be INR 11,399,000,000 inclusive of all taxes, cesses, duties as applicable in India except entry tax/Octroi duties and custom duty.

## **3. PAYMENT TERMS**

Subject to any deductions/adjustment from the Contract Consideration as per the Contract proposed to be executed, SEPCO shall be entitled to receive the Contract Consideration, progressively, in the following manner:

- 3.1 10% Advance at site against submission of Advance Bank Guarantee (ABG) of equal amount at the end of ninth month from the Zero Date.
- 3.2 10% on completion of the first layer of boiler structure lifting (prorated for each Unit)
- 3.3 10% on boiler drum lifting (prorated for each Unit)
- 3.4 10% on placement of generator stator (prorated for each Unit)
- 3.5 10% on turbine box up (prorated for each Unit)
- 3.6 10% on boiler hydro test (prorated for each Unit)
- 3.7 15% on Boiler light up (prorated for each Unit)
- 3.8 10% on back charging of Station Transformer and 6.6KV switchyard
- 3.9 5% against first synchronization (prorated for each Unit)
- 3.10 5% against successful completion of Reliability Run Test (prorated for each Unit)
- 3.11 5% against successful completion of PG test (prorated for each Unit)

WPCPL shall release any advance payment against ABGs within 7 working days from receipt of ABGs by WPCPL. All the other payment under the Contract will be released on milestone basis against submission of invoices and certification of progress with protocols duly certified by WPCPL or its representative by telegraphic transfer /any other electronic mode within 21 (twenty-one) days of the payment becoming due, the charges for such remittances shall be borne by WPCPL in India.

SEPCO shall furnish first PBG equivalent to 6% of contract value 30 days before completion of Reliability Run Test of first unit, valid upto Warranty period completion of the third unit. The amount of this performance guarantee shall be reduced prorata unit wise on completion of the respective warranty period. No further payments under this contract shall be released to SEPCO if the Performance Bank Guarantee is not submitted 30 days before the scheduled date of completion of Reliability Run Test of first unit

SEPCO shall furnish second PBG equivalent to 4% of contract value 30 days before completion of Reliability Run Test of fourth unit, valid upto Warranty period completion of

the sixth unit. The amount of this performance guarantee shall be reduced prorata unit wise on completion of the respective warranty period. No further payments under this contract shall be released to SEPCO if the Performance Bank Guarantee is not submitted 30 days before the scheduled date of completion of Reliability Run Test of fourth unit

The ABGs & PBG shall be submitted from any of the following banks.

1. Industrial & Commercial Bank of China
2. Bank of China
3. Agricultural Bank of China
4. Construction Bank of China

The payments for onshore services shall be made in INR

SEPCO shall provide complete support on documentation with respect to WPCPL Usanace / Buyers Credit facility with its bankers

#### 4. SCHEDULE OF ON-SHORE SERVICES

The On-shore Services shall be scheduled in such a manner as to ensure that the Power Plant shall be completed within the time schedule ("Project Schedule") as mentioned below.

Unit No.	Reliability Run Test completion (months) from NTP/Zero date (best effort basis)	Reliability Run Test completion (months) from NTP/Zero date (Guaranteed)
1 X 600 MW	36	38
2 X 600 MW	40	42
3 X 600 MW	44	46
4 X 600 MW	48	50
5 X 600 MW	52	54
6 X 600 MW	56	58

Notice To Proceed (NTP) or Zero Date or Effective date shall mean the date of this LoA, subject to following:

- SEPCO shall submit ABG at the end of the ninth month from the date of LoA.
- WPCPL shall pay the advance within 7 working days from receipt of swift message and a scanned image of the ABG to the bankers of WPCPL to be notified by WPCPL, confirming that the ABG has been issued on behalf of SEPCO. WPCPL shall arrange for the confirmation of the ABG, if required, for which the necessary charges shall be to the account of WPCPL. In case, of delay of payment of advance beyond 7 working days from receipt of swift message and a scanned image of the ABG, project schedule will be extended by corresponding period of such delay.
- For 1st advance payment if such delay continued for 30 days, then the Contract Price and Completion Schedule shall be renegotiated.
- For all other payments if such delay continued for 90 days, then the Contract Price and Completion Schedule shall be renegotiated
- All the area within the boundary wall shall be handed over to SEPCO within 6

months from Zero Date with the formal confirmation letter from WPCPL. Failing to do so by WPCPL, the Completion Schedule for the project shall be extended by the corresponding period of such delay.

- WPCPL will furnish the letter signed by their banker within 5 months from 'Effective date' that debt finance has been tied up. The completion schedule shall be extended by the same period of the delay of such furnishing.

### **5. POWER PLANT PERFORMANCE GUARANTEES**

SEPCO shall ensure that the On-shore Services under this LOA and or the Contract shall be capable of the delivering the following performance guarantees for the Power Plant:

Sr. No.	Parameter description	Performance guarantee
1	Unit GROSS HEAT RATE:- Unit gross heat rate in kcal / kWh at rated steam parameters & 0.1 ata as exhaust pressure, with zero percent make up, at TMCR condition and at reference ambient parameters as per tender specifications	2239.77
2.	Total auxiliary power consumption of all auxiliaries at TMCR condition (%)	7.017
3.	SPM -- mg/Nm <sup>3</sup> (with one field in each gas path out of service)	50
4.	Gross electrical power output at Generator terminals (MW)	600
5.	Boiler steaming capacity at BMCR condition (tph)	2068
6.	Unburnt Carbon in fly ash by weight (%) (Max)	1

SEPCO guaranteed Turbine cycle Heat Rate as 1950 kcal/kWh. SEPCO agreed to guarantee Unit Gross Heat Rate as 2239.77 kcal/kWh, considering (minimum) 99.5% piping efficiency. However improved piping efficiency shall be considered later based on the actual Main steam parameters measured during PG Test. Formula to be used for calculating piping efficiency shall be  $\{ (1 - (i_B - i_T) / i_B) \times 100 \}$ , where  $i_B$ ,  $i_T$  are values of enthalpy of main steam at Boiler outlet & Turbine inlet respectively. SEPCO indicated that piping loss is not considered on BE calculation. The unit gross heat rate shall be calculated by the formula,  $UHR = THR / BE / PE$ .

*MS*

*S. H.*

*[Signature]*

*[Signature]*

## **6. LIQUIDATED DAMAGES**

Liquidated Damages shall be applicable as under:

### **Delay in successful completion of Reliability Run Test :**

In the event of a delay in successful completion of Reliability Run Test ("RRT") beyond the Guaranteed completion Dates of such test, as per Schedule mentioned in clause 4, SEPCO shall pay as liquidated damages ("Liquidated Damages") and not as a penalty, a sum equal to 0.5 % (Zero point five percent) of the Unit Contract Price, for each week [7 days] of delay in completion of Reliability Run Test or part thereof of each unit, subject to an aggregate of ten percent (10%) of the Contract value.

### **Performance Liquidated Damages**

The Liquidated Damages payable in relation to the performance of the Power Plant shall be reckoned as follows:

Sr. No.	Variation Factor	Liquidated Damages for shortfall in performance
1.	Unit GROSS HEAT RATE:- Unit gross heat rate in kcal / kWh at rated steam parameters & 0.1 ata as exhaust pressure, with zero percent make up, at TMCR condition and at reference ambient parameters as per tender specs.	Unit Gross Heat rate - INR 1683386.74 per kcal / kWh or part thereof of increase in heat rate from guaranteed value.
2.	Total auxiliary power consumption of all auxiliaries at TMCR condition (%)	INR 8767.64 per kW (or part thereof) of increase in guaranteed value.
3.	Unit Gross electrical power output at Generator terminals (MW)	INR 8767.64 for every kW or part thereof by which output determined during the tests falls short of guaranteed rated output
4.	Each Boiler steaming capacity at BMCR condition (tph)	INR 252508.01 for each one tonne/hr. or part thereof decrease in steam generating capacity.
5.	Unburnt Carbon in fly ash by weight (%)	INR 1753527.89 for every 1% (or part thereof) increase of unburnt Carbon in fly ash beyond the guaranteed value.  For Ex. Guaranteed value is 1.5%. Actual value is 1.9%. LD value shall be = (1.9-1.5) X INR 1753527.89 = INR 701411.16

*prc*

*SK*

*SP*

*SP*

The Performance Guarantee test shall be conducted separately for each unit and also for the first three units together and the subsequent three units together for measuring the Gross Guaranteed electrical power output at Generator terminals for the respective three units (MW) and corresponding guaranteed auxiliary power consumption.

The aggregate liability under performance liquidated damages shall not exceed 10% of the Contract value

The PG tests shall be witnessed & the results shall be approved by WPCPL's Engineers.

All On-shore Services shall carry a warranty period of 12 months from successful RRT for defects and deficiency, during which period SEPCO shall redo or rework afresh the defective/deficient On-shore Services, as may be desired by WPCPL, free of all costs.

#### **Overall Aggregate liability**

The overall aggregate liability under contract for delay in guaranteed schedule and shortfall in guaranteed performance shall not exceed 17.5% of the Contract value.

#### **7. NOISE LEVEL GUARANTEES:**

SEPCO shall guarantee the noise level of any equipment in the Power Plant not to exceed the limits specified below, unless otherwise indicated elsewhere in the tender specifications.

Criterion	Guaranteed Value
Noise Pressure Level	Average 85 dB(A) at 1m distance measured at 1.5m above ground in a free field condition

No Liquidated damages/Rejection shall be applied on the increase in the Noise level beyond guaranteed values. SEPCO to take necessary measures and to attenuate the noise levels within the limits specified.

#### **8. REJECTION OF ON-SHORE SERVICES**

In the event of SEPCO fails to demonstrate to the satisfaction of WPCPL, the performance guarantees, subject to the tolerance(s) agreed herein below and as is recorded during the first PG test, then, SEPCO shall be given a further period of 30 days to make necessary corrections and conduct any retest. In the event of failure to demonstrate the performance parameters even during such re-test, the On-shore Services will stand rejected and SEPCO shall render the requisite Onshore Services for enabling replacement of the equipment within reasonable time at no extra cost basis to WPCPL.

#### **Rejection Criteria of On-shore Services of the Power Plant :**

WPCPL may reject the any part of the On-shore Services under the following circumstances:

*PK*

*Sh*

*[Signature]*

*[Signature]* Page 6 of 10

- 1.) **Output:** Shortfall in excess of 5% in guaranteed output (of all major equipments and complete Power Plant)
- 2.) **Auxiliary power Consumption:** In excess of 5% over the guaranteed auxiliary power consumption value.
- 3.) **Unit Gross Heat Rate :** In excess of 5% over the guaranteed value.
- 4) **Emission Level :** In excess of guaranteed Emission level value.
- 5) **Unburnt Carbon in fly ash % by weight :** in excess of 2%

#### 9. NON-ASSIGNMENT

No Party shall assign the benefits of this LoA without the first party intending to assign, obtaining a written consent of the other Party except that WPCPL is permitted to assign the LoA to its Lender(s)

#### 10. TIME

Time is the essence of this LoA

#### 11. LEGAL COMPLIANCES

SEPCO shall be fully and absolutely responsible for complying with all applicable laws, rules, regulations and guidelines and obtaining all permits and clearances in relation to the On-shore Services and their performance upto and including the Performance Guarantee Test of Power Plant except for those deviations already agreed

#### 12. GOVERNING LAW, JURISDICTION & DISPUTES:

The Contract will be governed by relevant and applicable laws of India and subject to the exclusive jurisdiction of Courts in India.

All disputes whatsoever in relation to the Contract will be settled by arbitration under UNICITRAL (United Nations Commission on International Trade Law) Rules of Arbitration, through a arbitral panel of two arbitrators (one to be appointed by either Party) and an umpire to be nominated by the two arbitrators. The venue of arbitration shall be Singapore.

#### 13. CONFIDENTIALITY

No party shall disclose this LoA/Contract or any part thereof, without the written consent of the other party, except that such consent is not required when such disclosure have to be made to a lender, Statutory Authority or in pursuance of any directive from a Regulatory Authority.

#### 14. NON-DISCLOSURE

SEPCO shall not disclose the existence or the contents of this LoA/Contract or any part thereof, for 6 months from Zero date, without the written consent of WPCPL.

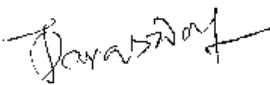
#### 15 EXECUTION OF CONTRACT:

Parties agree and understand that this LoA is only a broad statement of intent of Parties on matters covered herein and that the Parties shall finalise and execute the Contract on or before 20.3.2009, capturing all the relevant terms and conditions agreed to between the Parties, based on the Bid Documents, Offer submitted by SEPCO, Minutes of the Meetings held on various dates between the Parties and the decisions agreed to thereunder as per enclosed references (copies of these are available with both parties). The Contract on execution, shall be read with the documents referred to in the Reference List

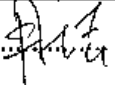
IN WITNESS WHEREOF, the Parties hereby have caused this LoA to be executed by their duly authorized signatories on the date set forth above.

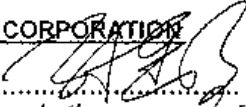
#### WARDHA POWER COMPANY, PRIVATE LIMITED

  
.....  
**Authorized Signatory**  
Name: S. Kishore  
Designation: Director  
Date: 26.02.2009

  
.....  
**In the presence of**  
Name: G.P. Rao  
Designation: Project Head  
Date: 26.02.2009

#### SEPCO ELECTRIC POWER CONSTRUCTION CORPORATION

  
.....  
**Authorized Signatory**  
Name: Yin Shiji  
Designation: DGM - SEPCO  
Date: 26.02.2009

  
.....  
**In the presence of**  
Name: Sun Lianming  
Designation: CEO - SEPCO I  
Date: 26.02.2009

Enclosed - Reference list





**WARDHA POWER COMPANY PRIVATE LIMITED**  
**6 x 600 MW THERMAL POWER PROJECT AT NARIYARA, CHHATTISGARH**

**LIST OF DOCUMENTS AND COMMUNICATIONS TO FORM PART OF  
LOA / CONTRACT DOCUMENT WITH SEPCO**

- 1) Bid Specification for 3600 MW Coal based power project dated 27<sup>th</sup> March 2008 released via NIT in all major newspapers.
- 2) Bid specification sent on 28<sup>th</sup> March 2008 to SEPCO
- 3) Minutes of pre bid meeting dated 10.05.08 held at Novatel Hotel, Hyderabad.
- 4) DCPL E-mail No. K712/NRM-1/V7/72 dated 18.06.08 on Amendment-1 to Technical specification.
- 5) DCPL E-mail No. K712/NRM-1/V7/101 dated 27.06.08 on extension of Bid submission date to 30<sup>th</sup> July 2008
- 6) DCPL E-mail No. K712/NRM-1/V7/128 dated 03.07.08 on Amendment-2 to Technical specification to the offer.
- 7) DCPL E-mail No. K712/NRM-1/V7/152 dated 17.07.08 regarding Change in design water analysis.
- 8) SEPCO offer for 6 x 600 MW Sub-critical coal based power project submitted on dated 21.07.08.
- 9) DCPL E-mail dated 29.07.08 on extension of Bid submission date to 30<sup>th</sup> August 2008.
- 10) DCPL E-mail No. K712/NRM-1/V7/192 dated 28.08.08 on extension of Bid submission date to 08<sup>th</sup> Sept 2008.
- 11) DCPL E-mail No. K712/NRM-1/V7/193 dated 30.08.08 on contract documents and Notes on taxes.
- 12) Comment/clarification issued vide DCPL-K7V12/NRM-1/V7/197 dated 09.09.08 Technical offer.
- 13) WPCPL E-mail No. SEPCO,CHINA/GPRA/1160201/359 dated 10.09.08 on Tendering process.
- 14) Minutes of meeting held between SEPCO, WPCPL and DCPL between 25.09.08 to 28.09.08 at DCPL, Vashi
- 15) DCPL E-mail No. K712/NRM-1/V7/211 dated 29.09.08 on amendment in contract documents.
- 16) DCPL E-mail No. K712/NRM-1/V7/216 dated 06.10.08 on degassed cation conductivity analyser.

- 17) DCPL E-mail No. K712/NRM-1/V7/223 dated 11.10.08 on Specification for CNC Lathe and Eutectic Metal Spray.
- 18) SEPCO E-mail dated 10.10.08 and 15.10.08 on clarification/reply to pending points of MOM dated 25-09-08 to 28-09-08.
- 19) SEPCO reply dated 17.10.08 to DCPL E-mail dated 16.10.08 on pending points of MOM dated 25-09-08 to 28-09-08.
- 20) WPCPL mail dated 26<sup>th</sup> December 2008 on Pending Points and on compliance with CEA guidelines "Standard Technical Specification for Main Plant Package of Sub-Critical Thermal Power Project, 2 x (500 MW and above)".
- 21) SEPCO Clarification on Pending Points vide e-mail dated 31<sup>st</sup> December 2008.
- 22) WPCPL mail on 3<sup>rd</sup> January 2009 to SEPCO including comments to 31<sup>st</sup> December 2008 SEPCO clarification.
- 23) WPCPL mail on 5<sup>th</sup> January 2009 to SEPCO containing WPCPL standard Quality plan for Turbine, Generator, Boiler, Electrical and auxiliaries.
- 24) MOM of meeting at SEPCO, Jinan office on 08<sup>th</sup> January 2009, complied documents sent on 10<sup>th</sup> January 2009 by WPCPL.
- 25) Two mails sent on 13<sup>th</sup> January 2009 by SEPCO on commercial clarification.
- 26) SEPCO sent a mail having a clarification on their experience on 13<sup>th</sup> January 2009.
- 27) Minutes of Meeting held at SEPCO, Jinan office on 21<sup>st</sup> and 22<sup>nd</sup> January 2009.
- 28) SEPCO clarifications vide e-mail dated 4<sup>th</sup> February 2009.
- 29) Minutes of Meeting held at WPCPL, Hyderabad on 4<sup>th</sup> to 6<sup>th</sup> February 2009.
- 30) Quality Control Plans on BOPs forwarded to SEPCO by WPCPL.
- 31) SEPCO reply to pending points of 6<sup>th</sup> February 2009 MOM on 11<sup>th</sup> February 2009.
- 32) Comments on HMBDs forwarded to SEPCO vide WPCPL mail dated 12<sup>th</sup> February 2009 and clarifications furnished by SEPCO vide e-mail dated 14<sup>th</sup> February 2009.
- 33) Minutes of Meeting held at SEPCO, Jinan office on 16<sup>th</sup> to 21<sup>st</sup> February 2009.
- 34) Minutes of Meeting held at WPCPL, Hyderabad on 26<sup>th</sup> February 2009.

**Annexure 2**  
**Format of Advance Payment Bank Guarantee**  
(Total 3 Pages)

Date: \_\_\_\_\_

Guarantee No.:

Dear Sir,

To:

Wardha Power Company Private Limited  
8-2-293/82/A/431/A,  
Road No.22, Jubilee Hills,  
Hyderabad – 500 033, India

WHEREAS, in consideration of your agreeing to pay to M/s. SEPCO Electric Power Construction Corporation(SEPCO), a company incorporated under the laws of People's Republic of China and having its registered / principal office at No.150,Jinger Road, Jinan, Shandong, P. R. China, (hereinafter referred to as "Party" (which expressions shall include its successors and assigns permitted by us) a sum of US Dollar \_\_\_\_\_,(say US Dollars \_\_\_\_\_ only) as and by way of Advance Payment in terms of your LOA reference No. \_\_\_\_\_ dated \_\_\_\_\_ and the Contract Agreement NO: \_\_\_\_\_ with the Party (SEPCO) dated \_\_\_\_\_ (hereinafter referred as the "Contract") for the fulfillment of obligations such as supply to be carried out by the Party under the said Contract on furnishing a Bank Guarantee of equivalent value in the manner hereinafter contained, we, \_\_\_\_\_ do hereby covenant and agree with you as follows:

1. We hereby undertake and bind ourselves irrevocably and unconditionally to pay to you the sum in aggregate not exceeding US Dollar \_\_\_\_\_ (Say US \_\_\_\_\_ Dollars) representing the Advance Payment made by you to the "Party" as aforesaid, without delay or demur, merely on the first written demand signed by your duly Authorised Signatory stating that the amount claimed is due by way of loss or damage caused to or would be caused to you by reason of default or defaults on the part of the "Party" in discharging any of its obligation under the said "Contract". Your written demand shall be accompanied by a certificate issued by the project consultant as appointed by you (Beneficiary, i.e. Wardha Power Company Private Limited) to prove that the Party is in breach of his obligation(s) under the contract and stating the respect in which the Party is in breach. Any such demand



made on us shall be conclusive as regards the amount due and payable to you by us under this guarantee.

2. Notwithstanding anything to the contrary, your decision as to whether the "Party" has made any such default or defaults under the aforesaid Contract and the amount or amounts to which you are entitled by reason thereof, will be binding on us and we shall not be entitled to ask you to establish your claim or claims under this guarantee but will pay you the sum promptly on first written demand made by you without any protest or demur forthwith.
3. This guarantee shall come into force simultaneously with receipt of the corresponding advance payment by "Party" and shall remain in full force and effect up to and including \_\_\_\_\_ (herein called the expiry Date) at the counters of \_\_\_\_\_. Should it be necessary to extend the validity of this guarantee beyond the said date, we undertake to extend the period of the guarantee on your request till such time as may be mutually agreed between you and the "Party".
4. The amount of this guarantee shall be upon the receipt of your approval on the Party's application, progressively reduced on quarterly basis in proportion to the value of progress payment received by the Party.
5. All Banking Charges occurred in India are to the account of Wardha Power Company Private Limited.
6. We further agree that you shall have the fullest liberty without our consent and without affecting in any manner our obligations hereunder to vary any of the terms and conditions of the said "Contract" and/or to extend the time for performance by the "Party" from time to time.
7. We, \_\_\_\_\_, also undertake not to revoke this guarantee during its currency and until the discharge Certificate is issued by you in writing through your Bank.
8. Notwithstanding anything contained hereinabove, our liability under this guarantee is restricted to US Dollar \_\_\_\_\_ (say US Dollar \_\_\_\_\_ only) This guarantee shall remain valid up to \_\_\_\_\_ at the counters of \_\_\_\_\_. Unless a claim in writing is lodged with us within a period of 60 days (sixty days) from the date of expiry of the guarantee i.e. up to and including \_\_\_\_\_ (Date) at the counters of \_\_\_\_\_, all your rights under this guarantee shall stand forfeited and we shall be released and

discharged from all liabilities under this guarantee whether or not this document shall have been returned to us.

THIS GUARANTEE SHALL BE SUBJECT TO THE UNIFORM RULES FOR DEMAND GUARANTEES, ICC PUBLICATIONS NO.458.

SIGNED AND DELIVERED this -----

For and on behalf of

Bank: \_\_\_\_\_

Address: \_\_\_\_\_, No.

(AUTHORISED SIGNATORY OF BANK)

*pvk*

*[Signature]*

**Annexure 3**  
**Format of Performance Bank Guarantee**  
(Total 3 Pages)

Date:

Guarantee No.:

To: Wardha Power Company Private Limited  
8-2-293/82A/431/A  
Road No. 22, Jubilee Hills  
HYDERABAD – 500 033, India

Dear Sirs,

WHEREAS, M/s. SEPCO Electric Power Construction Corporation, a company incorporated under the laws of People's Republic of China, having its registered office at No. 150, Jinger Road, Jinan, Shandong, China (hereinafter referred to as the "Party" which expressions shall include its successors and permitted assigns) has in terms of Contract No..... entered between you and the said Party, contracted to perform the Works and services as stated in the Contract.

AND WHEREAS, as per provision of the said Contract, the Party is required to furnish to you a Bank Guarantee for USD..... (Say US Dollar ..... only) towards due and faithful performance of the Party's obligations under the Contract.

Now, we ..... (name of the bank) hereby irrevocably agree and undertake as follows:

1. We hereby irrevocably guarantee to pay to you the sum in aggregate not exceeding USD ..... (Say US Dollar ..... only), merely on the first written demand signed by your duly authorised representative stating that the amount claimed is due by reasons of breach by the said Party of any of the terms or conditions contained in the said Contract or by reasons of the Party's failure in performance of the Contract. Your written demand shall be accompanied by a certificate issued by the project consultant as appointed by you (Beneficiary, i.e. Wardha Power Company Private Limited) to prove that the Party is in breach of his obligation(s) under the contract and stating the respect in which the Party is in breach. Any such demand made on us shall be conclusive as regards the amount due and payable to you by us under this guarantee.

2. This guarantee shall come into force from date on the successful completion of Reliability Run Test of the \_\_\_\_\_ Unit and shall remain in full force and effect up to and including \_\_\_\_\_ (Date) at the counters of \_\_\_\_\_, \_\_\_\_\_ Branch or the earlier date upon which we have received a written notice from you and the Party jointly stating that the Contract has been terminated and no claim against the Party is outstanding. Should it be necessary to extend the validity of this guarantee beyond the said date, we undertake to extend the period of the guarantee till such time as may be mutually agreed between you and the Party.
3. All banking charges occurred in India are to the account of Wardha Power Company Private Limited.
4. Notwithstanding anything contained hereinabove our liability under this guarantee is restricted to USD..... (Say US Dollar .....only). This guarantee shall remain valid up to..... (Date) at the counters of \_\_\_\_\_, \_\_\_\_\_ Branch.. Unless a claim in writing is lodged with us within a period of 60(sixty) days from the date of expiry of the guarantee i.e. \_\_\_\_\_ up to and including..... (Date) at the counters of \_\_\_\_\_, \_\_\_\_\_ Branch, all your rights under this guarantee shall stand forfeited and we shall be released and discharged from all liabilities under this guarantee whether or not this document shall have been returned to us.
5. The amount of Performance Bank Guarantee shall be reduced prorated Unit wise on completion of the Warranty Period of the respective Unit, upon receipt of the certificate to that extent from you.
6. We further agree that you shall have the fullest liberty without our consent and without affecting in any manner our obligations hereunder to vary any of the terms and conditions of the said contract with the Party.
7. This Guarantee shall not be affected by any change in your constitution / management / or of Party / or the Bank by absorption with any other body, corporation or otherwise and this Guarantee will be available for enforcement by such body or corporation.
8. We, \_\_\_\_\_, \_\_\_\_\_ Branch, also undertake not to revoke this guarantee during its currency and until the discharge Certificate is issued by you in writing through your Bank.





THIS GUARANTEE SHALL BE SUBJECT TO THE UNIFORM RULES FOR DEMAND  
GUARANTEES, ICC PUBLICATIONS NO.458.

(AUTHORISED SIGNATORY OF BANK)

*PULC*

*[Signature]*

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## INDIA NON JUDICIAL

### Government of National Capital Territory of Delhi

#### e-Stamp

Certificate No.	: IN-DL321139269219010
Certificate Issued Date	: 30-Mar-2016 12:39 PM
Account Reference	: IMPACC (IV)/ dl815803/ DELHI/ DL-DLH
Unique Doc. Reference	: SUBIN-DL815803630849801998740
Purchased by	: KSK MAHANADI POWER COMPANY LIMITED
Description of Document	: Article 5 General Agreement
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: KSK MAHANADI POWER COMPANY LIMITED
Second Party	: Not Applicable
Stamp Duty Paid By	: KSK MAHANADI POWER COMPANY LIMITED
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



Please write or type below this line.

This Stamp Paper forms an integral part of first  
Amendment to the on shore services contract

For KSK Mahanadi Power Company Limited

Authorised Signatory



#### Statutory Alert:

1. The authenticity of this Stamp Certificate should be verified at "www.shcilestamp.com". Any discrepancy in the details on this Certificate and as available on the website renders it invalid.
2. The onus of checking the legitimacy is on the users of the certificate.
3. In case of any discrepancy please inform the Competent Authority.

**DATED THE 30<sup>Th</sup> DAY OF MARCH 2016**

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**FIRST AMENDMENT TO THE  
ON SHORE SERVICES CONTRACT**

---

**Between**

**KSK MAHANADI POWER COMPANY LIMITED**

**And**

**SEPCO ELECTRIC POWER CONSTRUCTION  
CORPORATION**



This **FIRST AMENDMENT TO THE ONSHORE SERVICE CONTRACT** ("**Amendment Agreement**") is made as of this 30<sup>th</sup> day of March, 2016 by and between:

1. **KSK MAHANADI POWER COMPANY LIMITED**, a company incorporated under the Indian Companies Act, 1956 having its registered office at 8-2-293/82/A/431/A, Road No. 22, Jubilee Hills, Hyderabad - 500 033 (hereinafter referred to as "**KMPCL**" or "**Owner**", which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its successors-in-business and permitted assigns);

And

2. **SEPCO ELECTRIC POWER CONSTRUCTION CORPORATION**, a company duly incorporated and existing under and by virtue of the laws of China and having its registered office at No.10567, Jingshi Road, Jinan, Shandong, China (hereinafter referred to as "**SEPCO**" or "**Contractor**", which expression shall unless repugnant to the context otherwise, include its successors-in-business and permitted assigns);

KMPCL and SEPCO are referred to herein individually as a "Party" and collectively as the "Parties".



**WHEREAS:**

- (A) SEPCO and Wardha Power Company Limited (WPCL) had executed a Onshore Services Contract ("OSC") on April 1, 2009 for providing such works for the latter's 6x600 MW coal-based power plant being established in Nariyara village, Chhattisgarh State, ("Project");
- (B) And pursuant to a Scheme of Arrangement, approved by the Hon'ble High Court of Andhra Pradesh, India, in Company Petitions No. 4 and No.5 of 2010 vide orders dated 26.2.2010 made effective on 31.3.2010, the Project including, inter alia, all assets, liabilities and all rights, entitlements, registrations and benefits of all contracts and agreements of every kind and description, has been demerged from WPCL on a going concern basis and transferred to and vested in KMPCL and accordingly the OSC vested in KMPCL vide Tripartite Amendment to Onshore service Contract dated 14.5.2010 (hereafter referred '**Tripartite Amendment Agreement**') and being honoured and implemented by both Parties;
- (C) Parties have subsequently held discussions in relation to required payment and have mutually agreed to amend Contract with regards to payment schedule as hereinafter set out, while the basic contract would remain;
- (D) Accordingly, in order to reflect this understanding between the Parties, the Parties have agreed to amend the OSC, as more particularly set out hereunder.

**IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES AS UNDER:**

1. The Parties hereby agree that the following amendments to the OSC shall be effective immediately on and from the date of execution of this Amendment Agreement with respect to clause as modified under this Amendment Agreement ("**First Amendment**").

1.1 Article 8.6.1 of the OSC shall stand amended to the extent of balance payments as provided under Annexure 1

The Owner commits to release monthly payment as set forth in Annexure 1 before the 20th day of each month regardless of the amount of invoices submitted in that same month. Quarterly reconciled statement of account with invoices shall be duly signed by both parties within 30 days of the closure of quarter.



1.2 The existing clause 4.14.2 of OSC is hereby deleted and substituted with the following revised dates:

Units	First Commissioning
Third Unit (Unit # 2)	31 <sup>st</sup> December 2016
Fourth Unit (Unit # 5)	30 <sup>th</sup> April 2017
Fifth Unit (Unit # 1)	31 <sup>st</sup> October 2017
Sixth Unit (Unit # 6)	31 <sup>st</sup> December 2017

As regards application of Liquidated Damages against delays beyond the respective RRT dates, the Purchaser agrees to consider a grace period for each of the RRT dates in favour of the supplier with respect to application of LD clause for delay, after due deliberation ("LD Application Dates"). The Purchaser can schedule and supply power after such First Commissioning.

1.3 The existing clause 23.1.5 of OSC is hereby deleted and substituted with the following:

If the Contractor fails to achieve RRT (according to the conditions of RRT of Contract only) of the Unit#2, #5, #1 and #6 within the RRT dates above due to reasons attributable to the Contractor, The Owner shall levy Liquidated Damages and not as a penalty, equivalent to 0.5% (Zero point five percent) of Total Unit Value (excluding taxes and duties) per week (7 days) of delay or part thereof of each Unit from LD Application Dates subject to the maximum 10% of Total Unit Value (excluding taxes and duties)

1.4 The Parties hereby agree and confirm that the quantum and timeline for furnishing Performance Bank Guarantee provided for at 8.7.7 of OSC shall stand amended to the following:

- For EPC Unit #2 & #5 - USD 3,957,986 per unit before expiry of 18 days from the completion date of Reliability Run Test of respective unit valid up to warranty period completion of the respective unit
- For EPC Unit #1 & #6 - USD 3,957,986 per unit before expiry of 18 days from the completion date of Reliability Run Test of respective unit valid up to warranty period completion of the respective unit



1.5 The existing clause 8.7.5 is hereby as amended by the First Amendment deleted and substituted with the following:

The Owner shall retain Contractor furnished ABGs for an aggregate value of USD [14,117,538]. The balance ABGs shall be released by the Owner to the Contractor in mutually agreed time frame.



The ABGs so furnished by the Contractor shall be valid upto the completion of Reliability Run Test of the fourth Unit. The amount of the Guarantee shall be progressively reduced on quarterly basis in proportion to the value of services rendered made hereinafter and progress payments received thereto.

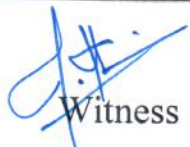
## 2. Miscellaneous

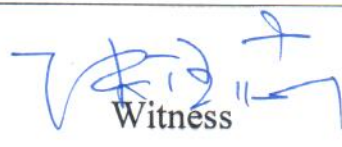
Save and to the extent amended by this Amendment Agreement, the OSC, as executed and amended earlier, shall continue to remain in full force and effect in accordance with its terms.

The Parties agree that all of the provisions of the OSC, as amended earlier, shall apply mutatis mutandis to this Amendment Agreement, as if set out specifically herein and incorporated into this Amendment Agreement:

**IN WITNESS HEREOF THE PARTIES HAVE EXECUTED THIS AMENDMENT AGREEMENT ON THE DAY AND YEAR FIRST HEREINABOVE WRITTEN**

For KSK MAHANADI POWER COMPANY LIMITED 	For SEPCO ELECTRIC POWER CONSTRUCTION CORPORATION 
Mr. C-SRINIVAS duly authorized representative for and On behalf of KSK MAHANADI POWER COMPANY LIMITED	Mr. Wuchuanman duly authorized representative for and On behalf of SEPCO ELECTRIC POWER CONSTRUCTION CORPORATION

  
Witness

  
Witness

For KSK Mahanadi Power Company Limited

  
Authorised Signatory





## Annexure – 1

	For Commissioning upto 4 Units (INR, Cr.)	For Commissioning last 2 units (INR, Cr.)	Total (INR, Cr.)
Mar-16	11.00		11.0
Apr-16	27.00		27.0
May-16	40.00		40.0
Jun-16	40.00		40.0
Jul-16	40.00		40.0
Aug-16	40.00		40.0
Sep-16	40.00		40.0
Oct-16	40.00		40.0
Nov-16	40.00		40.0
Dec-16	2.00	23.00	25.0
Jan-17	0.00	25.00	25.0
Feb-17	0.00	25.00	25.0
Mar-17	0.00	25.00	25.0
Apr-17	0.00	25.00	25.0
May-17	0.00	25.00	25.0
Jun-17	0.00	25.00	25.0
Jul-17	0.00	25.00	25.0
Aug-17	0.00	25.00	25.0
Sep-17	0.00	25.00	25.0
Oct-17	0.00	25.00	25.0
Nov-17	0.00	25.00	25.0
Dec-17	0.00	25.00	25.0
	<b>320.00</b>	<b>323.00</b>	<b>643.00</b>

For KSK Mahanadi Power Company Limited

  
Authorised Signatory







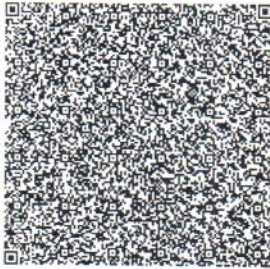
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## INDIA NON JUDICIAL

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#### e-Stamp

Certificate No.	: IN-DL321139269219010
Certificate Issued Date	: 30-Mar-2016 12:39 PM
Account Reference	: IMPACC (IV)/ dl815803/ DELHI/ DL-DLH
Unique Doc. Reference	: SUBIN-DL815803630849801998740
Purchased by	: KSK MAHANADI POWER COMPANY LIMITED
Description of Document	: Article 5 General Agreement
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: KSK MAHANADI POWER COMPANY LIMITED
Second Party	: Not Applicable
Stamp Duty Paid By	: KSK MAHANADI POWER COMPANY LIMITED
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



Please write or type below this line.

This Stamp Paper forms an integral part of first  
Amendment to the on shore services contract

For KSK Mahanadi Power Company Limited

Authorised Signatory



#### Statutory Alert:

1. The authenticity of this Stamp Certificate should be verified at "www.shcilestamp.com". Any discrepancy in the details on this Certificate and as available on the website renders it invalid.
2. The onus of checking the legitimacy is on the users of the certificate.
3. In case of any discrepancy please inform the Competent Authority.

**DATED THE 30<sup>Th</sup> DAY OF MARCH 2016**

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**FIRST AMENDMENT TO THE  
ON SHORE SERVICES CONTRACT**

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**Between**

**KSK MAHANADI POWER COMPANY LIMITED**

**And**

**SEPCO ELECTRIC POWER CONSTRUCTION  
CORPORATION**



This **FIRST AMENDMENT TO THE ONSHORE SERVICE CONTRACT** ("**Amendment Agreement**") is made as of this 30<sup>th</sup> day of March, 2016 by and between:

1. **KSK MAHANADI POWER COMPANY LIMITED**, a company incorporated under the Indian Companies Act, 1956 having its registered office at 8-2-293/82/A/431/A, Road No. 22, Jubilee Hills, Hyderabad - 500 033 (hereinafter referred to as "**KMPCL**" or "**Owner**", which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its successors-in-business and permitted assigns);

And

2. **SEPCO ELECTRIC POWER CONSTRUCTION CORPORATION**, a company duly incorporated and existing under and by virtue of the laws of China and having its registered office at No.10567, Jingshi Road, Jinan, Shandong, China (hereinafter referred to as "**SEPCO**" or "**Contractor**", which expression shall unless repugnant to the context otherwise, include its successors-in-business and permitted assigns);

KMPCL and SEPCO are referred to herein individually as a "Party" and collectively as the "Parties".



**WHEREAS:**

- (A) SEPCO and Wardha Power Company Limited (WPCL) had executed a Onshore Services Contract ("OSC") on April 1, 2009 for providing such works for the latter's 6x600 MW coal-based power plant being established in Nariyara village, Chhattisgarh State, ("Project");
- (B) And pursuant to a Scheme of Arrangement, approved by the Hon'ble High Court of Andhra Pradesh, India, in Company Petitions No. 4 and No.5 of 2010 vide orders dated 26.2.2010 made effective on 31.3.2010, the Project including, inter alia, all assets, liabilities and all rights, entitlements, registrations and benefits of all contracts and agreements of every kind and description, has been demerged from WPCL on a going concern basis and transferred to and vested in KMPCL and accordingly the OSC vested in KMPCL vide Tripartite Amendment to Onshore service Contract dated 14.5.2010 (hereafter referred '**Tripartite Amendment Agreement**') and being honoured and implemented by both Parties;
- (C) Parties have subsequently held discussions in relation to required payment and have mutually agreed to amend Contract with regards to payment schedule as hereinafter set out, while the basic contract would remain;
- (D) Accordingly, in order to reflect this understanding between the Parties, the Parties have agreed to amend the OSC, as more particularly set out hereunder.

**IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES AS UNDER:**

1. The Parties hereby agree that the following amendments to the OSC shall be effective immediately on and from the date of execution of this Amendment Agreement with respect to clause as modified under this Amendment Agreement ("**First Amendment**").

1.1 Article 8.6.1 of the OSC shall stand amended to the extent of balance payments as provided under Annexure 1

The Owner commits to release monthly payment as set forth in Annexure 1 before the 20th day of each month regardless of the amount of invoices submitted in that same month. Quarterly reconciled statement of account with invoices shall be duly signed by both parties within 30 days of the closure of quarter.



1.2 The existing clause 4.14.2 of OSC is hereby deleted and substituted with the following revised dates:

Units	First Commissioning
Third Unit (Unit # 2)	31 <sup>st</sup> December 2016
Fourth Unit (Unit # 5)	30 <sup>th</sup> April 2017
Fifth Unit (Unit # 1)	31 <sup>st</sup> October 2017
Sixth Unit (Unit # 6)	31 <sup>st</sup> December 2017

As regards application of Liquidated Damages against delays beyond the respective RRT dates, the Purchaser agrees to consider a grace period for each of the RRT dates in favour of the supplier with respect to application of LD clause for delay, after due deliberation ("LD Application Dates"). The Purchaser can schedule and supply power after such First Commissioning.

1.3 The existing clause 23.1.5 of OSC is hereby deleted and substituted with the following:

If the Contractor fails to achieve RRT (according to the conditions of RRT of Contract only) of the Unit#2, #5, #1 and #6 within the RRT dates above due to reasons attributable to the Contractor, The Owner shall levy Liquidated Damages and not as a penalty, equivalent to 0.5% (Zero point five percent) of Total Unit Value (excluding taxes and duties) per week (7 days) of delay or part thereof of each Unit from LD Application Dates subject to the maximum 10% of Total Unit Value (excluding taxes and duties)

1.4 The Parties hereby agree and confirm that the quantum and timeline for furnishing Performance Bank Guarantee provided for at 8.7.7 of OSC shall stand amended to the following:

- For EPC Unit #2 & #5 - USD 3,957,986 per unit before expiry of 18 days from the completion date of Reliability Run Test of respective unit valid up to warranty period completion of the respective unit
- For EPC Unit #1 & #6 - USD 3,957,986 per unit before expiry of 18 days from the completion date of Reliability Run Test of respective unit valid up to warranty period completion of the respective unit



1.5 The existing clause 8.7.5 is hereby as amended by the First Amendment deleted and substituted with the following:

The Owner shall retain Contractor furnished ABGs for an aggregate value of USD [14,117,538]. The balance ABGs shall be released by the Owner to the Contractor in mutually agreed time frame.



The ABGs so furnished by the Contractor shall be valid upto the completion of Reliability Run Test of the fourth Unit. The amount of the Guarantee shall be progressively reduced on quarterly basis in proportion to the value of services rendered made hereinafter and progress payments received thereto.

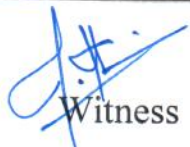
## 2. Miscellaneous

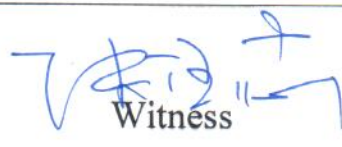
Save and to the extent amended by this Amendment Agreement, the OSC, as executed and amended earlier, shall continue to remain in full force and effect in accordance with its terms.

The Parties agree that all of the provisions of the OSC, as amended earlier, shall apply mutatis mutandis to this Amendment Agreement, as if set out specifically herein and incorporated into this Amendment Agreement:

**IN WITNESS HEREOF THE PARTIES HAVE EXECUTED THIS AMENDMENT AGREEMENT ON THE DAY AND YEAR FIRST HEREINABOVE WRITTEN**

For KSK MAHANADI POWER COMPANY LIMITED 	For SEPCO ELECTRIC POWER CONSTRUCTION CORPORATION 
Mr. C-SRINIVAS duly authorized representative for and On behalf of KSK MAHANADI POWER COMPANY LIMITED	Mr. Wuchuanman duly authorized representative for and On behalf of SEPCO ELECTRIC POWER CONSTRUCTION CORPORATION

  
Witness

  
Witness

For KSK Mahanadi Power Company Limited

  
Authorised Signatory





## Annexure – 1

	For Commissioning upto 4 Units (INR, Cr.)	For Commissioning last 2 units (INR, Cr.)	Total (INR, Cr.)
Mar-16	11.00		11.0
Apr-16	27.00		27.0
May-16	40.00		40.0
Jun-16	40.00		40.0
Jul-16	40.00		40.0
Aug-16	40.00		40.0
Sep-16	40.00		40.0
Oct-16	40.00		40.0
Nov-16	40.00		40.0
Dec-16	2.00	23.00	25.0
Jan-17	0.00	25.00	25.0
Feb-17	0.00	25.00	25.0
Mar-17	0.00	25.00	25.0
Apr-17	0.00	25.00	25.0
May-17	0.00	25.00	25.0
Jun-17	0.00	25.00	25.0
Jul-17	0.00	25.00	25.0
Aug-17	0.00	25.00	25.0
Sep-17	0.00	25.00	25.0
Oct-17	0.00	25.00	25.0
Nov-17	0.00	25.00	25.0
Dec-17	0.00	25.00	25.0
	<b>320.00</b>	<b>323.00</b>	<b>643.00</b>

For KSK Mahanadi Power Company Limited

  
Authorised Signatory



