

CONTRACT NO.: SEPCO, CHINA/SK/1160201/254

ON-SHORE SUPPLY CONTRACT

BETWEEN

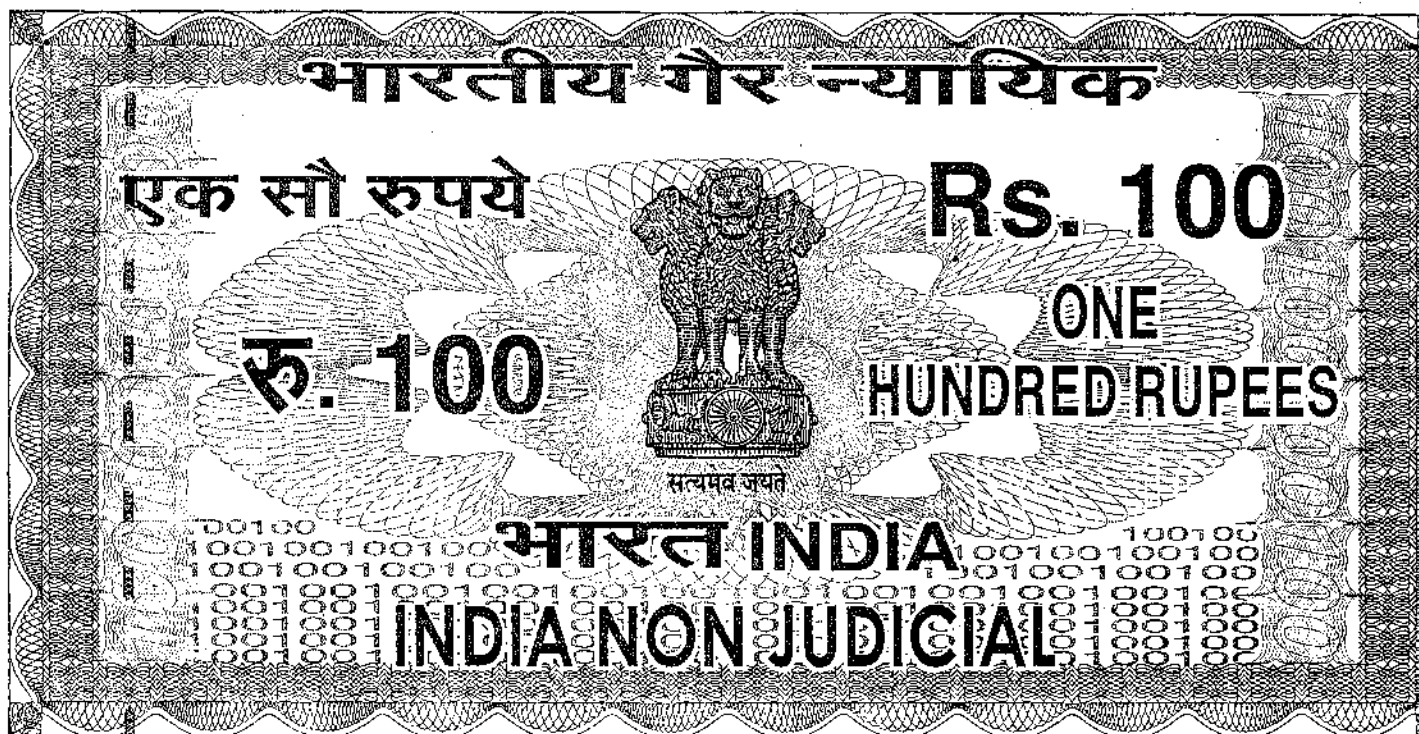
WARDHA POWER COMPANY PRIVATE LIMITED

AND

**SEPCO ELECTRIC POWER CONSTRUCTION
CORPORATION**

REGARDING

**3600MW POWER PLANT AT NARIYARA, JANJGIR-
CHAMPA, CHATTISGARH**



ఆంధ్రప్రదేశ్ ఆంధ్ర ప్రదేశ్ ANDHRA PRADESH

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Sl. No. : 12959 Date: 05/3/2009. Rs.: 100/-
Sold To : Krishna
S/o. : Ramaiah. R/o. Hyd.
To Whom : Wardha Power Company Private Limited.
(Chattisgarh)

K. RAMA CHANDRAVATHI
STAMP VENDOR (L. No. 27/99, RL.No. 16/2008),
6-3-387, Beside Banjara Durbar Hotel, Panjagutta
HYDERABAD - 500 082. Phone. No. 23351799

THIS ON-SHORE SUPPLY Contract is made and executed on this 1st day of April, 2009, at Hyderabad, by and between:

WARDHA POWER COMPANY PRIVATE LIMITED (WPCPL) a company duly incorporated and existing under and by virtue of the laws of the Republic of India and having its Registered Office at 8-2-293/82/A/431/A Road No.22, Jubilee Hills, Hyderabad 500033, India; (hereinafter referred to as "Purchaser" which expression shall unless repugnant to the context otherwise, include its successors and permitted assigns) as party of the first part;

and

SEPCO ELECTRIC POWER CONSTRUCTION CORPORATION (SEPCO) a company duly incorporated and existing under and by virtue of the laws of China and having its Registered Office at No.150, Jinger Road, Jinan, Shandong, China (hereinafter referred to as "Supplier", which expression shall unless repugnant to the context otherwise, include its successors and permitted assigns) as party of the second part;

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Onshore Supply Contract

The Purchaser and the Supplier are referred to herein individually as a "Party" and collectively as the "Parties".

RECITALS

WHEREAS

- A. The Purchaser is setting up a 3600 MW Coal based Power Plant ("Power Plant"/ "Project") on build, own and operate basis at Nariyara, Janjgir – Champa Dist, Chattisgarh State, India ("Site") for the purpose of generating and selling electrical energy. The Purchaser is the ultimate Purchaser of the Power Plant equipment being supplied by Supplier.
- B. The Supplier is engaged in the business of undertaking procurement activities, delivering various kinds of plant and equipments and providing services for various power plants.
- C. The Purchaser is purchasing certain Plant and Equipment as per the Technical Specifications set out in Schedule 2 of the Contract for installation at the Purchaser's Power Plant, proposed to be located at the Site.
- D. The Purchaser proposes to engage the Supplier to design, engineer, manufacture, procure, assemble, shop test, pack and supply the Plant and Equipment for the Power Plant.
- E. The Supplier has agreed to design, engineer, manufacture, procure, assemble, shop test, pack and supply the Plant and Equipment to the Delivery Point, in accordance with the Technical Specifications set out in Schedule 2 to the Contract ("Supplies").
- F. The Supplier desires to procure the Plant and Equipment either directly or through its Sub-Suppliers and Affiliates and transport Plant and Equipment on fixed lump sum price basis in accordance with the Payment Terms set out in Article 12 and subject to the terms and conditions set forth herein.
- G. The Supplier 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.

- H. The Supplier hereby confirms and warrants that the Supplier has the necessary expertise and resources to perform its obligations under the Contract and that it has supplied similar plants, equipments and other materials for various coal based power plants; and
- I. The Purchaser has agreed to award to the Supplier and the Supplier has agreed to undertake the Supplies 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 Supplies, being these presents.
- J. The Purchaser and the Supplier wish to enter into the Contract to set forth the terms and conditions under which the Supplier will make the Supplies.

NOW, THEREFORE, THE CONTRACT WITNESSETH as follows:

1. DEFINITIONS

1.1 Definitions

The following terms shall have the meanings specified in this Article and as used in the Contract (including the Recitals above) unless where the context otherwise requires:

"Acceptance Tests" shall mean Trial Runs, Initial Operations, Reliability Run Tests, and Performance Guarantee Tests, as described in Schedule 2 [Technical 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, license, 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 obligations of the Supplier and/or the Purchaser 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 in India.

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

"Bank Guarantee" shall have the meaning as ascribed to it in Article 11.5 of the Contract.

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

"Change" means any addition to, deletion from, or modification to the quality, function, capability, capacity, composition, or intent of the Supply or the Equipment or the materials as presently delineated in the Contract, so long as the change requested is reasonably related to the equipment, materials, including any such addition, deletion, suspension or other modification that requires a change in one or more of the Contract Price, Guaranteed Completion Date, the Delivery Schedule, or the Performance Guaranteed Values. Correction of errors or omissions or Miss Outs by Supplier shall not be deemed a Change and shall be performed at Supplier's sole cost and expense.

"Change Order/Variation" means a written order to Supplier signed by Purchaser and Supplier during the execution and delivery of Scope of Supplies under the Contract authorizing a Change and, if appropriate, an adjustment in one or more of, the Contract Price, Guaranteed Completion Date, the Delivery 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 Feb 21, 2009 and which was not reasonably foreseeable by the Supplier on 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 28.5

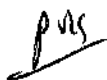
"Competent Authority" means any local or State Government or Union Territory in India or the Government of India or any department, instrumentality or agency thereof or any corporation (to the extent acting in a legislative, judicial or administrative capacity and not as a contracting party with the Purchaser or the Supplier) 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.

"Commissioning" shall mean, in relation to each part, the first successful integrated operation of all the Equipment and materials supplied by the Supplier in accordance with the Contract 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 for each Unit as per Project Schedule.

"Commissioning Certificate" shall mean the fully executed certificate issued by the Purchaser to Supplier 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.



"Complete Plant or Plant" shall mean the equipment and materials capable to generate electric power meeting the Performance Guaranteed Values, 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, supplies 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.

"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.

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

"Contract Price" means the Contract Price as set forth in Article 10.

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

"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.

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"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.

"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) India 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.

"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.

"Delivery Date" shall mean the day on which the last of the Equipment and replacements therefor, if any, is delivered to the Delivery Point.

"Delay Liquidated Damages" shall have the meaning as set forth in Article 23.1.



"Delivery Point" shall mean Power Plant Site location, at Nariyara Village, Janjgir-Champa District, Chhattisgarh State, India, where the Plant and Equipment shall be supplied and delivered by the Supplier.

"Delivery Schedule" means the master delivery program of Plant and Equipment under the Contract, in line with Project Schedule, as provided by the Supplier and approved by the Purchaser and as may be amended from time to time.

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

"Dispute" shall have the meaning as set forth in Article 28 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.

"Engineer" means the Officer appointed from time to time in accordance with Article 4.4 by the Purchaser/Lender and notified in writing by the Purchaser to the Supplier to act as Engineer for the purpose of the Contract. Unless any change is notified, the project head of the Purchaser 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.

"Equipment" shall mean all of the equipment, materials, apparatus, tools & tackles, structures, supplies and other goods provided or required by the terms of the Contract to be provided by Supplier. The term Equipment or Major Equipment shall include those items set forth in Technical Specifications.





"Equipment Documents" shall mean, 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 Assurance Program (QAP), inspection reports, test reports, IBR approved third party certificate, erection drawings and instructions, operation and maintenance manuals, and other manuals and information of a similar nature, to be submitted by the Supplier / Sub-Suppliers.

"Ex-Works" has the meaning as provided for in the INCO TERMS of international trade and commerce.

"Final Acceptance" has the meaning as set forth in Article 25.

"Final Acceptance Certificate" means the certificate as specified in Article 25.2.

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

"Force Majeure" has the meaning as set forth in Article 26.1.

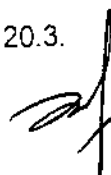
"Good Industry Practice" means the exercise of that degree of skill, diligence and prudence which would reasonably and ordinarily be expected from a skilled and experienced Supplier, equipment manufacturer or operator applying the standards generally adopted by Indian and/or international suppliers,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

"Guaranteed Completion Date" means the date as provided in Article 4.20.1.

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

"Indemnified Party" shall have the meaning set forth in Article 20.3.





"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 Purchaser or any person / firm appointed by or duly authorised by the Purchaser or appointed by the Supplier on approval of the Purchaser from time to time to inspect the Plant and Equipment and/or the Works in totality according to the terms and conditions of the Contract.

"Item" shall mean any item being a part of the Plant and Equipment to be supplied by the Supplier in accordance with Schedule 2.

"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.

"Lender" shall include the services enabling or Institutions or financing entities providing construction, interim or long-term financing (including any refinancing thereof), (i) for KSK Energy Ventures Limited (sponsors) for the supplies and / or (ii) the Purchaser 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 Purchaser for the provision of finance in connection with the Project.

"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



Onshore Supply Contract



Contract.

"Latent Defect" shall mean, in respect of each Item, the defects which are inherent or not visible at the time of Taking Over of the said Items/s of the Plant and Equipment and which were undetected at the expiry of the respective Warranty Period relating to the said Items of the Plant and Equipment.

"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 Supplier's acts or omissions, including any lien recorded or held by any Sub Supplier or any other person entitled to a lien under Applicable Law.

"Mechanical Completion" shall mean when all the Equipment supplied 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 Purchaser, date of which shall happen before Commissioning Date.

"Miss Outs" shall mean the Scope of Supply and related Technical Specifications which are not detailed in the Technical Specifications but which are essentially required to complete the Scope of Supply, as per applicable standards, but shall not include any variations or additions outside the Miss Outs, which are instructed to be carried out by or on behalf of the Purchaser.

"Month" means any calendar month.

"MW" shall mean mega watt i.e. 1000 electrical kilowatts.

"O&M Contractor" shall mean the Person with which Purchaser 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.

"Purchaser's Contractor" shall mean the other Contractors/suppliers engaged by the Purchaser for execution of specific supplies, services and works with respect to the project, which are outside





the scope of work under the Contract.

"Purchaser Event of Default" shall have the meaning set forth in Article 27.2.

"Purchaser Indemnified Party" shall have the meaning set forth in Article 20.1.B.

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

"Party" means the Purchaser or the Supplier, 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 12.

"Performance Guaranteed Values" means the guaranteed levels of performance of the Plant and Equipment as set out in Article 22.5.4.

"Performance Guarantee Tests" means the tests to be conducted so as to establish the Performance Guarantee parameters in the manner set forth in Article 22.5.4.

"Performance Guarantee Test Certificate" shall mean a certificate issued to the Supplier certifying that the Plant and Equipment has successfully passed the Performance Guarantee Tests.

"Performance Liquidated Damages" means the damages relating to the performance of the Plant and Equipment 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.

"Plant and Equipment" shall mean the list of those equipments to be supplied and delivered by

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the Supplier in accordance with the Technical Specifications as specified in Schedule 2 of the Contract.

"Progress Reports" has the meaning as set forth in Article 4.20.13.

"Project or Power Plant" shall mean the 3600MW 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.

"Quality Assurance Programme (QAP)" or "Quality Plan" has the meaning given to it in Article 4.21.12.

"Reliability Run Test" shall mean as defined in Article 22.5.3 and in Technical Specifications.

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

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

"Scope of Supplies" means and includes the supply of the Plant and Equipment and other materials to be supplied by the Supplier in accordance with Schedules 2 and Article 2.3.

"Shop Tests" shall mean the Shop tests on each Item of the Plant and Equipment performed by Supplier at its Shop, or at its Sub Suppliers' or Affiliates' Shop as per approved QAP.

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

"Sub-Supplier" means any Person (other than the Supplier or the Purchaser) to whom the Supplier has sub-contracted any part of his Scope of Supply or with whom the Supplier has



entered into any contract for the supply of goods, services, materials or equipment 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-sub-suppliers and suppliers of any tier to such Person.

"Sub-Contracts" has the meaning given in Article 2.2.1.

"Supplier Indemnified Party" has the meaning given in Article 20.1-A.

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

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

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

"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 Plant and Equipment and/or each Unit (where applicable) by the Purchaser (Take Over shall have the same meaning as Taking Over).

"Taking Over Certificates" shall mean, a certificate issued to the Supplier by the Purchaser 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 Works 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 Supplier or any authorised persons acting on behalf of the Supplier; 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 Supplier, 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 28.3 of the Contract.

"Technical Expert" shall have the meaning as ascribed to it in Article 28.3 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 Plant and Equipment.

"Unit" means any one of the six Units forming the entire Plant and Equipment proposed to be set up at the Site.

"Unit Price" shall be a sum of INR 276,000,000 being one-sixth of the Contract Price.

"Warranty Period" has the meaning given in Article 18.

"Works" or "Supplies" shall mean the design, engineering, manufacture, procurement, shop testing, inspection, packing and supply of the Plant and Equipment.

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

"Zero Date/Effective Date" shall have the meaning as set forth in Article 4.21.3 of the Contract.

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.

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 or the like is understood to be a function of the Purchaser.

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. RELATIONSHIP OF PURCHASER, SUPPLIER AND SUB SUPPLIERS

2.1 Assignment and Sub-Contract

2.1.1 Assignment by the Supplier

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

2.1.2 Assignment by the Purchaser

The Purchaser shall not without the prior written consent of the Supplier, assign to any person any benefit of or obligation under the Contract in whole or in part save that the Supplier hereby consents to the creation by the Purchaser of a security assignment of the Contract in favour of any Lender (or a trustee acting on behalf of one or more Lenders) and hereby undertakes to execute upon the request of the Purchaser 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 Purchaser. Further, save and except to group companies or the current promoters of the Purchaser (the "Promoters") where assignment shall be effective with prior notice to the Supplier, in all other cases the Purchaser 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 Supplier.

2.2 Sub-Contracting and Sub- Supplies

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2.2.1 The Supplier may, sub-contract any part of the Contract, provided that the Supplier obtain written consent from the Purchaser for the list of Major Sub-Supplier. The Supplier shall have the right to have any of the Supplies accomplished by Sub-Suppliers pursuant to written sub-contracts between Supplier and such Sub-Suppliers (or in the case of Sub-Suppliers who are also Supplier's affiliates, pursuant to whatever method Supplier chooses). However, the creation of any sub-contract relationship shall not relieve the supplier of any of its obligations under the Contract.

2.2.2 The Supplier shall be solely responsible for the engagement, payment and management of Sub-Suppliers in the performance of the Works, and for all acts and omissions of Sub-Suppliers. No contractual relationship or privity of contract shall exist between Purchaser and any Sub -Supplier with respect to the Works. No Sub-Supplier is intended to be or shall be deemed a third-party beneficiary of the Contract.

Provided that the Supplier shall obtain the approval of Purchaser of the list of Sub Suppliers who shall provide Supplies or materials aggregating to in excess of Rs Fifty (50) Million (such Sub Supplier being a "Major Sub-Supplier").

2.2.3 The Purchaser reserves the right to reject a Sub-Supplier if the financial and technical performance of such Sub-Supplier is found to have deteriorated before the award of a Sub-Contract by the Supplier to the Sub-Supplier. In the case of Sub Supplier(s) not already identified in the Contract, the experience list of the Sub-Supplier(s) under consideration by the Supplier shall be furnished to the Purchaser for approval prior to procurement of all such Items as covered under the Scope of Supplies under the Contract. The Purchaser shall provide their decision in this regard within 7 (seven) Business days from the Supplier furnishing details of the Sub-Supplier.

2.2.4 The Supplier shall ensure that all sub-contracts with the Sub-Suppliers are made in writing. It is understood and agreed between the Parties that if the terms of the contracts with the Sub- Suppliers, including those relating to Delivery Date and performance for any Item, shall meet at the minimum the equivalent terms of the Contract as signed with the Purchaser.

2.2.5 The (un priced) copies of the sub-contracts with Major Sub-Supplier including the technical





and functional specifications shall be submitted to the Purchaser by the Supplier within 4 months from the date of such supplies order is placed. The Quality Assurance Program of the Sub-Supplier(s) shall be as per the approved Quality Assurance Program under the Contract.

2.2.5 Under any sub-contract with the Sub-Suppliers, the Supplier shall provide that, pursuant to the terms in form and substance to the Purchaser, the rights of the Supplier under such sub-contract are assignable to the Purchaser successors and assigns and the Lenders upon the Purchaser's written request following termination of the Contract or after Warranty period completion.

2.2.6 In the event of termination of the Contract, based on Purchaser's request, the Supplier shall use best efforts to procure that a Sub-Supplier (other than in relation to minor or immaterial sub-contracts) enter into a direct Contract with the Purchaser wherein the Sub-Supplier, upon settlement of all payments payable as per Contract, to the Supplier under the Contract shall agree that all rights and obligations of the Supplier under such Sub-Contract are transferred to the Purchaser.

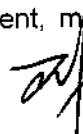
Provided however that to the extent that the supplier relies on any of its rights under Sub-Contracts as the basis of a claim against a Sub-Supplier prior to the termination of the Contract, the Supplier and the Purchaser shall mutually discuss and agree upon treatment of such rights.

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

2.2.8 Any sub-contracting of the Contract fully, or any rights there under fully by the Supplier without the prior written consent of the Purchaser shall be null and void. Such sub-contracting shall not relieve the Supplier from any obligation, duty or responsibility under the Contract.

2.2.9 The Supplier shall be responsible for the engagement, management and compensation of





Sub-Suppliers, the agents, servants, representatives or employees of such Sub-Suppliers in the performance of the work, acts, defaults and neglects of any Sub-Suppliers, the agents, servants, representatives, or employees of such Sub-Suppliers as fully as if they were the acts defaults or neglects of the Supplier. The Supplier shall assure that all Sub-Suppliers comply with all pertinent provisions of the Contract in their performance of the Works. The Supplier shall remain fully and primarily responsible for the performance of all Scope of Supply delegated to Sub-Suppliers, the agents, servants, representatives or employees, and shall be fully responsible for all acts, defaults, neglects, omissions or faults of any Sub-Supplier as if they were the acts, omissions or faults of the Supplier.

2.3 Scope of Work/Scope of Supply

- 2.3.1 The Scope of Work to be carried out by the Supplier shall include but not be limited to design, engineering, approval of drawings, manufacture, procurement, assembling, shop testing, packing, forwarding, transportation and delivery of the Plant and Equipment at Site including commissioning spares, Consumables to the Delivery Point, for the Project, more specifically detailed in Schedule 2 ("Scope of Supply").
- 2.3.2 The Plant and Equipment supplied shall be complete in all respects with all mountings, fixtures and standard accessories, commissioning spares that are required to be supplied in accordance with Good Industry Practices including Miss Outs, even if it is not specifically detailed in the Technical Specifications. The Supplier shall not be eligible for any extra payment in respect of such mountings, fixtures, fittings, and accessories and commissioning spares as may be needed for safe and reliable operation of the Plant and Equipment or if required under applicable Codes though they may not have been included in the Contract. Various Items of the Plant and Equipment supplied shall be interchangeable with one another.
- 2.3.3 The Supplier shall sequence his Supplies in accordance with the Delivery Schedule matching the Project Schedule approved by the Purchaser to meet the requirements of erection at Site and to facilitate achieving completion of successful Reliability Run Test/Taking Over of the Units by the respective Guaranteed Completion Date and satisfactory completion of Performance Guarantee Tests thereon and Purchaser's Final

Taking Over of the Units.

- 2.3.4 The obligations of the Supplier under the Contract shall include single point responsibility for all necessary co-ordination in respect of the independent supplies & allied activities to be performed to ensure that the Project is completed in every respect as contemplated. Thus the Supplier needs to ensure that the Scope of Supplies is completed in accordance with the Guaranteed Dates, the Technical Specifications and the Performance Guaranteed Values and the overall performance of the Supplies as agreed.

3. SUPPLIER TO INFORM HIMSELF FULLY

- 3.1 The Supplier is deemed to have carefully examined the Technical Specifications mentioned in Schedule 2 to his entire satisfaction before signing of the Contract. The Supplier 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 Supplies covered in the Contract.
- 3.2 The Supplier is also deemed to have familiarized himself with various acts and laws prevailing in India and have considered them fully while signing the Contract.
- 3.3 The Purchaser shall not permit any change in Project Schedule or any financial adjustment arising due to lack of information on the part of the Supplier. Any information obtained by the Supplier from the Purchaser, which is not in writing, shall not in any way relieve the Supplier of the Supplier's responsibility to fulfill his obligation under the Contract.
- 3.4 The Supplier 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 of the supply and materials necessary for the delivery of the Plant and Equipment at Site.
- 3.5 The Supplier 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 Purchaser, be

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entitled to any extension of time for any of the Items listed in the Project 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 Supplier from the Purchaser, which is not in writing, shall not in any way relieve the Supplier of his responsibility to fulfill his obligation under the Contract.

4. SUPPLIER'S OBLIGATIONS

4.1 Scope of Work/ Scope of Supply

The Supplier shall supply the Plant and Equipment in accordance with the Technical Specifications in Schedule 2 and perform all its other obligations as provided under the Contract.

4.2 Conformance to Requirements

The Supplier shall supply the Plant and Equipment to the Purchaser in accordance with all Requirements and Good Industry Practice. The Supplier shall perform all the Supplies in a good and workmanlike manner. All the materials used in the manufacture of the Plant and Equipment shall be selected from the best available sources for the purpose conforming to internationally acceptable standards set out for such material, considering strength, durability and free from defects and imperfection and of recent manufacture and unused. Liberal factors of safety shall be used throughout and especially for all parts subject to alternating stresses or shocks. The Supplier shall supply all Plant and Equipment and systems as per design, which are part of the Supplies with safety conforming to acceptable level of safety as per standard set out for such Plant and Equipment dependability, efficiency and economy, in each case using qualified, competent and, where necessary, licensed personnel. The Supplier shall deliver Plant and Equipment and other items necessary for start-up and Commissioning and Taking Over of the Power Plant.

4.3 Completeness of Equipment:

The Equipment supplied shall be complete in all respects with all mountings, fixtures and

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standard accessories, Commissioning spares that are required to be supplied in accordance with Good Industry Practices, including Miss Outs, even if it is not specifically detailed in the Technical Specifications. The Supplier shall not be eligible for any extra payment in respect of such mountings, fixtures, fittings, and accessories and commissioning spares as may be needed for safe and reliable operation of the Equipment or if required under applicable Code except for those deviations already agreed or if required for completion of the Plant as per the Contract though they may not have been included in the Contract.

Parts of all similar Equipment supplied shall be interchangeable with one another.

4.4 Engineer

4.4.1 The Supplier shall undertake coordination of the Supplies and inform the Purchaser on the progress of the Works. The Purchaser/Lender shall nominate a competent and qualified person ("Engineer") who shall be a single point contact between the Purchaser and the Supplier in all matters relating to the Contract. The name and contact details of such Engineer shall be furnished to the Supplier during Kick-off Meeting.

4.4.2 Compliance with the Engineer's Decision

The Supplier shall proceed with the Works in coordination 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 Article 19 hereof shall be binding and complied with by the Supplier. In respect of all matters, which are left to the decision of the Purchaser including the granting or withholding of the certification, the decision of the Engineer shall be final.

4.5 Drawings of the Plant and Equipment

4.5.1 The Supplier shall supply and deliver all the drawings (as provided for in the Technical Specification) mechanical, electrical, control and instrumentation, data sheets other than proprietary information and the like for approval of the Purchaser along with the design

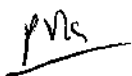


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calculations other than proprietary information and general write up wherever involved. All electrical, Control and instrumentation and mechanical drawings shall be properly coordinated.

- 4.5.2 While scrutinizing the Drawings, the Purchaser shall indicate the corrections to be made in these Drawings which the Supplier shall incorporate or justify its correctness.
- 4.5.3 The Supplier then shall submit the revised drawings for approval of the Purchaser. On approval of the same, Supplier shall furnish 8 (eight) hard copies and soft copy on compact disc ("CD") of these approved Drawings to the Purchaser as per the distribution to be intimated. Approval of any drawings by the Purchaser shall not absolve responsibilities of the Supplier to comply with requirements of codes/rules/competent authority in existence without any extra cost to the Purchaser.
- 4.5.4 Any delay in approval of Drawings by Purchaser, due to submission of incorrect data, non-submission of data, non-updating the Drawings in line with the corrections indicated shall be to the Supplier'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 and executed only after obtaining Purchaser's approval.
- 4.5.5 Within 1 (one) month from the successful completion of Reliability Run Test of each Unit, the Supplier shall incorporate all the changes necessitated in the drawings for the systems completed for that Unit and submit 2(two) sets and one soft copy in CD 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 certificate, erection drawings and instructions, and other manuals and information of a similar nature, for the records of the Purchaser. As the Drawings shall be approved based on the basic information furnished by the Supplier, approval by the Purchaser shall not absolve the Supplier of his responsibilities towards correctness of design and performance of the Plant and Equipment.
- 4.5.6 The Supplier shall be responsible for and shall perform, at its own cost, any alterations or remedial work to the Supplies required due to any discrepancies, errors or omissions in the





Drawings or other particulars supplied by it whether such Drawings or particulars have been approved or not by Purchaser.

- 4.5.7 If any dimensions figured upon a Drawing or a plan differ from those obtained by scaling Drawings or plans, the dimensions as figured on the Drawing or plan shall be taken as correct figures. All additional or incidental costs or damages which the Purchaser may have incurred on account of changes made by the Supplier in the Drawings provided by the Supplier after they have been approved by the Purchaser shall be recovered from the Supplier.
- 4.5.8 The sizing calculations of the Plant and Equipment other than the proprietary information shall be provided by the Supplier to the Purchaser as per the list that is mutually agreed during the Kick-Off Meeting. For Items under such list, sizing calculations shall be submitted, before proceeding with ordering / manufacturing of such Items, for Purchaser's approval.
- 4.5.9 The Supplier shall also prepare and supply Equipment Documents pertaining to the Plant and Equipment in sufficient detail to satisfy the requirements of the Contract and applicable Codes. The Supplier shall prepare such documents in accordance with Project Schedule, which shall be agreed to between the Purchaser and the Supplier. The Supplier shall submit, within 45 (forty five) days from Zero Date or during Kick-off Meeting whichever is earlier, list of documents identifying those documents under approval and information categories for the Purchaser's approval.
- 4.5.10 The Purchaser shall approve the list with comments, if any, within 14 (fourteen) Days of receipt of such list. In case of documents under approval category, the Purchaser shall either approve or comment within 14 (fourteen) days of receipt of first submission. For subsequent submissions, if any, the Purchaser shall similarly respond within 10 (ten) days of respective receipt(s).
- 4.5.11 No manufacturing activities covered under approval category of documents shall commence prior to Purchaser's approval of such documents. In the event that the Supplier commences such manufacturing, it shall take into account Purchaser's comments at its risk and

expense. The Supplier shall not depart from any approved documents unless the Supplier has first submitted to the Purchaser an amended document and obtained the Purchaser's approval thereof.

4.5.12 The documents under approval category, once approved by the Purchaser, shall be submitted to the Purchaser within a reasonable period, not exceeding 45 (forty five) Days from the date of such approval in 6 (Six) copies and one soft copy in CD for Purchaser's reference and records. However, in case these approved drawings are required to be submitted to any competent authority, then these shall be submitted to Purchaser at an earlier date as mutually agreed. The Purchaser shall provide suitable reasons for such expeditious requirements.

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

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

4.6 Manuals

4.6.1 Operation and Maintenance Manuals

For all the Items supplied by the Supplier, the Supplier shall submit to the Purchaser 10 (ten) sets of the Operation and Maintenance (O&M) Manuals and one soft copy in CD. The Manuals shall contain the operational features of the Item/s trouble shooting, maintenance schedules for preventive maintenance, detail dimensional drawings, cross sectional drawings, method of assembly and the like to make the Purchaser's staff acquainted with the Item/s supplied as well as to enable them to operate and maintain the same in prescribed manner. The O&M Manuals shall contain all information for ordering of the

spares, like part name, part no., address of the Supplier with phone number, fax number and other necessary details. The Supplier shall ensure that these O&M Manuals are made available to the Purchaser well before starting of Initial Operation of the Unit/s and/or the Plant and Equipment.

4.6.2 Erection Manuals

In order to enable the Engineer appointed by the Purchaser to supervise the Works properly, Supplier shall furnish 6 (Six) copies of Erection Manuals for each Unit and one soft copy in CD depicting therein the erection procedure, special precautions to be taken, various clearance to be maintained, erection checks and tests to be carried out before the Unit is put to Initial Operation.

4.7 Paints and Consumables

4.7.1 It shall be the responsibility of the Supplier to supply all the paints as required.

4.7.2 It shall be the responsibility of the Supplier to supply all consumables other than Coal, Raw water, LDO, HFO and start-up power up to completion of Reliability Run Test. The Supplier shall furnish specifications of all such consumables to enable the Purchaser to purchase the future requirements of such paints, consumables, oils and lubricants well in advance.

4.8 Packing, Forwarding and Despatch

4.8.1 The Supplier, after proper surface treatment shall pack and crate all the items of the Plant and Equipment for despatch in such manner so as to protect it from damage, corrosion and deterioration in transit and during its transportation by land, till the time of supplies reaching Delivery Point.

4.8.2 Each Item of the Plant and Equipment shall be painted, greased and/or provided with a suitable protective coating as required to prevent rust or damage due to bad weather. Before packing the Items as required, the Plant and Equipment shall undergo the Supplier's standard preservation measures to protect it during shipment.

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- 4.8.3 The Supplier shall give all information concerning the weight, size and content of each package including any other information the Purchaser may require.
- 4.8.4 The Supplier shall ensure that the dimensions of the packages conform to the requirements of the carriers viz. railways or any other mode of transport in India. The packing shall be sufficient to withstand, without limitation, rough handling during transit and exposure to extreme temperature, salt and precipitation during transit and open storage. Packing case size and weights shall take into consideration, where appropriate, the remoteness of the final destination, the ability of the connecting roads/bridges enroute to withstand the weight, and the absence of heavy handling facilities at all points in transit.
- 4.8.5 The Supplier shall prepare detailed packing list of the packages, containers, bundles and loose materials forming each and every consignment dispatched to the Purchaser.
- 4.8.6 The packing, marking and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the Contract and/or in any subsequent instructions by the Purchaser.
- 4.8.7 The packing material shall become property of the Purchaser on receipt of material at Site.
- 4.8.8 Supplier shall manufacture or otherwise procure the Equipment. Supplier shall then timely dispatch and provide for transport of the Equipment. Should Supplier encounter delays in manufacturing, procuring or transporting the Equipment, it shall, as necessary, initiate steps to remedy such delays and keep the Purchaser informed.

4.9 Permits

Supplier shall obtain and maintain any and all Permits necessary or desirable for the manufacture, transport of the Equipment ("Supplier Permits). Supplier shall obtain and maintain the Supplier Permits at Supplier's sole cost and expense. Supplier shall also cause all its Sub-Suppliers to maintain their Permits.



4.10 Storage and Identification

- 4.10.1 Until such time as risk of loss with respect to the Plant and Equipment has passed from Supplier to Purchaser, the Supplier shall properly store and ensure maintenance of the Plant and Equipment and shall protect such Items against weather hazards, water, humidity, sand, fire, theft, damage, and similar hazards, all in accordance with the Requirements.
- 4.10.2 The Supplier shall use reasonable means to prevent at all times any damage or loss whatsoever to the Plant and Equipment. All the major Items of the Plant and Equipment shall be labeled with permanently affixed nameplates that will include the manufacturer's name, Item model number and serial number. Such identification system shall correspond to the information contained in warranties maintenance requirements and records, as well all related certificates and documentation relating to the given Plant and Equipment that the Supplier delivers to Purchaser with the Plant and Equipment.

4.11 Supplier's Representative and Personnel

- 4.11.1 The Supplier shall provide all requisite superintendence during Supply envisaged under the Contract until proper completion of the Suppliers obligation under the Contract. Such superintendence shall be through experienced and qualified personnel, with prior experience in similar Plant and Equipment setup and adequate knowledge (including knowledge of operations to be carried out, preventive steps and procedures on accidents) facilitating timely implementation of the Project.
- 4.11.2 The Supplier shall provide superintendence to comply with the Delivery Schedule solely at its cost to complete the performance under the Contract.
- 4.11.3 The Supplier shall not recruit, or attempt to recruit, its staff and labour from amongst the employees of the Purchaser. Likewise, the Purchaser shall not recruit, or attempt to recruit, its staff and labour from amongst persons in the service of Supplier.
- 4.11.4 The Supplier shall, if applicable, 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 Supplier shall promptly pay and afford to its employees all their rights under employment with the Supplier. The Supplier shall be required to ensure that all such employees obey all Applicable Laws, including those concerning safety. The Supplier undertakes to include in each of its sub contracts a provision that the Sub-Supplier will comply with the foregoing labour Laws and worker's rights requirements with respect to its employees and that of any Sub-Suppliers. Nothing contained in any part of this Contract shall be construed to create any privity of relationship between the Purchaser and the Supplier or the Sub-Supplier or the employees, if any, deployed by the Supplier or the Sub-Supplier for the purpose of performance of the Scope of Supplies, including but not limited to principal-agent, master-servant and employer-employee.

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

4.11.6 No obligation of the Supplier pursuant to this Article shall be construed as obligating Purchaser to inspect or review the Supplier's labour and employment practices. Inspection or review of the supplies, procedures, methodologies and the like or the Supplier's facilities by Purchaser or Purchaser's Representative shall not (a) constitute either (i) an approval, endorsement or confirmation of the Supplier's or any Sub Supplier'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 Supplier from any of its obligations under this Article or any Applicable Law, or (ii) liability or responsibility under any of the Requirements.

14.12 SHOP ASSEMBLY

Shop Assembly to the extent necessary shall be performed by the Supplier to assure proper fitting of the various parts and for checking the correctness of clearances and dimensions,



parts thus assembled shall be match-marked for re-assembly at Site, prior to dismantling for despatch. A detailed description of intended shop assemblies shall be submitted along with the Quality Assurance Programme, wherever possible.

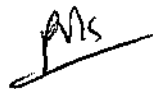
4.13 Shop Testing

- 4.13.1 The Supplier or its Sub Suppliers and/or Affiliates shall perform the standard Shop Tests. Upon successful completion of the standard Shop Test the Supplier shall provide the Purchaser with a shop testing certificate detailing the standard Shop Test and the results thereof. In addition, the Purchaser reserves the right to require the Supplier to perform one or more formal Shop Tests of any or all of the Item/s of the Plant and Equipment that the Purchaser or the Purchaser's Representative may attend.
- 4.13.2 The Purchaser shall give the Supplier written notice of the Purchaser's desire for such Shop Tests prior to the proposed readiness to despatch. Should the Purchaser require a formal Shop Tests, the Supplier shall provide Purchaser with at least ten (10) Days (or such other period as may be agreed upon by the Supplier and Purchaser) prior written notice of the time and place for the conduct of such formal Shop Tests; provided that, in the case of any retesting shortly following a failed Shop Test, such notice to the Purchaser may be oral and within such reasonable period prior to such retest as shall provide the Purchaser with a reasonable opportunity to attend.
- 4.13.3 The Supplier shall allow Purchaser to attend any other Shop Tests whether conducted by the Supplier or a Sub-Supplier, and use reasonable efforts to enhance the ability of Purchaser to attend such tests. If Purchaser fails to attend any such Shop Test within 7 days after receipt of notice by Purchaser, then such test shall be deemed waived by Purchaser and Purchaser shall rely on the test report submitted by Supplier. In case of change in shop test schedule, Supplier shall inform Purchaser one week in advance of such change.
- 4.13.4 The Supplier shall promptly forward to Purchaser duly certified reports of all the Shop Tests (including IBR approved third party certificates) and copies of the data upon which the reports are based.

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- 4.13.5 If the Purchaser does not attend a test after having received notice thereof in accordance with the provisions of the Contract, or if Purchaser and the Supplier agree that Purchaser shall not attend a particular Shop Test, the Supplier agree in writing without prejudice to the Purchaser's right to receive the Item/s materials of required quality set out in the specifications to meet the required level of performances, the Supplier may proceed with the test.
- 4.13.6 If, as a result of inspection, examination or testing, it is determined that any or all Item/s of the Plant and Equipment, materials, supplies or workmanship is not in accordance with the Contract, the Purchaser may reject the same. If the Purchaser rejects the same, it shall notify the Supplier promptly, stating its reasons. The Supplier shall then promptly repair the defect and ensure that the Item supplied complies with the Contract.
- 4.13.7 If, due to rejection by the Purchaser, all or any Item/s of the Plant and Equipment requires retesting to verify compliance with the Contract, the necessary inspections, examinations and tests shall be repeated under the same terms and conditions, at no additional cost to the Purchaser. If such correction and retesting (other than Acceptance Tests) cause the Purchaser to incur additional costs directly related to such retesting, such costs shall be reimbursed to Purchaser by the Supplier.
- 4.13.8 Notwithstanding the above, the Supplier shall be solely responsible for complying with the Requirements under the Contract including the quality parameters with respect to the Supplies.
- 4.13.9 Inspection, Testing and Expediting. Supplier or its Sub Suppliers and/or Affiliates shall perform all inspection, expediting, testing, quality assurance and logistic services, by appropriate and technically qualified personnel or internationally accredited agencies if so required by the Purchaser, required to perform the Scope of Supplies. Supplier shall provide, at its own cost, all documents and other information reasonably necessary for the testing of the Equipment when installed at/on the Site.



4.14 Consultation with Purchaser, no release from responsibility

Inspection or review by Purchaser or Purchaser's Representative shall not (a) constitute either (i) an approval, endorsement or confirmation of any design or engineering materials, manual, test, Plant and Equipment or any Item thereof, Supplies, program, method of procedure or other work done, or (ii) an acknowledgment by any such Person that any design or engineering materials, manual, test, Plant and Equipment or any Item thereof, Supplies, program, method of procedure or other work done satisfies any of the Requirements; or (b) relieve the Supplier from any (i) of its obligations to perform the Supplies or furnish the Plant and Equipment in accordance with all the Requirements, or (ii) liability or responsibility for injuries to persons or damage to property.

4.15 Spares

4.15.1 All the Spares required to be supplied shall be properly protected and packed for long storage at Site under prevailing conditions and delivered by the Supplier in new and unused condition.

4.15.2 The Spares shall be capable of being inter-changed with the parts for which they are intended to be a replacement.

4.15.3 In case of any failure in any original part / component of the Item or the Unit or the Plant and Equipment, as the case may be, and where such failures are due to faulty design, material and workmanship, spare parts, if any, supplied for such components / parts shall also be replaced without any extra cost to the Purchaser. Such replaced Spares shall have the same warranty period as applicable to the replacement of defective parts and material.

4.16 Commissioning Spares and Consumables and Purchaser inputs

4.16.1 The Supplier shall provide all Commissioning spare parts, as required to meet the Plant and Equipment requirements.



4.16.2 The Supplier shall provide all tools & tackles related to the Supplies and other items to meet the actual Site requirements for enabling Commissioning and Final Acceptance of the Power Plant.

4.16.3 The Supplier shall supply at its own cost all consumable and first fill of lubricants and thereafter until date of Reliability Run Test completion. Purchaser shall provide only four inputs free of cost, namely raw coal, raw water, LDO/HFO and start-up power at 400KV for testing, commissioning and Reliability Run Test, subject to guaranteed cap provided by the Supplier as below:

S. No.	ITEM	QTY. (For Three Units)	UNIT	Required for
1	Design Coal	1650000	tons	Testing, commissioning & up to the successful completion of RRT.
2	LDO	13770	tons	Testing, commissioning & up to the successful completion of RRT.
3	HFO	21000	tons	Testing, commissioning & up to the successful completion of RRT.
4	Raw Water	9900000	Cu.m	Testing, commissioning & up to the successful completion of RRT.
5	Startup Power (from grid)	126000000	kWh	Testing, commissioning & up to the successful completion of RRT.

. For any excess consumption beyond these guaranteed values these shall be charged to the Supplier at the rates mentioned below:

- Coal at the rate of Rs. 900/MT at Track hopper
- LDO/HFO at the rate of Rs. 40000/kl at Fuel oil tanks
- Raw Water at the rate of Rs. 2.0/Cu.m at Raw Water reservoir
- Start up power at the rate of Rs. 10.0/ kWh at 400 kV Bus of power plant switchyard."



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All other consumables required for power project shall be in Supplier scope.

4.16.4 It shall be the responsibility of the Supplier to maintain adequate items in sufficient number, as Erection & Commissioning Spares to ensure that erection, commissioning works and operation up to end of Warranty Period do not hamper for requirement of the Spares. All the left over unused Erection and Commissioning Spares shall be the Supplier's property after the Warranty Period is over and after due reconciliation of spares at Site.

4.17 Long Term Availability of Spares

4.17.1 The Supplier shall ensure the long-term availability of all the Spares mentioned in this Article to the Purchaser through out the term of the Contract. The Supplier shall also ensure that before going out of production of the Spares of the Plant and Equipment covered under the Contract, the Supplier shall give the Purchaser at least 12 (twelve) months advance notice, in writing, so that the Purchaser has sufficient time to order for the Spares in bulk, if the Purchaser so desires. The same provision shall also be applicable to all the Sub-Suppliers and it shall be the responsibility of the Supplier to ensure that the respective Sub-Contract provides for the same.

4.17.2 In case of discontinuance of manufacture of any of the Spares by the Supplier or any of the Sub- Suppliers, the Supplier shall provide the Purchaser, 1 (one) year in advance of such discontinuance, all the manufacturing drawings, material specification and technical information required by the Purchaser for the purpose of manufacture of such Spares.

4.17.3 Further, in case of discontinuance of supply of the Spares by the Supplier or any of the Sub-Suppliers, the Supplier shall provide the Purchaser with full information for replacement of such Spares with other equivalent make, if so required by the Purchaser.

4.17.4 The Supplier shall provide the Purchaser with a "directory" of all the Sub-Suppliers giving the addresses and other particulars of such Sub-Suppliers. The Purchaser, if he so desires, shall have the right to procure the Spares directly from such Sub-Suppliers.

4.18 Access

Upon reasonable notice, the Supplier shall provide or arrange for the Purchaser access during normal business hours to the Supplier's Works, and all Sub-Suppliers' Works in order to witness the tests, to inspect and examine the Plant and Equipment, and to monitor compliance by the Supplier 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-Article to the contrary, the Supplier (and, if applicable, any Sub-Supplier) may provide, and the Purchaser shall accept, an escort or any safety measures that the Supplier (and, if applicable, any Sub Supplier), in its sole discretion, deems necessary or advisable. The Purchaser 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.

4.19 Compliance with Requirements, Codes and Standards of Care

4.19.1 Compliance with Applicable Law

4.19.1.1 The Supplier shall in its performance of the Contract ascertain and comply with the Applicable Laws and the Supplier 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.

4.19.1.2 All the Supplies shall be delivered by the Supplier 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 Plant and Equipment, such Change in Law shall be treated as if it were a Variation instructed by the Purchaser, upon which Article 19 of the Contract shall apply.

4.19.1.3 Either Party shall indemnify the other Party or any third parties 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.

4.19.2. Divergences from Statutory Requirements

4.19.2.1 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.

4.19.2.2 If either Party 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 Supplier shall promptly upon becoming aware of the same, inform the Purchaser in writing of its proposed amendment for removing the divergence, and with the Purchaser's consent and subject to agreement on any variation in the Contract Price, the Supplier shall deliver the Plant and Equipment and each item thereof in accordance with such amendment. The cost and expenses (if any) involved in the above divergence shall be mutually discussed and agreed upon.

4.19.3 Codes

4.19.3.1 The Supplier 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.

4.19.3.2 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 Supplier shall comply with the same. However, if such compliance calls for any modification of the design of the Plant and Equipment or any Item thereof with financial implication, the same shall be discussed and mutually agreed to between the Supplier and the Purchaser.

4.19.3.3 At all times, the Supplier shall execute and complete the Works in a safe, prudent and reliable manner strictly in 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 the same size and characteristics similar to that of the Project.

4.20 Program of Works

The Supplier shall so organize its resources and perform its obligations as to meet the Delivery Schedule as per the Project Schedule of each Unit of the Plant and Equipment to achieve the relevant completion of Reliability Run Test or Taking Over of such Unit after the Commercial Operation Date of such Unit, applicable thereto, and to permit successful completion of Performance Guarantee Tests

4.21 Project Schedule

4.21.1 The Scope of Supply under the Contract is to be programmed (hereinafter "Delivery Schedule") in such a way that the erection, testing, Commissioning of the Plant and Equipment is completed by respective contractors within the Guaranteed Completion Date as specified below.

4.21.2 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

Unit No.	Reliability Run Test completion (months) from Zero Date (best effort basis)	Reliability Run Test completion (months) from Zero Date (Guaranteed Completion Date)
5 X 600 MW	52	54
6 X 600 MW	56	58

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

- Supplier shall submit ABG at the end of third month from the date of LoA issued for 8% of the Contract Price and at the end of sixth month from the date of LoA issued for 2% of the Contract Price.
- The Purchaser 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 Purchaser to be notified by Purchaser, confirming that the ABG has been issued on behalf of Supplier. Purchaser shall arrange for the confirmation of the ABG, if required, for which the necessary charges shall be to the account of Purchaser. 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.
 - For first advance payment if such delay continued for 30 days from the due date, then the Contract Price and Guaranteed Completion Date shall be renegotiated.
 - For all other advance payments if such delay continued for 90 days from the 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 Supplier within 6 months from Zero Date with the formal confirmation letter from Purchaser. Failing to do so by Purchaser, the Guaranteed Completion Date shall be extended by the corresponding

PNC

[Signature]

period of such delay.

- The Purchaser 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 Purchaser, the Guaranteed Completion Date shall be extended by the same period of the delay of such furnishing.

4.21.4 The micro detailed Delivery Schedule so as to match with the above completion of the Works shall be submitted by the Supplier for Purchaser's approval, after award of the Contract.

4.21.5 The Supplier shall for approval of the Purchaser, submit, within 4 (four) weeks from Zero Date, the Delivery Schedule 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) Manufacture and Testing of the Plant and Equipment at Supplier's Works;

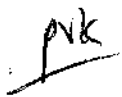
ii) Delivery to the Delivery Point.

4.21.6 The program submitted to the Purchaser, shall be reviewed by the Purchaser and on approval shall form part of the Contract and subject to up-dation, without change in Guaranteed Completion Date, based on Purchaser approval, shall be strictly adhered to by the Supplier during the execution of the Contract. The Supplier shall also submit the schedule of inputs required from the Purchaser in order to execute the project as per Project Schedule.

4.21.7 Grounds for Extension of Guaranteed Completion Date

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

- (a) any Variation/Change Order issued in accordance with Article 19 hereof;



- (b) events or circumstances of Force Majeure as defined in Article 26 hereof;
- (c) Purchaser's failure to fulfil any of its obligations under the Contract;
- (d) an instruction of the Purchaser to suspend the whole or any part of the Works for reasons not attributable to the Supplier.

4.21.8 Grant of Extension of Time

As soon as reasonably practicable following the occurrence of any of the circumstances described in Article 4.20.8 hereof, but subject to the provision thereto, the Purchaser shall grant the Supplier from time to time in writing either prospectively or retrospectively such extension to the relevant Guaranteed Completion Date as shall be fair and reasonable.

4.21.9 Delivery Schedule

Supplier shall arrange supply of the Equipment sequentially as per agreed Project Schedule.

The Plant and Equipment and each Item thereof shall be supplied by the Supplier in accordance with the Delivery Schedule and the Delivery Schedule may, subject to the prior approval of the Purchaser, be amended from time to time. The Delivery Schedule and sequence of all the items of the Plant and Equipment shall be so as to ensure that the schedule of the Supplies by the Supplier is met to enable the Commissioning of each Unit and/or the Plant and Equipment to occur within the period as specified under and enable the Taking Over of each Unit and/or the Plant and Equipment, as the case may be, by the Purchaser, after successful completion of Reliability Run Test and Completion of Performance Guarantee Test.

4.21.10 Manufacturing Programme

The Supplier shall make available to the Purchaser a detailed Manufacturing Programme for the Plant and Equipment in line with the Project Schedule within 30 (thirty) Days from the date of Purchaser's final acceptance of the Project Schedule. During the execution of





the Contract, such programmes shall be reviewed, updated, submitted to the Purchaser as and when needed by it or periodically as specified by it. If in the reasonable opinion of the Purchaser, proper progress is not maintained for reasons solely attributable to the Supplier, the Purchaser shall have the right to instruct the Supplier to accelerate the progress of the Works and suitable changes shall be made in the Supplier's operation to ensure proper progress.

4.21.11 Quality Assurance Programme

4.21.11.1 The Supplier undertakes to implement throughout the period of the Contract the Quality Assurance Programme ("QAP") as described in the Technical Specifications and as agreed with the Purchaser.

4.21.11.2 The QAP is a document, which presents in a tabular form the Quality Control checks to be exercised by the Supplier during the various stages of manufacture and dispatch in order to meet the requirements of the Contract. The QAP shall detail the components manufactured, characteristics being controlled and acceptance norms for this characteristic and the agency responsible for performance and witnessing the checks.

4.21.11.3 The Purchaser has furnished & explained the sample Quality Plans (QP) for Equipment of Water Treatment Plants, Coal Handling Plant & Ash Handling Plant with minimum quality requirements for guidance of Supplier. The Supplier shall follow the same & prepare similar QPs of other equipment of BOP. Supplier shall submit the same for Purchaser's approval within 45 days from Zero date. Supplier shall fix enquiries to Sub-vendors only with approved QPs.

The Purchaser already furnished & explained its Quality Plans (QP) for Boilers, Turbines & Generators and their auxiliaries. Supplier agreed to follow the same with minor changes, which shall be discussed & agreed after Zero Date.

4.21.11.4 The approved Quality Assurance Programme shall be the basis of inspection and certification by the Purchaser of respective Supplies of the Supplier. The necessary hold points shall be identified in the QAP where the clearance by the Purchaser shall be required



before proceeding further unless a waiver is given by the Purchaser. At such stages, the Supplier shall give at least 10 (ten) Days' notice in advance for the Purchaser to attend such inspection and the Purchaser at its discretion may either attend the test or give waiver. The Supplier shall be responsible to furnish copies of tests certificates, IBR approved third party certificates and inspection reports to the Purchaser as per QAP before release of payment for such supply.

4.21.11.5 The details of the quality assurance / quality checks envisaged by the Supplier during manufacturing of the Item/s supplied by the Supplier or procured through the sub-vendors/ Sub-Suppliers of the Supplier shall be detailed out in the quality plans to be submitted by the Supplier. The Supplier may also furnish any additional information regarding quality assurance / quality checks in the additional sheets, if required. The QAP plans for other major Item/s manufactured by the Supplier or procured through his sub-vendors / sub-Suppliers shall be submitted during engineering. After approval of the Purchaser is accorded various quality plans shall be bound as a booklet and shall be submitted to the Purchaser as soon as possible. The Supplier shall ensure that the approved quality plans are followed scrupulously by the Supplier and the sub-vendors, sub-suppliers and manufacturing of the Item/s covered under the QAP shall be taken up only after Purchaser has approved the QAP.

4.21.12 Progress Reports

The Supplier shall constantly monitor the progress of all activities in connection with delivery of the Supplies in accordance with the Delivery Schedule and the Project Schedule and shall submit a detailed Progress Report, in 6 (six) copies in print and soft copy in CD, to the Purchaser every Month. 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 delivery of the Plant and Equipment and each Item of such Plant and Equipment as against the Project Schedule and if any activities are behind the Delivery Schedule and/or Project Schedule, shall set out the explanation therefore, consequences thereof, and the action being taken to remedy the delay.



4.21.13 Test Reports

On completion of tests of the Items at the Supplier's Works, the Supplier shall furnish 4 (four) copies of test certificates and IBR approved third party certificates to the Purchaser for approval and subsequent dispatch clearance. The test report shall invariably indicate identification data, including model no., sr. no. and the other like necessary details of the Items of the Plant and Equipment, method of application and duration of test along with test results. Only on approval of these test results by the Purchaser or Purchaser's Third Party Inspection Agency, the material shall be dispatched to the Delivery Point.

4.22 Patent Rights, Royalties and License Fees

4.22.1 The Supplier shall hold the Purchaser 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.

4.22.2 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 Supplier 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 the same.

4.22.3 In the event of any claim being made or action brought against the Purchaser arising out of the matters referred to in this Article, the Supplier shall be promptly notified thereof and may at the Supplier's own expenses conduct all negotiations for the settlement of the same and any litigation that may arise therefrom. The Purchaser shall not, unless and until the Supplier 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 Supplier of such negotiations or litigation shall be conditional upon the Supplier having first given to the Purchaser such reasonable security as shall from time to time be required by the Purchaser to cover the amount ascertained or agreed or estimated as the case may be of any compensation, damages, expenses and costs for which the Purchaser may be liable in



respect of such infringement as aforesaid. The Purchaser shall, at the request of the Supplier, afford all available assistance for the purpose of contesting any such claim or action and shall be repaid any expenses incurred in so doing.

4.22.4 Final payment to the Supplier by the Purchaser shall not be made while any suit or claim regarding infringement of patent or other intellectual property right and royalties remains unsettled. In the event any apparatus, Plant or equipment or any part thereof furnished by the Supplier in such suit or proceedings is held to constitute infringement and its use is not permitted, the Supplier shall, at his option, and at his own expenses, either procure for the Purchaser 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 Equipment.

4.23 Supply Completion

The Supplier shall notify the Purchaser within 24 (twenty four) hours after the Supplier has supplied the last Item of the Plant and Equipment relating to Scope of Supply.

4.24 Financing Matters

4.24.1 The Supplier hereby consents to assignment of the Contract to the Lenders of the Project for their security purposes.

4.24.2 The Supplier shall cooperate with the Purchaser and the Lenders and shall execute, deliver, and perform under such documents as may be reasonably required by the Lenders.

4.24.3 Supplier shall provide complete support on documentation with respect to Purchaser Usance / Buyers Credit facility with its bankers.

4.25 Transfer of Ownership and Risk

4.25.1 The title to the Plant and Equipment shall pass to the Purchaser when the Plant and Equipment are delivered to Site and endorsed on the transport documents by Purchaser.

Provided however, such passing of title of ownership to the Purchaser shall not in any way absolve, diminish or dilute the responsibilities and obligations of the Supplier under the Contract or otherwise affect the provisions respecting care, custody and control and loss.

4.25.2 The transfer of ownership and risk specified as above shall not be affected by any activity by the Supplier arising on account of Warranties under Article 18 hereof.

4.25.3 In performing the Scope of Supplies the Supplier shall not incorporate into the Plant and Equipment any components, materials, tools and supplies that are not free and clear of any and all Liens, or other encumbrances. Should Purchaser be encumbered from using any Item of the Unit and/or portion of the Plant and Equipment or otherwise become the subject of legal action due to the Supplier's failure to comply with this Sub-Article, the Supplier shall promptly bring the Plant and Equipment into full compliance with this Sub-Article and perform all actions necessary to have the injunction lifted and/or the legal action dismissed with prejudice.

4.25.4 The Supplier shall, at its sole expense, promptly and duly execute, obtain from third parties and deliver to Purchaser such documents (including financing statements, short form memorandums of the Contract and Lien waivers for filing and recording purposes) and assurances, and take such further action as Purchaser may from time to time reasonably request in order to establish, perfect and maintain Purchaser's right, title and interest in and to the Plant and Equipment and the Project.

4.26 Interconnection.

The Purchaser and Supplier acknowledge and agree that the design, engineering and installation of the electrical Equipment within Supplier's scope within the battery limits of Power Plant will require coordination among Purchaser, Supplier and the State Transmission Utility (STU) in Chhattisgarh or its successors and Power Grid Corporation of India Limited (PGCIL). Supplier shall be responsible for Supply of such electrical Equipment within Supplier's scope and Interconnection Equipment to enable timely interface with the Grid. Transmission Line and equipment beyond Supplier battery limits are not within the scope of Supplier. The Purchaser shall be responsible for providing all necessary





information from STU/PGCIL and providing interconnection conditions outside the Power Plant boundary necessary for on-time interconnection to the Supplier.

4.27 Punch List.

The Supplier shall co-operate with the Purchaser for preparation and submit a list of items of uncompleted Scope of Supplies, the lack of which or the failure of which to complete (considered individually or in the aggregate) does not or will not adversely affect the performance of the Power Plant or the ability of Purchaser to safely and efficiently operate and maintain the Power Plant in the ordinary course of business (the "Punch List"). At any time prior to the Take Over Date, the Purchaser shall have the right to add Punch List Items to the Punch List which prove, or are discovered to be, deficient and the same shall be liquidated by the Supplier before PG test completion date. All items which the Purchaser believe to be deficient after the Take Over Date but within Warranty Period, as applicable, shall be submitted to the Supplier as warranty work pursuant to Article 18 and the Supplier shall re-supply or rectify the defects of such Supplies.

4.28 Care custody

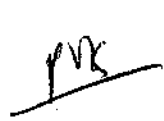
Notwithstanding which Party has title, care custody and control of the Equipment and loss or damage thereto shall remain with Supplier until passed to the Purchaser at the time of final handing over of each Unit.

5. PURCHASER'S OBLIGATIONS

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

5.1 Make Payments

The Purchaser shall be liable to make Payments to the Supplier in the manner as set forth in Article 12 of the Contract.



5.2 Purchaser's Representative

- 5.2.1 The Purchaser shall depute an English-speaking employee or representative to act on its behalf as its authorized representative ("**Purchaser's Representative**") who will act as an in-charge for all the Works under the Contract. The Supplier's resident engineer shall report to the Purchaser's Representative for all the day-to-day Works.
- 5.2.2 The Purchaser shall provide the Supplier written notice of the name, current address, telephone and facsimile numbers of Purchaser's Representative. The Supplier shall comply with instructions given by the Purchaser's Representative in connection with the Contract.
- 5.2.3 The Purchaser shall cause the Purchaser's Representative to perform every act required under the Contract to be performed by the Purchaser's Representative and any obligation stated under the Contract to be an obligation of the Purchaser's Representative shall be deemed to be an obligation of the Purchaser. The Purchaser shall be responsible for any act, neglect or omission of the Purchaser's Representative as if it were an act, neglect or omission of the Purchaser.
- 5.2.4 The Supplier shall proceed with the Scope of Supplies in accordance with decisions, instructions and orders given by the Purchaser's Representative subject to and in accordance with the Contract, including provisions for Variations as set out in Article 19 hereof.
- 5.2.5 The Purchaser's Representative may issue written and/or oral instructions in case of emergencies with which the Supplier shall immediately comply. The Purchaser's Representative shall confirm any oral instruction in writing within 36 (thirty six) hours of its issuance.

5.3 Purchaser's Staff/Representative not personally liable

Neither any member of the Purchaser'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 Purchaser in the observance or performance of any of the acts, matters or things which are concerning the Contract.

5.4 Approvals / Consents

The Purchaser shall obtain and maintain all statutory approvals / consents for the purchase of the Plant and Equipment and timely execution of the Contract. The Purchaser shall be responsible for the approvals and consent required for implementing the Project and excludes those approvals that are to be obtained and maintained by the Supplier. The Purchaser shall obtain registration with Sales Tax authorities in the Champa, Chhattisgarh and the Purchaser shall issue Supplier "C" Forms..

5.5 Document Review.

The Supplier may send to the Purchaser for review any data, documentation, or specifications, drawings ("Documents"). The Purchaser's reviewer will verify the accuracy of the information and data that the Supplier has supplied. All Documents submitted by the Supplier to the Purchaser for approval must be either approved or rejected by the Purchaser with comments within 14 (fourteen) days from the date the Documents are delivered to the Purchaser, where after they shall be deemed approved. In the event they are rejected by the Purchaser, the Supplier shall resubmit the same, and the Purchaser shall comments within 10 (ten) days from the date they are delivered to Purchaser, where after they shall be deemed approved.

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) by the Purchaser shall not be applicable In such case the time period for drawings approval shall be mutually discussed and agreed.

6. EFFECTIVENESS OF CONTRACT

The term of the Contract shall commence and it shall be in full force and effect from the date of Contract signing. Unless otherwise terminated the Term of the Contract shall be

deemed to continue until the completion of the Warranty Period and till the completion of all the contractual obligations by the Supplier.

7. PROGRESSIVE AND FINAL CERTIFICATES

- 7.1 The Supplier may, at the times and in the manner explained hereunder, apply to the Engineer for Progressive and Final Certificates for the Works executed in terms of the Contract with complete supporting documentation.

The Supplier shall submit applications for Progressive Certificate upon the completion of progress events and each application shall be accompanied by such evidence as the Engineer may reasonably require.

- 7.2 The Engineer shall issue to the Supplier progressive certificate certifying completion of Works up to a said date, within 7 days after receiving of an application, therefore, made in accordance with this Article.

- 7.3 Every progressive certificate shall certify the Contract Price of the Plant and Equipment supplied or value of the Works duly executed pursuant to the Contract, up to the date named in the application for the certificate. If any Item/s supplied does not comply with the Contract and for which a progressive certificate has been issued earlier by the Engineer, the value of such Item/s shall be subtracted from the next progressive certificate.

- 7.4 No progressive certificate shall be relied on as conclusive evidence of any matter stated therein, nor affect or prejudice any right of the Purchaser or the Supplier 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.

- 7.5 Application for the final certificate may be made by the Supplier to the Engineer at the end of the Warranty Period, provided the Supplier has fulfilled the necessary obligations under the Contract in totality.

- 7.6 The Engineer shall issue the Supplier a final certificate 15 days after receiving an application



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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 authorized in the Contract.

- 7.7 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.
- 7.8 The Purchaser shall not be liable to the Supplier for any matter or thing arising out of or in connection with the performance of Scope of Supplies under the Contract unless the Supplier shall have made a claim in writing in respect thereof within 90 (ninety) days from the cause thereof.

8. INSPECTION, TESTING AND INSPECTION CERTIFICATE

- 8.1 The Engineer or Engineer's duly authorised representative and / or an outside inspection agency acting on behalf of the Purchaser, shall have at all reasonable times, access to the Supplier's premises or works and shall have the power at all reasonable times to inspect and examine the materials, workmanship and progress of the Works during its manufacture or erection and if any Item of the Plant and Equipment is being manufactured or assembled at other premises or the Supplier's Works, the Supplier shall obtain for the Engineer and for his duly authorised representative, permission to inspect as if the Works were manufactured or assembled on the Supplier's Works.
- 8.2 The Supplier shall give the Engineer / Inspector 15 (fifteen) days written notice of any material being ready for testing. Such tests shall be to the Supplier's account except for the expenses of the Purchaser's Inspector. The Engineer / Inspector, unless witnessing of the tests is waived, will attend such tests within 15 (fifteen) days of the date on which the Item/s is notified as being ready for test / inspection, failing which the Supplier may proceed with the test, which shall be deemed to have been made in the Inspector's presence and he shall forthwith forward to the Inspector duly certified copies of tests in triplicate.



- 8.3 The Engineer or Inspector shall, within 7 (seven) days from the date of inspection as defined herein, give notice in writing to the Supplier of any objection to any drawings and / or any Item of the Plant and Equipment and workmanship which in his opinion is not in accordance with the Contract. The Supplier shall give due considerations to such objections and shall either make the modifications that may be necessary to meet the said objection or shall confirm in writing to the Engineer / Inspector giving reasons therein, that no modifications are necessary to comply with the Contract.
- 8.4 When the Shop Tests have been completed at Supplier's Works, the Engineer / Inspector shall issue a certificate to this effect 7 days after completion of tests but if the tests are not witnessed by the Engineer / Inspector, the certificate shall be issued within 7 days of receipt of Supplier's test certificate by the Engineer / Inspector. Failure of the Engineer / Inspector to issue such a certificate shall not prevent the Supplier from proceeding with the Works. The completion of these tests or the issue of the certificate shall not bind the Purchaser to accept the Plant and Equipment should it, on further tests after erection, be found not to comply with the Contract.
- 8.5 In all cases where the Contract provides for tests whether at the premises or works of the Supplier or of any Sub-Supplier, the Supplier, except here otherwise specified, shall provide free of charge such items as labour, materials, electricity, fuel, water, stores, apparatus and instruments as may be reasonably demanded by the Engineer / Inspector or his authorized representative to carry out effectively such tests of the Items in accordance with the contract and shall give facilities to the Engineer / Inspector or to any authorized representative to accomplish testing.
- 8.6 The inspection and/or acceptance by the Engineer and issue of Inspection Certificate thereon shall in no way absolve or limit the liabilities and responsibilities of the Supplier towards quality of the Plant and Equipment to be supplied under the Contract and shall not prevent subsequent rejection, if such Item is found to be defective and not in conformity with the requirements of the Contract.
- 8.7 The above provisions shall also be applicable to the erection portion of the Works. The Engineer shall have the right to re-inspect any Item of the Plant and Equipment though

previously inspected and approved by him at Supplier's works before and after the same are erected at Site. If, by the above inspection, the Engineer rejects any Item/s, the Supplier shall make good such rejections either by replacement or modifications/ repairs as may be necessary to the satisfaction of the Engineer. Such replacements will also include the replacements or re-execution of all such Works of other contractors and / or agencies which might have got damaged or affected by the replacements or rework done to the Supplier's Works.

- 8.8 It is agreed and acknowledged by the Parties that no Item of the Plant and Equipment shall be despatched before all tests and inspections have been carried out according to the approved Quality Assurance Programme unless otherwise instructed by the Purchaser.

9. THIRD PARTY INSPECTION

The Plant and Equipment to be supplied under the Contract shall be inspected during manufacturing as per the QAP to be finalized. Material verification and stage inspection at all important stages as well as final testing and inspection shall fall within this scope. The inspection shall be carried out by the Purchaser or a third party inspection agency to be appointed by the Purchaser for supplies. The cost towards this inspection shall be borne by the Purchaser.

10. CONTRACT PRICE

- 10.1 The Purchaser agrees to pay to the Supplier in the manner set forth in the Contract and the Supplier shall accept as full and complete compensation for Scope of Supplies under this Contract, the lump-sum, (the "Contract Price") INR (Indian Rupees) 1,656,000,000/- (**Say Indian Rupees one billion six hundred and fifty-six million only**) inclusive of all applicable taxes and duties as on Feb 21, 2009 except entry tax/octroi duties.

- 10.2 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) Any 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 Purchaser. In the event the variation results in increase of Contract Price, the Purchaser shall pay the same to the Contractor. In the event the variation results in decrease of Contract Price, the Purchaser shall deduct the same from the balance payment to the Supplier or in the event the decrease is more than the balance payment to the Supplier, shall recover the same from the Supplier. The Supplier shall provide all documentation to establish such variations to account for the increase / decrease in the Contract Price.

11. PAYMENTS

The Purchaser, as per guidelines and conditions specified herein, shall arrange the payment to Supplier 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 off-shore supply shall be made in Indian Rupees.

- 11.1 It shall be the responsibility of the Supplier to effect the Payments to the Supplier's collaborator/associate, principal, sub- vendor, sub-supplier etc. The Supplier shall hold the Purchaser harmless and indemnified from and against all such claims. The Supplier acknowledges that this aspect has been taken into consideration in the Contract Price.

11.2 Due dates for payment

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

On receipt of complete set of required documents, the Purchaser shall process the documents within 7 days. Any delay in approval / comments from the Purchaser within 7

days, same shall be treated as approval for payment. On approval from the Purchaser, the Purchaser shall release the payment within 14 days.

The Purchaser shall make timely payments to the Supplier of all amounts due to the Supplier 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.

11.3 Payment Schedule (Billing Break-Up)

The Supplier 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 Billing Break-Up is approved by the Engineer.

11.4 Application for Payments

11.4.1 Each such application shall state the amount claimed and shall set forth in detail, in the order of the Payment Schedule, particulars of the Works and of the Item/s shipped/received at the Site pursuant to the Contract or erection at Site completed up to the date mentioned in the application and for the period covered since the last preceding application, if any.

11.4.2 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.

11.5 Bank Guarantee

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

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

11.5.3 If any extension of the validity of the Bank Guarantees is required as a result of a delay in the Reliability Run Test (expiry date for ABG), or as a result of an extension in the Warranty Period of the Project, for reason of the Supplier, the Supplier shall, within 7 days prior to their expiry, arrange such extension. If the Supplier fails to arrange such extension or fails to arrange substitute the Bank Guarantees (in form and substance satisfactory to the Purchaser), the Purchaser 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 Supplier, the Supplier shall not have any obligation for extension of the validity of the Bank Guarantees.

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

- (a) the initial advance payment;
- (b) due performance of the Contract until the Reliability Run Test.

11.5.5 ABG shall be furnished at the end of third month from Zero Date for 8% of the Contract Price and at the end of sixth month from Zero Date for 2% 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.

11.5.6 Performance Bank Guarantees ("PBG") shall be furnished by the Supplier to the Purchaser, 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 Supplier's Warranty Period obligations;
- (c) Recover any Taxes applicable and payable by the Supplier which is paid by the

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Purchaser:

11.5.7 The Supplier 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 Supplier if the Performance Bank Guarantee is not submitted 30 days before the scheduled date of completion of Reliability Run Test of first Unit.

The Supplier shall furnish second PBG equivalent to 4% of Contract Price 30 days before completion of Reliability Run Test of the 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 Supplier if the Performance Bank Guarantee is not submitted 30 days before the scheduled date of completion of Reliability Run Test of fourth Unit.

11.5.8 The Bank Guarantees shall be submitted by the tested swift message in favour of an Indian bank nominated by the Purchaser. If the Bank Guarantee confirmation is required, it shall be arranged by the Purchaser. All bank confirmation charges applicable in this regard shall be to the Purchaser's account.

12. TERMS OF PAYMENT

12.1 The Purchaser shall make progressive payment as and when they are due as per the agreed Payment Schedule. The charges for payment remittances shall be borne by the Purchaser.

12.2 Advance Payment

12.2.1 8% advance payment of the Contract Price against submission of Advance Payment Bank Guarantee (ABG) of equal amount at the end of third month from Zero Date.

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12.2.2 2% advance payment of the Contract Price against submission of ABG of equal amount at the end of sixth month from Zero Date

12.2.3 Any advance payment for supply of Items forming the Plant and Equipment, will be paid by telegraphic transfer or any other electronic mode within 7 Business days from receipt of swift message and a scanned image of the ABG to the bankers of Supplier to be notified by the Purchaser, confirming that the ABG has been issued on behalf of Supplier. The Purchaser shall arrange for the confirmation of the ABG, if required, for which the necessary charges shall be to the account of the Purchaser. 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.

12.2.4 For all advance payment, the application and invoice shall be submitted to the Purchaser.

12.3 Payment for Supply of Plant and Equipment

12.3.1. Balance Payment shall be governed by the following Articles:

- a) 75% of the Contract Price against receipt for Onshore Supplies at site on prorata basis as per a billing schedule to be approved by the Purchaser.
- b) 5% of the Contract Price against first synchronization (prorated for each Unit);
- c) 5% of the Contract Price against successful completion of Reliability Run Test (prorated for each Unit) and on submission of Performance Bank Guarantee (PBG) by Supplier;
- d) 5% of the Contract Price against successful completion of PG Test (prorated for each Unit).

Such payments shall be made by telegraphic transfer/any other electronic mode within 21

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

12.3.2 The Supplier shall submit the following documents along with the invoice to the Purchaser to claim the payments.

12.3.2.1 Documentation list for 75% prorated offshore supplies payments

(a) Signed commercial invoices in two original and three copies) invoice format need to be mutually discussed & approved by Purchaser.

Signed Commercial invoice shall among other things contain the following:

- Total invoices shall be in INR-----
- The Goods are as per On Shore Supply Contract no..... dated.....
- Name and complete postal address of the Consignor;
- Name and complete postal address of the Consignee;
- Name and complete postal address of the place where the equipment is proposed to be physically delivered;
- Mode of conveyance –
- Mode of payment giving details of the beneficiary bank;
- Invoice number and date;
- Reference of the contract / purchase order. Pursuant to which the equipment is being invoiced;
- No. of Packages and Package Reference number(s);
- Consignee code (by Purchaser);
- Gross & net weight of the package / equipment;
- Dimensions of each package (in Packing List);
- place of manufacture;
- Description of the equipment along with quantity/unit price/value (in numbers and words);
- Terms of payment - % of the Contract Price to be payable as per the contract;

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- Reference to the insurance policy number covering the transit risks

(b) The following document shall accompany the Invoice. Further, a common reference No. shall appear on Invoice & these documents for cross reference:

- Inspection / Inspection Waiver Note as applicable and Quality/test Certificate as per QAP;
- Detailed packing list. Detailed packing list will have each component listed with its dimensions, qty, volume, type of packing, etc.
- Dispatch details must be conveyed within seven days of the shipment to the applicant by fax/telex/email and copy of such fax/telex/email to accompany documents.
- Original LR copy for inland transportation (Purchaser provided waybill to Supplier).
- Project site entry Gate Pass.
- Signed jointly (Representatives of Purchaser & Supplier at the site) Inward Goods Inspection report as proof of complete and safe receipt of goods at site.

12.3.3 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.

12.4 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 Supplier an exemption certificate issued by Competent Authority. In case such certificate is not given to the Supplier, Octroi Duty/Entry Tax shall be reimbursed at actual to the Supplier against documentary proof of payment by the Supplier.

12.5 Certificate Not to Affect Right of Purchaser and Liability of Supplier

No interim payment certificate of the Engineer nor any sum paid on account by the

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Purchaser, nor any extension of time for execution of the Works granted by the Engineer shall affect or prejudice the rights of the Purchaser against the Supplier or relieve the Supplier of the obligations under the Contract or be interpreted as approval of the Works done and no certificate shall create liability for the Purchaser to pay for alterations, amendments, variations or additional works not ordered, in writing, by the Engineer nor shall discharge the liability of the Supplier for the payment of damages whether due, ascertained or certified or not, or any sum against the payment of which the Supplier is bound to indemnify the Purchaser, nor shall any such certificate nor the acceptance by the Supplier of any sum paid on account or otherwise, affect or prejudice the rights of Purchaser against the Supplier.

13. TAXES AND DUTIES

- 13.1 The Supplier shall be liable to pay all Indian duties, levies(except entry tax/ Octroi Duties) lawfully assessed against the Supplier other than the Purchaser in pursuance of the Contract. In addition, the Supplier shall be responsible for payment of all Indian duties, levies and taxes lawfully assessed against the Supplier regarding the personal income and property as well as any corporate taxes including the personnel income tax of his supervisory personnel etc. In this connection attention of the Supplier is invited to the provisions of the Income Tax Act and the Circulars issued by the Competent Authority from time to time.
- 13.2 The Purchaser shall issue concessional Sales Tax declaration forms like "C/E" forms for the supply portion of the Contract Price to enable the Supplier to avail concessional sales tax for inter-state transactions.
- 13.3 The Contract Price includes all taxes and duties (including variations thereof) applicable to the transactions between the Supplier and the Sub-Suppliers for the purchase of raw materials, components, assemblies finished products etc. i.e. bought out items/ components/ equipment of the Supplier for this project and there shall be no liability to the Purchaser on this account.
- 13.4 The Supplier should note that statutory deduction towards withholding tax, if any, as

applicable, shall be made and necessary withholding tax certificate shall be issued by the Purchaser. If any other withholding tax is brought into effect by a Competent Authority during 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 by the Purchaser.

- 13.5 The price under the Contract is inclusive of all applicable Indian taxes (except entry tax or Octroi Duty), under the various Current Indian Taxation Laws either enacted by the Central/State or Local Government as on Feb 21, 2009. Such taxes shall include, without limitation, sales taxes (including Value Added Taxes), excise duties, CST the Supplier shall be solely responsible for registering with taxing authorities as a taxpayer in all jurisdictions where required by Law. The Purchaser shall provide documents required for such purpose promptly to the Supplier. The Supplier shall be solely responsible for maintaining a knowledge of all tax Laws applicable to the Scope of Work and for compliance therewith. The Supplier hereby warrants that the Supplier has recognized all taxes & duties applicable as on 21 Feb, 2009. The Supplier's obligation to recognize in totality and pay such taxes, duties, tariffs, fees and other charges as set forth in this Article shall include taxes, duties, tariffs, fees and other charges imposed by taxing authorities pursuant to Laws enacted prior to 21 Feb, 2009.
- 13.6 In the event the Purchaser claims no taxable event based on current legislations governing the power plants catering to either 100% Export Oriented Units/Special Economic Zone/Mega project status, the Purchaser shall take steps to intimate the same to the Supplier under the Contract by furnishing necessary documentary evidence to such an effect and the Supplier shall thereafter not incur any further tax liability on such portion (s) of the supplies that are to be covered during such period until the expiry of the Contract. Any tax liability if incurred consequent to the intimation by the Purchaser shall be to the account of the Supplier.
- 13.7 If Purchaser may be required to withhold or deduct or pay any taxes under Applicable Law under this Agreement on Supplier's behalf such taxes and other sums, if any then Purchaser shall forthwith inform the Supplier about the same. Upon receipt of such notice from the Purchaser, the Supplier shall promptly within the due date indicated in such notice inform in writing to Purchaser, the Suppliers 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 Purchaser after due legal process, Purchaser reserves the right to deduct the same from Performance Bank Guarantee available with the Purchaser. Consequent to the above action the Supplier shall restore the Bank Guarantee to the required value.

13.8 The Supplier shall indemnify the Purchaser and/or its Affiliates and its or their employees and directors from and against all liability, cost, damages, loss and expense:

- (i) arising from the Supplier's failure to pay the whole or any part of any taxes, and duties.
- (ii) resulting from Supplier's failure to use reasonable efforts to cooperate and provide all such necessary documents / values / certificates to the Purchaser to maintain any exemptions from, or reductions of, taxes, or value added tax as may be granted to the Purchaser.

The Supplier shall (i) assist Purchaser in the preparation, processing and submission of all tax documentation such that documentation shall be made available by the Purchaser prior to filing of such documents (ii) provide all necessary explanations relating to the nature of the Equipment and the manner in which it will be used; and (iii) provide any other reasonable matter specified in such procedures required by any taxing Governmental Authority as a condition to the granting of or maintaining of any exemption from, or reduction of, any taxes. The Supplier shall consult with the Purchaser before submission of any documentation or the provision of any explanation to taxing Governmental Authorities and the Purchaser shall give reasonable assistance to Supplier therewith provided that such assistance shall not relieve Supplier of its responsibilities referred to above.

13.9 Notwithstanding anything stated above, the Purchaser will deduct taxes as per the provision under the Income Tax Act, 1961 and amendments from time to time, as applicable in India. However, no tax or lower rate tax will be deducted at source if a tax exemption certificate or lower rate tax certificate from the tax authorities is provided to the Purchaser by the Supplier before deduction of tax.

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14. STATUTORY VARIATION FOR TAXES AND DUTIES

- 14.1 If any statutory variation in taxes/duties/levies and any new taxes/duties/levies are introduced by any Competent Authority applicable for the Works carried out under the Contract with effect from the next day to Feb 21, 2009 and onwards and if the Supplier is required to pay any amount towards this tax or duty and the Purchaser shall reimburse the Supplier such payments against documentary proof. This provision will be applicable only to the direct transactions between the Supplier and the Purchaser.
- 14.2 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 Supplier and the Purchaser at actuals against documentary evidence as per statutes.
- 14.3 No claim for any increase towards the statutory variation shall be entertained by the Purchaser during the extended period of the Contract, if any, provided the extension of the Contract is required by causes attributable to the Supplier.

15. REPRESENTATIONS AND WARRANTIES

15.1 Representations and Warranties of the Supplier

On and as of the date of the Contract the Supplier represents and warrants to Purchaser that:

15.1.1 Organization and Standing

The Supplier is a corporation duly organized and validly existing under the laws of China and is in good standing under the laws of China / 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 Supplier 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 Supplier.



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15.1.2 Authorization

The Supplier 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 Supplier and its officers, directors and shareholders that is necessary for the authorization, execution and delivery of the Contract and for the performance of the Supplier's obligations hereunder has been taken.

15.1.3 Compliance with Other Instruments

The execution, delivery and performance by the Supplier 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, any provision of the Supplier's Articles of Association, charter documents or bye-laws, any material instrument, mortgage, deed of trust, loan, agreement commitment or obligation to which the Supplier is a party or by which Supplier or any of its properties or assets are bound.

15.1.4 Binding Obligation

The Contract constitutes a legal, valid and binding obligation of the Supplier enforceable against the Supplier 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.

15.2 Representations and Warranties of the Purchaser

On and as of the date of the Contract, the Purchaser represents and warrants to the Supplier that:

15.2.1 Organization and Standing



The Purchaser is a limited liability company, duly organized, validly existing and in good standing under the laws of India, and has the requisite 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 Purchaser 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 Purchaser.

15.2.2 Authorization

The Purchaser has all requisite legal power to enter into the Contract and to carry out and perform all of its obligations under the terms hereof. All action on the part of Purchaser and its officers, managers and members that is necessary for the authorization, execution and delivery of the Contract and for the performance of Purchaser's obligations hereunder has been taken.

15.2.3 Compliance with other Instruments

The execution, delivery and performance by Purchaser 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, any provision of Purchaser's Clauses of incorporation, charter documents or bylaws, any material instrument, mortgage, deed of trust, loan, agreement, commitment or obligation to which Purchaser is a party or by which Purchaser or any of its properties or assets are bound.

15.2.4 Binding Obligation

The Contract constitutes a legal, valid and binding obligation of Purchaser enforceable against Purchaser 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.



16. REPLACEMENT OF DEFECTIVE PLANT AND EQUIPMENT

If, during the progress of the Project, the Engineer shall decide and inform in writing to the Supplier that the Supplier has manufactured any item of the Plant and Equipment unsound or imperfect or has furnished any plant or equipment inferior to the quality specified, the Supplier, on receiving details of such defects or deficiencies, shall at his own expense within 15 (fifteen) days of receipt of the notice, or otherwise within such time as may be reasonably necessary for making it good, proceed to alter, re-construct or remove such work and furnish fresh Item(s) up to the standard of the specifications. In case the Supplier fails to do so, the Engineer may, on giving the Supplier 15 (fifteen) days notice in writing of it's intention to do so, proceed to remove the portion of the Works so complained of and at the cost of the Supplier perform all such work or furnish all such Items provided that nothing in this Article shall be deemed to deprive the Purchaser of or affect any rights under the Contract which the Purchaser may otherwise have in respect of such defects and deficiencies.

The Supplier's full and extreme liability under this Article shall be satisfied by the payments to the Purchaser of the extra cost of such replacement procured including erection, such extra cost being the ascertained difference between the price paid by the Purchaser for such replacement and the Contract Price portion for such defective Items. Should the Purchaser not replace the defective Item(s), the Supplier's extreme liability under this Article shall be limited to repayment of all sums paid by the Purchaser under the Contract for such defective Item(s).

If any action in Court is brought against the Purchaser or Engineer or an officer or agent of the Purchaser for the failure or neglect on the part of the Supplier to perform any acts, matters, covenants or things under the contract, or for damage or injury caused by the alleged omission or negligence on the part of the Supplier, his agents, representatives or his sub-Suppliers, or in connection with any claim based on lawful demands of Sub-Suppliers, workmen, suppliers or employees, the Supplier shall, in all such cases, indemnify and keep the Purchaser and the Engineer and / or the Purchaser representative harmless from all losses, damages, expenses or decrees arising out of such action.



17. CO-ORDINATION MEETINGS

- 17.1 The Engineer and the Supplier's Representative shall at frequent intervals conduct Co-ordination Meetings to keep a close watch on the progress of Works, removal of any bottlenecks in the implementation, program for inspection of materials and witnessing of tests at Supplier's Works or Site.
- 17.2 The Supplier's Representative will also be called upon to attend to design co-ordination meetings with the Engineer, other contractors and consultants of the Purchaser. The Supplier's Representative shall attend such meetings at the Supplier's own cost as and when required and fully co-operate with the Purchaser and other agencies involved.
- 17.3 In the event any of the Works or activity is not likely to be completed within the Delivery Schedule and for completion of such work/activity, the Purchaser and the Supplier may arrive at new date which may be beyond the Delivery schedule, this Contract shall not be construed to be extension in time limit approved by the Purchaser but shall be agreed without any prejudice to other terms and conditions of the Contract.

18. WARRANTY PERIOD

- 18.1 The Supplier warrants that the Plant and Equipment supplied shall be new and 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:
- (a) New Equipment. The Supplier warrants (the "New Equipment Warranty") that all Equipment and other materials and components of the Power Plant provided in connection with the Supplies shall be new when first installed in the Power Plant, shall conform to all Requirements.
- (b) Materials and Workmanship. The Supplier warrants (the "Materials and Workmanship Warranty") that the Supplies shall be performed in accordance with all

Requirements, and (i) the Supplies shall be free from defects in manufacturing, workmanship, and materials; and (ii) the remainder of the Equipment shall be free from defects in systems engineering, manufacturing, workmanship, and materials. For purposes of this Article 18.1(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 Equipment only for claims for such defects made during the Warranty Period.

18.2 Remedy.

Except as provided in Articles 18.3 and 18.4, if any Equipment Warranty is breached during the Warranty Period, Purchaser's sole remedy and the Supplier's sole liability (subject to Article 18) shall be as set forth in this Article 18.2:

- (a) Provide, at site, new remanufactured, or the Supplier-approved repaired parts or assembled components needed to correct the defect. The items replaced under this warranty become the property of the Supplier.
- (b) Replace consumables, filters, antifreeze and other service items made unusable by the defect.
- (c) Provide reasonable or customary labor (including overtime labor) and technical direction needed to correct the defect, including labor to disconnect the product from and reconnect the product to its attached equipment, mounting, and support systems, if required. In the event that the Supplier desires to utilize the Purchaser's site maintenance personnel / O & M Contractor to effect a repair, at Purchaser's request the Supplier shall reimburse the Purchaser / O & M Contractor for the hourly rate of Purchaser's personnel / O & M Contractor. In this case Supplier shall provide necessary technical supervision of Purchaser's personnel / O & M Contractor.

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- (d) Provide reasonable travel expenses for authorized mechanics, including meals, mileage, and lodging, when the Supplier chooses to make the repair on-site.
- (e) Any approval required for carrying the material for the purpose of repair or rectification shall be arranged by the Supplier at its own cost and shall also be shipped at its own cost.
- (f) Provide special tools for the removal, replacement, reconnection, mounting and calibration of the defective components. Special tools, as necessary, may be borrowed from the Purchaser's stock on site. Heavy lifting tools, except for those normally kept by Purchaser on Site, shall be provided by the Supplier.

Any repaired or replacement part furnished 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 the Supplier'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.

The Supplier acknowledges that failure to make repairs on a timely basis after Purchaser's notification of a warranty claim may cause significant financial loss to the Purchaser. Therefore, the Supplier shall make repairs in an expeditious manner. If, after notification of a breach of an Equipment Warranty, Supplier shall unreasonably delay in diligently commencing, continuing or completing the remedy required by this Article 18.2, then Purchaser may complete said remedial action, and the Supplier shall be liable for all reasonable and necessary costs, charges, and expenses incurred by Purchaser 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 Purchaser.

All replacement parts and repaired parts are warranted through, but not beyond, the

Warranty Period. Supplier's sole liability and responsibility, and Purchaser's sole and exclusive remedy, with respect to this Warranty shall be limited to the remedies set forth above.

18.3 Limitation on Warranty

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

- (a) failure to operate the equipment as per the operating manual provided by the Supplier;
- (b) failures resulting from abuse, neglect, and/or improper repair outside of prudent engineering practice;
- (c) failures resulting from unauthorized repair or adjustments;
- (d) damage to parts, fixtures, housings, attachments, and accessory items which are not part of the Supplies under the Contract.

18.4 Purchaser's Responsibilities Under Warranty

Under this Warranty the Purchaser is responsible for:

- (a) Giving timely notice of a warrantable failure and promptly making the product available for repair;
- (b) Performance of the required maintenance and use of proper fuel, oil, lubricants, and coolant;
- (c) Allow the Supplier access to all electronic data stored in the electronic control module at site to its personnel;
- (d) Assist the Supplier to obtain any possible exemption from taxes, levies, fees, or other

charges under the laws of India;

- (e) The Supplier shall arrange for transportation of used parts, replaced under this warranty, at its own cost to the desired destination of the Supplier. The Purchaser shall enable the Supplier to permit such transportation, provided that the responsibility of obtaining necessary approvals, if any shall vest with the Supplier; and
- (f) Provide the Supplier with reasonable access to the Power Plant to perform its obligations in connection with any Equipment Warranties, subject to Purchaser fulfilling the requirements of the consumers of power from the Power Plant.

18.5 Sub Supplier Warranties

Without in any way derogating the Supplier's own representations, warranties and guarantees with respect to the Scope of Supplies, the Supplier shall use its reasonable efforts to obtain for the benefit of Purchaser, long-term warranties similar to the Equipment Warranties that are obtainable from Sub Suppliers without additional compensation to such Sub Suppliers. To the extent legally possible, the Supplier shall assign to Purchaser at the end of the Warranty Period, all Sub Supplier warranties and/or guarantees relating to the Equipment, or material or component provided in connection with the Scope of Supplies that extend beyond the Warranty Period. To the extent such Sub Supplier warranties are unassignable, upon request of the Purchaser, the Supplier shall enforce such warranties for the benefit of the Purchaser.

18.6 Compliance with Laws, Codes and Standards

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

18.7 Latent Defects.

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The Purchaser and the Supplier hereby agree to mitigate and remedy the defects in the Supplies, if any, arising after the Warranty Period, in mutually agreed terms. The Supplier acknowledges that such latent defects, to the extent not covered under insurance, would cause significant financial loss to the Purchaser and undertakes to cooperate with the Purchaser / O & M Contractor to the extent possible for remedy of such latent defects. This commitment of the Supplier 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 16, hereinabove shall be followed.

19. VARIATION/CHANGE ORDERS

- 19.1 The Supplier realizes and acknowledges the nature, magnitude of the Project and the possibility of Variation/Change order that may arise from time to time and agrees and ensures that it shall accept all the possible reasonable Variations/ Change order as may be necessary for the Project to function as a whole.
- 19.2 If any changes required for completion of the Scope of Supplies as per Technical Specifications, the Supplier shall not be entitled to any addition in the Contract Price or to an extension of time.
- 19.3 No alterations, amendments, omissions, suspensions, or variations of the Works ("**Variation/Change**") under the Contract as detailed in the Contract Documents, shall be made by the Supplier except as directed in writing by the Engineer.
- 19.4 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 Supplier to make such Variations, alterations without prejudice to the contract. Any deviations in the Works executed shall be rectified by the Supplier without any extra costs.
- 19.5 If any suggested Variation/Change would, in the opinion of the Supplier, if carried out, prevent him from fulfilling any of his obligations or guarantees under the Contract, or that the same is beyond the scope of the Contract, or involves a claim for additional payment,



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he shall notify the Engineer thereof in writing and shall mark a copy to the Purchaser and the Engineer in concurrence with the Purchaser shall decide whether or not the same shall be carried out and if the Engineer confirms his instructions, Supplier's obligations and guarantees shall be modified to such an extent as may be mutually agreed.

- 19.6 If any Variation in Works as per Article 19.4 and/or 19.5 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 shall be added to or deducted from the Contract Price as the case may be.
- 19.7 All Change Orders shall be in writing and executed by an authorized representative of each of Purchaser and Supplier. Except as otherwise provided in Article 19.8 & 19.9, 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.
- 19.8 Purchaser may submit a written request to Supplier 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, Supplier and Purchaser shall agree upon adjustment to the Scope of Supplies, Performance Guaranteed Values, Guaranteed Completion Date, Contract Price, or other terms of this The Contract, if any necessitated by the proposed Change and Purchaser shall issue a Change Order. The Supplier shall proceed and execute the Change Order. If Purchaser elects not to issue any Change Order, Supplier shall not be compensated any costs and the Contract Price stands unaltered.
- 19.9 Supplier shall provide Purchaser with written notice of any condition or event that Supplier becomes aware of that Supplier 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 Supplier or by management personnel of Supplier responsible for the performance of the Scope of Supplies and such notice shall describe such condition or event in reasonable detail. Within fifteen (15) Business Days following delivery of such notice, Purchaser and the Supplier shall decide on the notified Change. If Purchaser elects to proceed, Purchaser shall issue a Change Order and Supplier shall proceed with the

Change Order and the Supplier shall not be compensated for any additional cost incurred if any, so long as the change is within the scope of Supplies. If the Purchaser elects not to proceed with the Change, the Purchaser shall perform the obligations under the Contract as per the Scope of Supplies specified in the Contract. The foregoing notwithstanding, Supplier shall not propose or carry any Change Order which keeps the Purchaser indifferent / neutral on financial terms and causes any financial loss to the Purchaser due to changes in this order resulting in defaults in other Contractual obligations of the Purchaser.

- 19.10 In the event and to the extent that a Force Majeure affects Supplier's ability to meet the Project Schedule, an adjustment in Guaranteed Completion Date shall be made by agreement of Purchaser and Supplier based on the numbers of days on which the work of supplies is effected. Supplier shall not be compensated for any additional cost or expense incurred due to the Force Majeure, except to the extent Purchaser receives insurance proceeds based on such costs incurred by Supplier, in which event Supplier 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 28.
- 19.11 All claims by Supplier for adjustments to one or more of the Contract Price, Guaranteed Completion Date, and the Performance Guaranteed Values as a result of Changes under this Article 19 shall be supported by such documentation as is sufficient for the Purchaser to determine the accuracy thereof.

20. INDEMNIFICATION

20.1.A Supplier's Indemnity

The Supplier shall protect, defend, indemnify and hold harmless Purchaser, 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 "Supplier 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

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

20.1.B Purchaser's Indemnity.

Purchaser shall protect, defend, indemnify and hold harmless Supplier, each of its Affiliates and the agents, officers, directors, shareholders, employees, permitted successors, and permitted assigns (each, an "Purchaser 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 resulting from, or in connection with, performance or non-performance by Purchaser of its obligations under the Contract or breach of any term of the Contract or its engineering of, construction of and commissioning of the Power Plant, including such claims regarding negligence, whether caused in whole or in part by Purchaser or any other Supplier Indemnified Party; provided, that Purchaser shall not be liable for, and shall not be obligated to indemnify any Purchaser Indemnified Party against, any such claims to the extent such claims result from (a) the negligence or wilful misconduct of any Purchaser Indemnified Party, or (b) any failure of the Supplier to perform hereunder.

20.2 Patent and Copyright Indemnification

The Supplier shall protect, defend, indemnify, and hold harmless the Supplier Indemnified Parties from and against any and all Damages that the Supplier 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 Supplier or any Sub Supplier in performing the Supplies.

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20.3 Notice and Legal Defense

In the event a Person indemnified pursuant to Articles 20.1 or 20.2 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 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.

20.4 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.

20.5 Survival

The provisions of this Article 20 shall survive the full performance or termination of the Contract, as applicable, until the later of (i) the date four (4) years after successful completion of Performance Guarantee Tests or (ii) the date 4 (four) years after the date the Contract is terminated.

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21. PROPRIETARY INFORMATION

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

- (a) The Purchaser agrees (i) to treat such information as confidential, (ii) to restrict the use of such information to matters relating to Supplier's performance of the Contract, and (iii) to restrict access to such information to employees of Purchaser and its agents whose access is necessary in the implementation of the Contract. Confidential Information will not be reproduced without Supplier's prior written consent, and all copies of written information will be returned to Supplier upon request except to the extent that such information is to be retained by Purchaser 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 the Supplier prior to the date of the Contract; (ii) is, or becomes, publicly known otherwise than through a wrongful act of Purchaser, its employees, or agents; (iii) is in possession of Purchaser, its employees, or agents prior to receipt from the Supplier, provided that the person or persons providing the same have not had access to the information from the Supplier; (iv) is furnished to others by the Supplier without restrictions similar to those herein on the right of the receiving party to use or disclose.

21.2 The Purchaser is granted a limited license for any Software delivered by the Supplier, whether as Item of any Plant and Equipment or separately. Purchaser is not granted a license for any other Software. This license allows Purchaser to:

- (a) Use the Software only on the Plant and Equipment on which it is installed at the time of delivery or, if Software is supplied separately, in connection with Plant and Equipment supplied by Supplier. The Purchaser must obtain a supplementary license from Supplier before using the Software in connection with any other equipment or for any other purpose.



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 supplier, within 120 days after successful completion of Reliability Run Test, the Purchaser at their discretion may reject the Unit/s or accept it after levying and recovering Liquidated Damages.
- 22.4 Any recoveries by the Purchaser from the Supplier 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:

22.5.1 Trial Run

On completion of erection of the Plant and Equipment, each Item of the Plant and Equipment shall be thoroughly cleaned and inspected jointly for correctness and completeness of installation and fitness for acceptability for the Trial Run of the Plant and Equipment. The list of tests to be performed prior to the Trial Run shall be determined by the Purchaser based on the Manuals furnished by the Supplier. The purpose of this Trial Run is to ensure integrity of each individual Item for its operation in the system for Initial Operation.

22.5.2 Initial Operation

After successful Trial Run of all the individual Item/s all the Item/s shall be operated together as a Unit. The purpose of this Initial Operation is to ensure integrity of all the Units which comprise the Plant and Equipment. 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 Plant and Equipment as the case may be. After satisfactory completion of Initial Operation for each Item, the Unit, the Plant and Equipment shall be considered ready for Reliability Run Test. During Initial Operation, any adjustments /calibrations to the instruments fitted in the Unit/Plant and Equipment shall be done in the

presence of testing staff of the Purchaser so as to enable them to familiarize themselves with its adjustments and maintenance except that the testing staffs of the Purchaser are not timely present after the notice of the Supplier.

22.5.3 Reliability Run Test

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

- (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 months for second Unit, 45.5 months 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 Purchaser'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 exceeds 8 hours, such RRT shall be treated as unsuccessful.
- (e) If RRT of any Unit is not successful based on above criteria, the Supplier shall repeat the RRT. In case the Supplier could not conduct RRT successfully within 38 months, the Supplier shall be liable for Liquidated Damages (LD) on account of delay.
- (f) However, in case the Supplier could not conduct RRT successfully within 38 months, the Purchaser 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 Purchaser 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 Purchaser.

22.5.4 Performance Guarantee Test

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

The Supplier 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 tender specifications	2239.77
2.	Total auxiliary power consumption of all auxiliaries	7.017

Sr. No.	Parameter description	Performance Guaranteed Values
	at TMCR condition (%)	
3.	SPM – mg/Nm ³ (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 Supplier guaranteed Turbine cycle Heat Rate as 1950 kcal/kWh. The Supplier 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. Supplier indicated that piping loss is not considered on BE calculation. The Unit gross heat rate shall be calculated by the formula, $UHR = THR / BE / PE$.

22.5.4.2 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 Purchaser on the basis of the Manuals provided by the Supplier. 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 Supplier about the readiness for conducting Performance Guarantee Test and within 90 (ninety) days of successful completion of Reliability Run Test.

22.5.4.3 All the tests shall be binding on both the Purchaser and the Supplier to determine the Plant and Equipment with the Performance Guaranteed Values.

22.5.4.4 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 Purchaser and the Supplier shall be used.

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

22.5.4.6 Should the results of these tests show any decrease from Performance Guaranteed Values, the Purchaser shall intimate the Supplier and the Supplier 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.

22.5.4.7 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.

22.5.4.8 In the event each of the Unit is capable of conducting the Reliability Run Test or Performance Guarantee Test, but the Supplier is unable to perform the test due to the reasons not attributable to the Supplier, the portion of the Contract Price due upon Reliability Run Test or Performance Guarantee Test of the Unit shall be paid to the Supplier not later than 2 (two) months after the date upon which it was otherwise available for a Reliability Run Test or a Performance Guarantee Test.

23 LIQUIDATED DAMAGES

23.1 Liquidated Damages for Delay (Delay Liquidated Damages)

23.1.1 All the Supplies shall be started and completed in accordance with the Guaranteed Completion Date as per Article 4.20.1

23.1.2 Subject to Article 4.20.8, no necessity for an extension of time is anticipated, but if untoward or extraordinary circumstances arise beyond the control of the Supplier, Purchaser should entitle the Supplier to a reasonable extension of time, such extension may be granted but

shall not operate to relieve the Supplier of any of the Supplier's obligations under the Contract.

23.1.3 The Supplier shall promptly notify the Purchaser any event of conditions which might delay the completion of supplies in accordance with the Delivery 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 Supplier 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 Supplier shall be bound to pay the Purchaser Liquidated Damages as stated herein. The Purchaser 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 Supplier. In the event any extension of time is granted by the Purchaser, in writing, for the Reliability Run Test according to the provision of 22.6.3 above, the Liquidated Damages shall be applicable for any further delay beyond such extended period.

23.1.5 If the Supplier 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 Supplier, the Purchaser shall levy Liquidated Damages and not as a penalty, equivalent to 0.5% (Zero point five percent) of Unit Price of the Plant and Equipment (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 for supply of the Plant and Equipment (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 Purchaser, and as such these Articles will be a deterrent to the Supplier from delays being caused. Accordingly, the Liquidated Damages would be levied by the Purchaser and become applicable once the delay on the part of Supplier has been established.

23.1.7 The payment or deduction of any sums under the provisions of this Article shall not relieve,



the Supplier from the obligations to complete the Works or from the other obligations the Supplier has to complete the Works or from the other obligations the Supplier 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 Supplier shall furnish Performance Guaranteed Values in accordance with Sub-article 22.5.4.1. These guarantees shall be met by the Supplier.

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 Supplier 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 244555.53 per kcal / kWh or part thereof of increase in heat rate from Performance Guaranteed Values.
2.	Total auxiliary power consumption of all auxiliaries at TMCR condition (%)	INR 1273.73 per kW (or part thereof) of increase in Performance Guaranteed Values.

Sr. No.	Variation Factor	Liquidated Damages for shortfall in performance
3.	Unit Gross electrical power output at Generator terminals (MW)	INR 1273.73 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 36683.32 for each one tonne/hr. or part thereof decrease in steam generating capacity.
5.	Unburnt Carbon in fly ash by weight (%)	<p>INR 254745.34 for every 1% (or part thereof) increase of unburnt Carbon in fly ash beyond the Performance Guaranteed Values.</p> <p>For Ex. Performance Guaranteed Values is 1.5%.</p> <p>Actual value is 1.9%.</p> <p>LD value shall be = $(1.9-1.5) \times \text{INR } 254745.34 = \text{INR } 101898.14$</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.

23.2.4 The aggregate liability under Performance Liquidated Damages shall not exceed 10% of the Contract Price (excluding taxes and duties).

23.2.5 The PG tests shall be witnessed & the results shall be approved by Purchaser's engineers.

23.2.6 Noise Level Guarantees

The Supplier 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 Performance Guaranteed Values. Supplier shall take necessary measures and to attenuate the noise levels within the limits specified.

23.2.7 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 Contract Price (excluding taxes and duties).

The overall aggregate liability under the Contract for Delay Liquidated Damages and Performance Liquidated Damages shall not exceed 17.5% of the Contract Price (excluding taxes and duties).

23.2.8. If the performance shortfall is such that the shortfall exceeds Rejection Criteria as below in Article 24.2 given, then the Purchaser will be entitled at the Purchaser'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 Supplier any loss the Purchaser has suffered.

23.3 Set-off; Payment of Liquidated Damages

Purchaser, whether original or assignee, shall at Purchaser's discretion, (a) subject to set-off against any undisputed amount that is due and owing by Purchaser to Supplier, though running bills and/or (b) liquidate the Performance Bank Guarantee. The Supplier shall replace the Performance Bank Guarantee for the required quantum under Article 11.5.1 for

maintaining the Bank Guarantee during the Warranty period.

24. REJECTION OF EQUIPMENTS

24.1 If the Supplier fails to demonstrate to the Purchaser, the Performance Guaranteed Values, subject to the tolerance(s)/limits agreed herein below, 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 Supplier 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 Supplier to demonstrate the performance parameters even during such re-tests, the particular equipment(s) under the Scope of Supply will stand rejected. In case the said equipments could not be rectified, the said equipment will have to be replaced at site, within reasonable time, at no extra cost basis to the Purchaser.

24.2 Rejection Criteria of Off-shore Supplies of the Power Plant:

The Purchaser may reject complete or any part of the Off-shore Supplies 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 Performance Guaranteed Values.
- 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 Purchaser exercises the option to reject the equipment on the basis of the rejection criteria as stated above then the Purchaser shall be entitled to all the payments made by Purchaser to Supplier in reference to the Contract and other allied payments related to the Contract.

25 FINAL ACCEPTANCE

- 25.1 On successful completion of the Acceptance Tests as specified in Sub-article 22.6 herein above the Purchaser shall give the Supplier a Final Acceptance Certificate indicating the date from which the Plant and Equipment or Unit/s thereof has been successfully commissioned.
- 25.2 On conducting the Performance Guarantee Test, if it is established by the Purchaser as per contract guarantees that each Item, Unit and the Complete Plant is performing as specified in the Technical Specifications, the Purchaser shall issue to the Supplier a Final Acceptance Certificate.
- 25.3 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 Purchaser 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 Supplier of any of his obligations which otherwise survive by the terms and conditions of the Contract.

26. FORCE MAJEURE

26.1 Definition of "Force Majeure"

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

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(B) Without limiting the generality of the foregoing, "Force Majeure" hereunder shall include each of the following events and circumstances, including but not limited to, but only to the extent that each satisfies the above requirements:

(i) certain political events:

(a) any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, civil commotion, act of terrorism, or sabotage;

(b) radioactive contamination or ionizing radiation; and

(c) strikes, lockouts or other generalized labor action occurring in India (excluding such events which are site specific and attributable to the Supplier and or sub Supplier) or works to rule or go-slows that are widespread or nationwide or that are of a political nature, such as, labor actions associated with or directed against a political party, or those that are directed against Purchaser or Supplier as a part of a broader pattern of labor actions against companies or facilities in India or in China;

(d) non availability of Fuel, raw water or start-up Power provisioning of which is under Purchaser Obligation, due to force majeure events.

(ii) any legislation, law, directive, regulation, rule, decree, order, restraint or other action (including expropriation or compulsory acquisition of the Power Station) by the Govt. of India, Govt. of Chhattisgarh or any Competent Authority;

(iii) the following uncontrollable events: (A) lightening, fire, earthquake, flood, cyclone, typhoon, or tornado or similar cataclysmic event; (B) explosion or chemical contamination; and (C) epidemic or plague;

(iv) marine and land transportation accident;



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(v) fire or explosion, except as may be attributable to Supplier;

(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 Purchaser of machinery, Equipment, materials, spare parts or consumables;

(ii) a delay in the performance of Supplier 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.

26.2 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 Supplier and the Purchaser. 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 Delivery 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.

26.3 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 26.2 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 26.4 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 26.2(a), the affected Party shall be excused for such failure or delay pursuant to Article 26.4 from the date of commencement of the relevant Force Majeure.

26.4 Excused Performance

So long as the affected Party has at all times since the occurrence of Force Majeure



complied with the obligations of Article 26.2(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 Purchaser in writing, in cases where Supplier is the affected Party, Supplier shall continue to perform the Supplies 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 Supplies in accordance with the Delivery Schedule, as revised.
- (c) It is the duty of the claiming Party to demonstrate through reasonable documentation all the elements of Force Majeure including but not limited to (i) specific action taken to work around or mitigate the impact, (ii) data in support of its claim, including as necessary specific event dates, directions, logic and schedule float to support the claim and (iii) specific cause for the claim of Force Majeure and to provide written documentation of such proof to the other Party as soon as reasonably possible. In the case of fire or explosion, the Party claiming Force Majeure must also provide, upon request of the other Party, documentation as to the cause of the fire or explosion and a statement as to the basis for believing such fire or explosion was not caused by the intentional or negligent acts of the Party claiming Force Majeure. A Party is not required to grant a request for Force Majeure until such documentation has been supplied.

26.5 Termination for Force Majeure.

Notwithstanding anything contained in this Article 26 to the contrary, if either Party is rendered unable to perform its obligations hereunder, in whole, or in substantial part,

because of a Force Majeure lasting for a period of one hundred and twenty (120) consecutive Days or more, either Party shall have the option of terminating the Contract, exercisable by giving thirty (30) Days' written notice to the other Party, at any time after such Force Majeure has continued for a period of one hundred and twenty (120) consecutive Days and prior to the performance or resumption of performance by the Party claiming Force Majeure. Any termination under this Article 26.5 shall be handled in accordance with the procedures set forth in Article 27.6 for a termination of the Contract.

27 EVENTS OF DEFAULT, TERMINATION AND SUSPENSION

27.1 Supplier Event of Default

A "Supplier 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 Supplier to (i) make payment of any undisputed amounts due to Purchaser under the Contract, or (ii) timely submission of a Advance Bank Guarantee as required for Performance Security under the Contract;
- (b) Supplier is in breach of any material provision of the Contract, other than a breach constituting a Supplier 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 Supplier 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 Supplier to cure the same with all due diligence, such longer period not to exceed forty five (45) Days after notice;
- (c) Supplier 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 Supplier makes an assignment for the benefit of its creditors' or Supplier 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 Supplier 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 Supplier's property; or any petition for any such relief is filed against Supplier; or any reconstruction 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) Supplier abandons the Supply and such abandonment on an aggregate basis exceeds sixty (60) Days.

27.2 Purchaser Event of Default

A "Purchaser 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 Purchaser to (i) make payment of any undisputed amounts due to Supplier under the Contract, or failure continues for a period of thirty (30) Days after written notice of such nonpayment from Supplier to Purchaser provided, any amount disputed by Purchaser must be disputed in good faith;
- (b) Purchaser is in breach of any material provision of the Contract, other than a breach constituting an Purchaser 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 Purchaser and Lender or (ii) if Purchaser, 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) Purchaser 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 Purchaser 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 Purchaser 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 Purchaser's property; or any petition for any such relief is filed against Purchaser or any reconstruction or amalgamation where by the resultant entity does not assume the obligations under the Contract.

27.3 Remedies for Breach

- (a) Subject to Articles 27.1, upon the occurrence and during the continuation of any Supplier Event of Default, Purchaser may give written notice to Supplier specifying such Supplier Event of Default; and Purchaser shall have the right, at Purchaser's election, to terminate the Contract and/or, subject to Article 28, sue Supplier for damages and/or injunctive or other equitable relief arising in connection with such Supplier 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 Purchaser Event of Default, Supplier may give written notice to Purchaser, specifying such Purchaser Event of Default; and thereafter Supplier shall have the right, at Supplier's election, to terminate the Contract and/or, subject to Article 28, sue Purchaser for damages and/or injunctive or other equitable relief arising in connection with such Purchaser Event of Default or pursue any other remedy to which it is entitled under either law or equity. Notwithstanding the foregoing, Supplier shall pursue no remedy against Purchaser without first (i) giving Lender a second notice (in addition to that set forth in Article 27.2) specifying the nature of the Purchaser Event of Default, and (ii) allowing Lender sixty (60) Days after the receipt of said second notice in which to

either cure the Purchaser Event of Default or assume Purchaser's obligations under the Contract. If Lender assumes the Contract, Supplier shall treat the assumption as if it were a fresh notice to Purchaser under Article 27.2, shall give the assuming party all of Purchaser's rights to cure under such Article 27.2 and shall perform all obligations herein for the benefit of the assuming party as if for Purchaser. Without the prejudice to Article 27.7, despite the existence of a Purchaser Event of Default, Supplier shall expeditiously continue with its performance of the Scope of Supplies until such time as it is allowed to exercise its remedies under this paragraph.

- (c) If Purchaser elects to terminate the Contract pursuant to a Supplier Event of Default, Supplier shall provide Purchaser and Lender, at Supplier'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. Purchaser shall be required to mitigate reasonably the cost for completion of such Supplies but may make such expenditures as in Purchaser's reasonable judgment will best accomplish the timely completion of the Power Plant; provided, Purchaser shall not be required or expected to mitigate any such costs by breaching, terminating, repudiating or renegotiating any agreement entered into between Supplier and any Sub Supplier (including, without limitation, any Sub Supplier that is an Affiliate of Purchaser). Supplier shall be entitled to receive any further payments under the Contract only as provided in Article 27.3(f).
- (d) If Purchaser elects to terminate the Contract pursuant to a Supplier Event of Default, the Purchaser shall, without prejudice to any other right he may have under the Contract, shall be free to use the equipment of the Supplier for the purpose of completion of Supply (without being responsible for any wear and tear to the equipment), which the Supplier shall allow without any hindrance and (ii) if the

termination be due to reason(s) mentioned in Article 27.1(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 Supplier, bind the Supplier 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 22.6.4.

- (e) If Purchaser elects to terminate the Contract upon a Supplier Event of Default, Supplier shall, at Purchaser's request and at Supplier's expense, perform the following services, in addition to those required under Article 27.3(c) and (d), relating to the Supplies so affected:
- (i) deliver to Purchaser all information as may be requested by Purchaser that is reasonably necessary for the completion of the Supplies and/or, to the extent such information was to be provided as part of the Supplies, reasonably necessary to the operation of the Power Plant, and
 - (ii) supply any proprietary components requested by Purchaser and reasonably necessary for the completion and operation of the Power Plant.
 - (iii) compensate the Purchaser for all financial losses suffered , other than consequential damages, limited to value of the contract, Subject to Article 27.3(g), if Purchaser terminates the Contract pursuant to a Supplier Event of Default, Purchaser shall pay to Supplier as a "Termination Payment under Supplier Default".
 - (iv) final payment an amount equal to the value of that portion of the Equipment delivered to the Delivery Point prior to termination to the extent not already paid for by Purchaser.
 - (v) all payments due towards material / Equipment which is ready but not delivered at the delivery point. The payment on such material/ Equipment will be released on delivery at delivery point.



- (f) The amounts payable to the Supplier on the above items shall be upon Supplier providing adequate proof of documentation relating to delivery of the said items at delivery point. 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 Purchaser, and Supplier's sole remaining compensation and reimbursement under the Contract. The Purchaser shall be entitled to retain payments to the Supplier and apply the balance which may otherwise be due to the Supplier for completion of the Supplies. The Purchaser shall be entitled to recover any excess amount expended, over and above the balance amount, on the execution of Supplies. Such excess amount shall be over and above the Liquidated Damages as per terms of the Contract. The Supplier shall make all the payments due to the Purchaser within thirty (30) days after Purchaser gives Supplier notice of the amounts due from the Supplier.
- (g) If Purchaser terminates the Contract pursuant to a Supplier Event of Default, then as soon as practicable after Purchaser has received all substituted equipment and materials that were intended to be delivered under the Contract as part of the Supplies, Purchaser shall determine the total reasonable and necessary expense incurred and accrued in completing the Supplies, including all amounts charged by any substitute provider of equipment and/or material to finish the Supplies and additional reasonable and necessary overhead incurred and accrued by Purchaser to effect such takeover and to complete the Scope of Supplies. If the total reasonable and necessary expenses incurred by Purchaser in completing the Supplies exceeds the balance of the Contract Price unpaid at the time of the Supplier Event of Default, then Supplier shall be liable for and shall pay to Purchaser the amount of such excess within thirty (30) Days following receipt of Purchaser's demand for such payment; provided, that Supplier's liability shall be subject to (and limited by) Article 18.
- (h) If Supplier terminates the Contract pursuant to a Purchaser Event of Default, Purchaser shall pay to Supplier as a final payment an amount equal to the sum of (i) amount payable for any Supply finished with price specified in the Contract and (ii)

expenses incurred in relation to the production equipment and materials ordered for the Project, delivered to the Purchaser or the Purchaser has the obligation to receive. ; (iii) cost for the Supplier 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 Supplies will be passed on to the Purchaser. The Supplier shall raise a substantiated invoice (subject to satisfaction of the Purchaser, 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 Purchaser's Default".

- (i) With respect to any Purchaser Event of Default or Supplier Event of Default arising out of a late payment, besides the due amount, the remedy for such Event 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.

27.4 Termination by Supplier under Special Circumstances

- (a) Rights. If, and only if, Purchaser abandons or suspends the Contract for a period more than 90 days as per Article 27.7, Supplier may terminate the Contract in whole or in part at any time by written notice thereof to Purchaser. Upon such notice, the Supplier shall, unless the notice mentions otherwise: (i) immediately discontinue the Supplies on the date and to the extent specified in such notice; (ii) place no further orders or subcontracts for Equipment or materials; (iii) promptly make every reasonable effort to procure cancellation upon terms reasonably satisfactory to Purchaser of all orders, subcontracts and rental agreements to the extent they relate to the performance of the Scope of supplies that is discontinued; and (iv) thereafter execute only that portion of the Scope of Supplies as may be necessary to preserve and protect Scope of Supplies already in progress and to protect Equipment at the Site or in transit thereto.
- (b) Payments for such termination under this Article 27.4 shall be made to Supplier within Forty Five (45) Days after Purchaser's receipt of a substantiated invoice (subject to



satisfaction of the Purchaser, 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 Supply finished with price specified in the Contract and (ii) expenses incurred in relation to the production equipment and materials ordered for the Project, or equipment and materials delivered to the Purchaser or the Purchaser has the obligation to receive. ; (iii) cost for the Supplier 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 Supplies will be passed on to the Purchaser.

27.5 Termination for Purchaser's Convenience

- (a) The Purchaser may for its own convenience terminate the Contract, in full or part any time upon 90 days notice to the Supplier specifying the details of such termination and effective date of termination. Upon such notice, Supplier shall, unless the notice mentions otherwise: (i) immediately discontinue such part of Supplies on the date and to the extent specified in such notice; (ii) place no further orders or subcontracts for part of Equipment or materials; (iii) promptly make every reasonable effort to procure cancellation upon terms reasonably satisfactory to Purchaser of such orders, subcontracts and rental agreements to the extent they relate to the performance of such Scope of Supplies that is terminated; and (iv) thereafter execute only that portion of the Scope of Supplies that is not terminated.
- (b) Payments for such termination under this Article 27.4 shall be made to Supplier within Forty Five (45) Days after Purchaser's receipt of a substantiated invoice (subject to satisfaction of the Purchaser, who shall choose the Lenders Engineer for due certification) of any such Equipment, as "Termination Payment upon Purchaser Convenience". The substantiated invoice will be for an amount equal to the sum of (i) amount payable for any Supply finished with price specified in the Contract and (ii) expenses incurred in relation to the production equipment and materials ordered

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for the Project, or equipment and materials delivered to the Purchaser or the Purchaser has the obligation to receive; (iii) cost for the Supplier 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 Supplies will be passed on to the Purchaser.

27.6 Termination upon Prolonged Force Majeure

- (a) If, and only if, the Contract is terminated as per provisions of Article 26.5 Supplier shall be entitled as a final payment ("Termination Payment under Force Majeure") an amount equal to the sum of (i) amount payable for any Supply finished with price specified in the Contract and (ii) expenses incurred in relation to the production equipment and materials ordered for the Project, delivered to the Purchaser or the Purchaser has the obligation to receive; (iii) cost for the Supplier 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 Supply will be passed on to the Purchaser. The Supplier shall raise a substantiated invoice subject to satisfaction of the Purchaser, 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 Force Majeure".
- (b) Upon such termination, the Supplier shall cease and cancel all activities related to the scope.

27.7 Suspension of the Work

- (a) General. Purchaser may at any time or from time to time, and for any reason, suspend the Supplies or any portion thereof by giving ten (10) Business Days prior notice to Supplier (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, Purchaser may require the Supplier to resume the Supplies.

- (b) Extension of Time. In the case of any suspension under this Article 27.7, Guaranteed Completion Date for performance by Supplier 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 Supplies may exceed the number of days of suspension or delay due to Supplier's scheduling constraints and the time required for demobilization and remobilization of the Supplies effort.
- (c) Compensation to the Supplier. In the event that suspension is solely attributable to the Purchaser, any necessary and demonstrable costs incurred by the Supplier as a result of such suspension of the Supplies shall be paid by the Purchaser, provided the costs are sustained to the satisfaction of the Purchaser Engineer subject to and in accordance with the contract.
- (d) Suspension arising out of Supplier / Other Supplier defaults. The Purchaser shall not be liable and responsible for any suspension or delay arising out of default due to the Supplier, its Sub Suppliers and other Suppliers. No compensation shall be paid to the Supplier due to Suspension under this Article.
- (e) Suspension arising out of Purchaser defaults. If the Purchaser fails to pay to the Supplier any undisputed payment and such failure continues for 60 (sixty) days after written notice thereof has been given to the Purchaser by the Supplier, then the Supplier may suspend any Works or part thereof. After the payment is made, the Supplier shall resume the Works.
- (f) Special Suspension Provisions. If a suspension is more than ninety (90) Days in duration, Purchaser will pay Supplier pro rata for the portion of the Supplies completed when the suspension was notified. In the event that production / fabrication has proceeded to the point that Supplier and Purchaser deems it cannot reasonably reschedule completion or the request for suspension is received less





than ninety (90) Days prior to the date by which the Equipment is ready for delivery, the Supplies shall be completed, invoiced and the Equipment, or the portions thereof completed, placed in storage at Purchaser's expense. In the event Supplier is otherwise unable to deliver the Equipment when ready due to the action or inaction of Purchaser, Supplier shall so notify Purchaser 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 Purchaser, the Contract shall be terminated. Any termination under this Article 26.7 shall be handled in accordance with the procedures set forth in Article 27.4 for a termination of the Contract.

28. DISPUTE RESOLUTION

28.1 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.

28.2 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 28.2, 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.

28.3 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 28.4 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.

28.4 Arbitration

- (a) Any Dispute that has not been resolved within twenty (20) Days of the delivery of a notice in accordance with Article 28.2, or that is not subject to resolution pursuant to Article 28.3 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 28.2, 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 28.2. Within twenty (20) Days after any demand for arbitration under this Article 28.4, 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 28.4. 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 28.4. 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) Supplier and Purchaser each hereby consents to the submission of any dispute for settlement by final and binding arbitration in accordance with this Article.



28.5 Continuance of Work

Notwithstanding any action, arbitration, Dispute, claim or other controversy (a "Claim") between Supplier and Purchaser or between Supplier and any Sub Supplier, Supplier and Purchaser 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.

28.6 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.

29. LIMITATION OF LIABILITY

29.1 No Consequential Damages

Except for Liquidated Damages, the proceeds of insurance, any interest paid on delayed payments, disputed amounts under Article 28 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 Supplies, shall either (a) Supplier or the Sub Suppliers be liable to Purchaser or Lender or (b) Purchaser or Lender be liable to Supplier or Sub Suppliers, 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 Purchaser's or Purchaser's customers.

29.2 Limitation on Liquidated Damages



The total liability of Supplier for the payment of Liquidated Damages shall be pursuant to Article 23.2.8 of the Contract.

This Article shall not be construed to limit Supplier'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 Purchaser under Article 20.

This Article shall survive the termination of the Contract.

29.3 Maximum Liability

Notwithstanding any other provisions contained in the Contract, the aggregate liability of Supplier to the Purchaser with respect to any and all claims arising out of the performance or non-performance of obligations in connection with the manufacture, sale, delivery, storage, or use of the Supplies (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 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.

29.4 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 the Contract (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 Supplier shall not be liable to the Purchaser, whether in contract, tort, or

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otherwise, for any indirect or consequential loss or damage, provided that this exclusion shall not apply to any obligation of the Supplier to pay Performance Liquidated Damages to the Purchaser, and

- b) The aggregate liability of the Supplier to the Purchaser under the Contract shall not exceed the Total Contract Price, provided that this limitation shall not apply to any obligation of the Supplier to repair or replace defective Equipment or to indemnify the Purchaser with respect to patent infringement.

30. SECRECY AND CONFIDENTIALITY

30.1 Confidential Information

The Purchaser and the Supplier 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-Suppliers), without the previous written consent of the other Party, provided that nothing in this Article shall prevent the publication or disclosure of any information that has come within the public domain otherwise than by breach of this Article.

- 30.2 The technical information, drawings, specifications and other related documents forming part of the Contract are and shall always remain the property of the Purchaser and shall not be used by the Supplier or the Sub-Supplier or any other the employees, agents, Supplier, labourers of the Supplier or the Sub-Supplier 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, re-cords 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 Purchaser'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 Purchaser with all approved copies and duplicates, if



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any, immediately after they have been used for the agreed purpose.

- 30.3 In the event of any breach of this provision, the Supplier/Purchaser shall indemnify the Purchaser/Supplier from any loss, cost or damage or any other claim whatsoever from any Parties claiming from or through them in respect of such breach.

30.4 Disclosure of Confidential Information

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:

- 30.4.1 to any Affiliate of such Party or, in the case of the Purchaser, to any Competent Authorities having jurisdiction over the implementation of the Facility;
- 30.4.2 to any outside consultants, Suppliers, suppliers or advisers engaged by or on behalf of such Party in connection with the Scope of Work or the implementation of the Facility and acting in that capacity;
- 30.4.3 to any Persons or Sub-Suppliers from whom the Supplier intends to invite tenders in respect of the sub-contracting of any element of the Scope of Work;
- 30.4.4 to any security trustee, any bank or other financial institution and its advisers from which such Party is seeking or obtaining finance;
- 30.4.5 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;
- 30.4.6 to any insurer under a policy of insurance required to be taken out by either Party under the Contract; or
- 30.4.7 to the directors, employees and officers of such Party; provided that:

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- (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.

31. GENERAL PROVISIONS

31.1 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.

31.2 Independent Supplier

The Parties are independent. The Supplier shall perform and execute the provisions of the Contract as an independent Supplier to Purchaser and shall not be an agent, representative or employee of Purchaser. Subject to the terms of the Contract, the Supplier shall be solely responsible for all methods, techniques, sequences, quality procedures, and safety programs applicable to the performance of the Scope of Supplies and the manufacture, procurement & supply of the Plant and Equipment.

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.

31.3 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.

31.4 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 Supplier shall be responsible for the accuracy of the translation of any document submitted by it to the Purchaser.

31.5 Severability

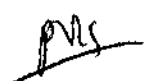
Any provision hereof which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof and without affecting the validity or enforceability of any provision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

31.6 Entire Contract

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

31.7 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 Purchaser in terms of Article 19.

31.8 Third Parties

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

31.9 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.

31.10 Site

All the Items of the Plant and Equipment shall be consigned to:

Site-In-Charge
WPCPL
Nariyara Village
Janjgir-Champa District
Chhattisgarh State, India

31.11 Governing Law & Jurisdiction

The Contract shall be governed by and construed in accordance with the Laws of India. Subject to the provisions of Article 28, the Purchaser and the Supplier 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. Purchaser and Supplier each 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



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court has been brought in an inconvenient forum. The Purchaser and the Supplier 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.

31.12 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.

31.13 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.

31.14 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.

31.15 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.

31.16 Notices

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



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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:

Purchaser 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

Supplier 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: wpcplh-doc@sepco1.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.

31.17 Rights / Ownership on the accruing Intellectual Property Right

The whole right title and interest in and to any designs, copyrights, patents, trademarks,



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technology, know-how and other intellectual property developed by the Purchaser post receipt of the Supplies from the Supplier shall remain with the Purchaser only and the Supplier has no right to claim any interest/share therein.

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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**



S. Kishore

Director

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

Witness:

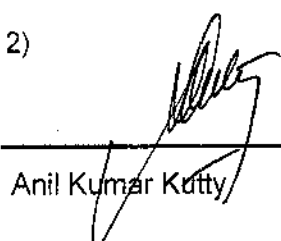
1)



G.P. Rao

Project Head

2)



Anil Kumar Kuttu

Director

**SEPCO ELECTRIC POWER
CONSTRUCTION CORPORATION**



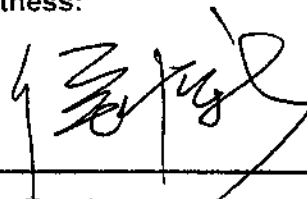
Wang Yi'e

President

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

Witness:

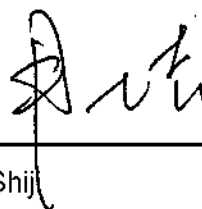
1)



Hou Zuoxin

Chairman (SEPCO I)

2)



Yin Shij

Dy. General Manager



SCHEDULE 1
Cash Flow
(Total 3 Pages)

Month	Cumulative Percentages of the Contract Price
0	0.00%
1	0.00%
2	0.00%
3	8.00%
4	8.00%
5	8.00%
6	11.84%
7	11.84%
8	11.84%
9	11.84%
10	13.67%
11	13.67%
12	13.67%
13	13.67%
14	15.51%
15	17.50%
16	17.50%
17	21.16%
18	21.16%
19	23.21%
20	26.87%
21	31.73%
22	31.73%
23	35.34%
24	37.18%
25	42.09%
26	45.71%

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Onshore Supply Contract

Month	Cumulative Percentages of the Contract Price
27	47.38%
28	51.49%
29	56.44%
30	60.86%
31	62.52%
32	63.00%
33	67.95%
34	67.95%
35	69.62%
36	70.92%
37	74.05%
38	75.17%
39	77.67%
40	78.97%
41	82.10%
42	82.93%
43	85.43%
44	86.74%
45	88.41%
46	89.24%
47	91.74%
48	93.05%
49	93.05%
50	94.17%
51	95.00%
52	95.83%
53	95.83%
54	96.67%
55	97.50%
56	98.33%

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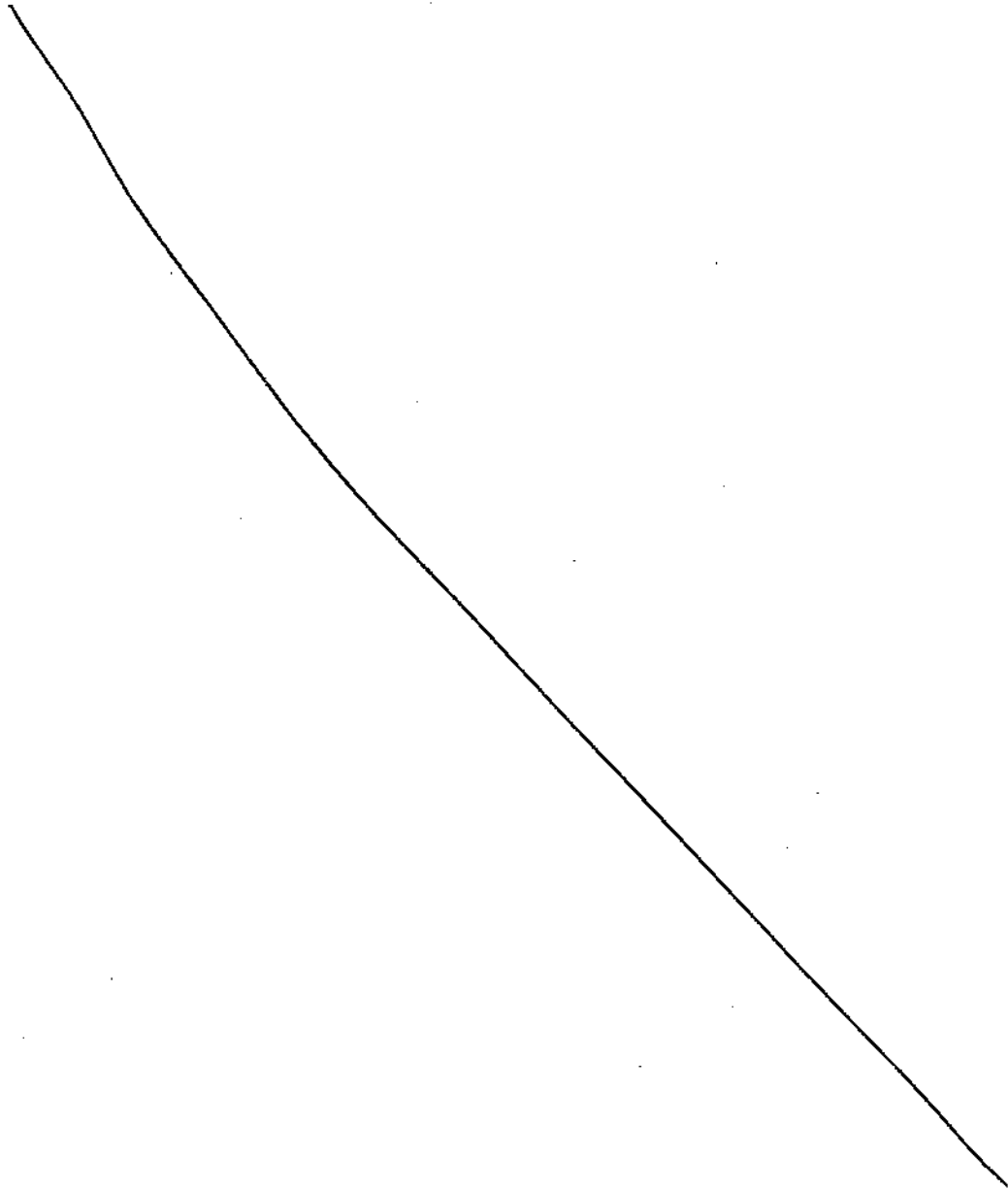


Onshore Supply Contract

Month	Cumulative Percentages of the Contract Price
57	98.33%
58	99.17%
59	100.00%

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Onshore Supply Contract

SCHEDULE 2
Technical Specification
(totalpages)

PNC
Onshore Supply Contract



Annexure 1

Letter of Award
(Total 10 pages)

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Onshore Supply Contract

[Handwritten signature]

Ref.No : SEPCO,CHINA/GPRAO/1160201/158

Letter of Award for Onshore Supplies

THIS Letter of Award (the "LoA") is made and entered into on the 26th 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, procurement and supply of various kinds of plant and equipments for large power plants.
- C. AND WHEREAS WPCPL has proposed to and SEPCO has agreed to procure, supply and deliver part of Plant and Equipment including commissioning spares and , Consumables required till successful completion of Reliability Run Test for the complete Power Plant ("On-shore Supplies") in India in accordance with agreed Technical Specifications ;
- D. AND WHEREAS, pending finalisation and execution of a detailed Contract for the On-shore Supplies, Parties desire to enter into this Letter of Award to confirm the aforesaid understanding.

NOW THE PARTIES HEREBY AGREE AS FOLLOWS:

1. SCOPE OF THIS AWARD :

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

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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.

The scope of onshore supply does not include CNC lathe Machine, training simulator and CCTV.

2. CONTRACT PRICE

The price of On-shore Supplies ("Contract Price") shall be INR 1,656,000,000, inclusive of all taxes, cesses, duties(except entry tax/Octroi duties).

3. PAYMENT TERMS

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

- 1.1 8% Advance against submission of Advance Bank Guarantee ("ABG") of equal amount at the end of third month from Zero Date.
2% Advance against submission of ABG of equal amount at the end of sixth month from Zero Date.
- 1.2 75% against receipt for Onshore Supplies at site on prorata basis as per a billing schedule to be approved by the WPCPL.
- 1.3 5% against first synchronization (prorated for each Unit)
- 1.4 5% against successful completion of Reliability Run Test (prorated for each Unit)
- 1.5 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 payments under the Contract shall be made by telegraphic transfer/any other electronic mode within 21 days from the date the payment falling due and receipt of complete & correct documents, the charges for such remittances to be borne by WPCPL in India and that applicable in China shall be borne by SEPCO. Further the Charges of respective correspondent banks/intermediary bank in USA shall be borne by each party.

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

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The ABGS & FBG 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 the On-shore Supplies 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 SUPPLIES

The On-shore Supplies 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 third month from the date of LoA for 8% of the Contract Price and at the end of sixth month from the date of LoA for 2% of the Contract Price.
- WPCPL shall pay any 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

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All the area within the boundary wall shall be handed over to SEPSCO within 6 months from Zero Date with the formal confirmation letter from Owner. 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 Supplies 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/Nm3 (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, $UHR = THR/BE/PE$.

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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 244555.53 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 1273.73 per kW (or part thereof) of increase in guaranteed value.
3.	Unit Gross electrical power output at Generator terminals (MW)	INR 1273.73 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 36683.32 for each one tonne/hr. or part thereof decrease in steam generating capacity.
5.	Unburnt Carbon in fly ash by weight (%)	INR 254745.34 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 254745.34= INR 101898.14

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

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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 Owner's Engineers.

All On-shore Supplies shall carry a warranty period of 12 months from successful RRT for defects and deficiency, during which period SEPCO shall repair or replace the defective/deficient Off-shore Supplies, 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 SUPPLIES

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 particular equipment(s) under the On-shore Supplies will stand rejected. In case the said equipments is not capable of being rectified, such equipment will have to be replaced at site, within reasonable time, at no extra cost basis to WPCPL.

Rejection Criteria of On-shore Supplies of the Power Plant :

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

- 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 Supplies 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.







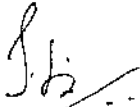


15. EXECUTION OF CONTRACT:

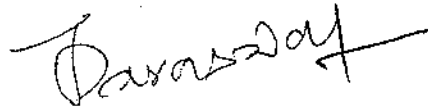
Parties agree and understand that this LoA is only a broad statement of intent of Parties on matters covered herein and that the Parties shall finalise and execute the Contract on or before 20.3.2009, capturing all the relevant terms and conditions agreed to between the Parties, based on the Bid Documents, 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



.....
Authorised 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



.....
Authorised 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 27th March 2008 released via NIT in all major newspapers.
- 2) Bid specification sent on 28th 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 30th 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 30th August 2008.
- 10) DCPL E-mail No. K712/NRM-1/V7/192 dated 28.08.08 on extension of Bid submission date to 08th 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.

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- 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 26th 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 31st December 2008
- 22) WPCPL mail on 3rd January 2009 to SEPCO including comments to 31st December 2008 SEPCO clarification.
- 23) WPCPL mail on 5th 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 08th January 2009, complied documents sent on 10th January 2009 by WPCPL.**
- 25) Two mails sent on 13th January 2009 by SEPCO on commercial clarification.
- 26) SEPCO sent a mail having a clarification on their experience on 13th January 2009
- 27) **Minutes of Meeting held at SEPCO, Jinan office on 21st and 22nd January 2009.**
- 28) SEPCO clarifications vide e-mail dated 4th February 2009.
- 29) **Minutes of Meeting held at WPCPL, Hyderabad on 4th to 6th February 2009.**
- 30) Quality Control Plans on BOPs forwarded to SEPCO by WPCPL
- 31) SEPCO reply to pending points of 6th February 2009 MOM on 11th February 2009
- 32) Comments on HMBDs forwarded to SEPCO vide WPCPL mail dated 12th February 2009 and clarifications furnished by SEPCO vide e-mail dated 14th February 2009.
- 33) **Minutes of Meeting held at SEPCO, Jinan office on 16th to 21st February 2009.**
- 34) **Minutes of Meeting held at WPCPL, Hyderabad on 26th February 2009.**

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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

PVK

Onshore Supply Contract



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.



Onshore Supply Contract



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 GURANTEE SHALL BE SUBJECT TO THE UNIFORM RULES FOR DEMAND GURANTEES, ICC PUBLICATIONS NO.458.

SIGNED AND DELIVERED this - - - - -

For and on behalf of

Bank: _____

Address: _____, No.

(AUTHORISED SIGNATORY OF BANK)



Onshore Supply Contract

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:

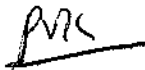
1. We hereby irrevocably guarantee to pay to you the sum in aggregate not exceeding USD (Say US Dollaronly), merely on the


Onshore Supply Contract



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 Dollaronly). 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.



Onshore Supply Contract



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 GURANTEEE SHALL BE SUBJECT TO THE UNIFORM RULES FOR DEMAND GURANTEES,ICC PUBLICATIONS NO.458.

DATED THE 9th DAY OF JUNE, 2011

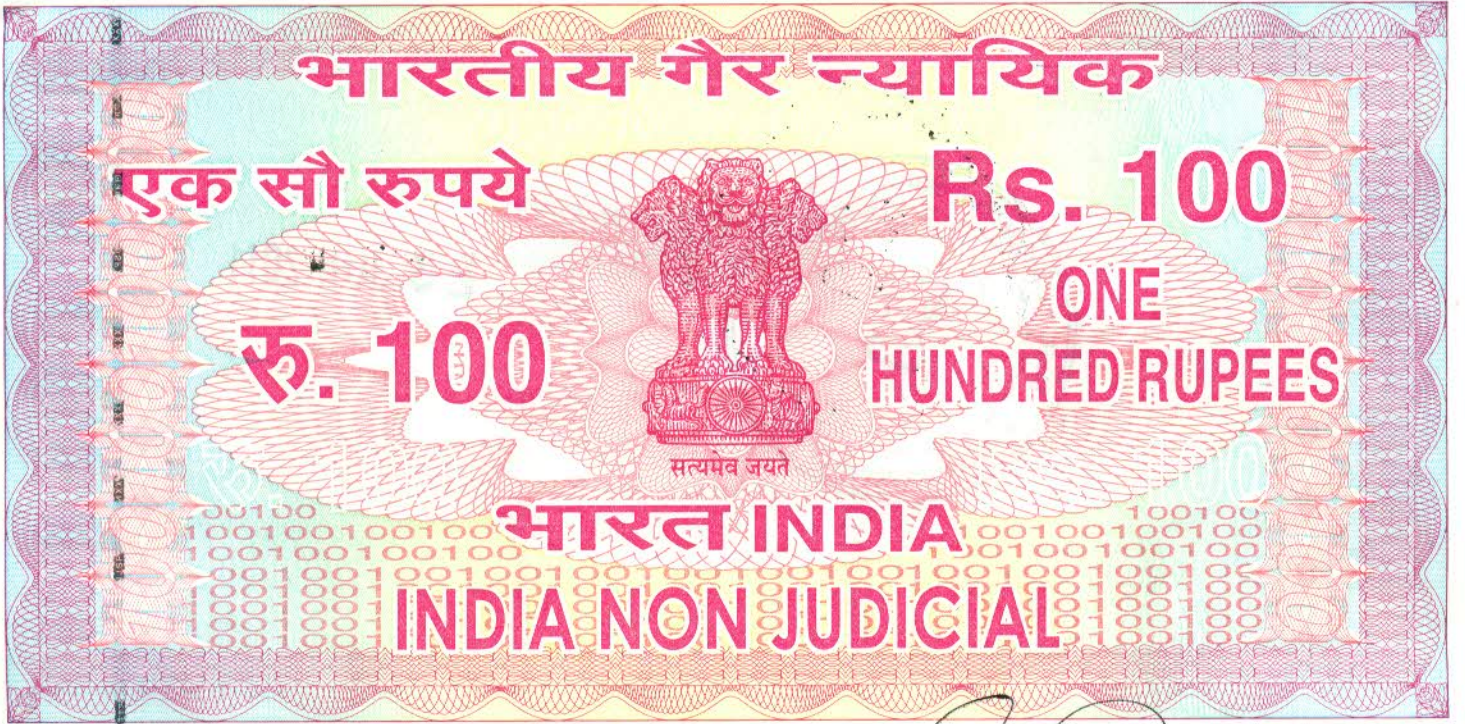
**FIRST AMENDMENT TO THE
ONSHORE SUPPLY CONTRACT**

Between

KSK MAHANADI POWER COMPANY LIMITED

And

SEPCO ELECTRIC POWER CONSTRUCTION CORPORATION



ఆంధ్రప్రదేశ్ ఆంధ్ర ప్రదేశ్ ANDHRA PRADESH

Sl.No. 18,693 Date: 09/06/2011

SOLD TO: R. Rama Krishna S/o R. Bhima Rao,

R/o SRT - 775, Sanathnagar, Hyd.

FOR WHOM: M/s K S K Mahanadi Power Company Ltd.,

Reg.No. U40300AP2009PLC064062, Ph.No. 040-23559922

[Signature]

AH 705094

V. SRIKANTH

LICENCED STAMP VENDOR

LIC. No. 15-10-018/2000, REN. No. 15-10-009/2009

PLOT No. 49, SURVEY No. 10,

BESIDE SWATHI SCHOOL, MADHAPUR,

SERILINGAMPALLY, R.R. DIST.

PHONE No: 9493014949

This **FIRST AMENDMENT TO THE ONSHORE SUPPLY CONTRACT** ("Amendment Agreement") is made as of this 9th day of June, 2011 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 "Purchaser", which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its successors in title 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.150, Jinger Road, Jinan, Shandong, China (hereinafter referred to as "SEPCO" or "Supplier", which expression shall unless repugnant to the context otherwise, include its successors and permitted assigns);

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

[Signature]

[Signature]

WHEREAS:

- (A) SEPCO and Wardha Power Company Limited (WPCL) had executed a Onshore Supply contract **bearing number SEPCO,CHINA/SK/1160201/254 ("OSC")** on April 1, 2009 for making supplies of certain materials for the latter's 6x600 MW coal-based power plant being established in Nariyara village, Chhattisgarh State, ("Project");
- (B) Thereafter, 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 On-shore Supply Contract dated 14.5.2010 (hereafter referred 'Tripartite Amendment Agreement) and being honored and implemented by both Parties;
- (C) Subsequent to the Tripartite Amendment Agreement, SEPCO has now requested that given that certain additional supplies are envisaged to be executed by SEPCO under OSC ,an amendment is warranted to adjust the contract price.
- (D) KMPCL has agreed, that as a goodwill gesture and to account for all these change requests with respect to OSC by SEPCO until the date of execution of this amendment, to amend the Scope of Supplies and the Contract Price as hereinafter set out.
- (E) Accordingly, in order to reflect this understanding between the Parties, and the adequacy of consideration being confirmed irrevocably by SEPCO, the Parties have agreed to amend the OSC, as amended by the Tripartite Amendment Agreement, 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, as amended by the Tripartite Amendment Agreement, shall be effective immediately on and from the date of execution of this Amendment Agreement :

1.1 Article 2.3.1 of the OSC, as amended by the Tripartite Amendment Agreement, shall stand amended as under:

2.3.1 The Scope of Work to be carried out by the Supplier shall include but not limited to design, engineering, approval of drawings, manufacture, procurement, assembling, shop testing, packing, forwarding, transportation and delivery of the Plant and Equipment at Site including commissioning spares, Consumables to the Delivery Point, for the Project, more specifically detailed in Schedule 2 read with Annexure 1 to this Amendment Agreement.



1.2 Article 10.1 of the OSC, as amended by the Tripartite Amendment Agreement, shall stand amended as under:

10.1 The Purchaser agrees to pay to the Supplier in the manner set forth in the Contract and the Supplier shall accept as full and complete compensation for Scope of Supplies under this Contract, the lump-sum, (the "Contract Price") INR (Indian Rupees) 3,585,636,314 (Say Indian Rupees Three Billion Five Hundred Eighty Five Million Six Hundred Thirty Six Thousand Three Hundred and Fourteen only) inclusive of all applicable taxes and duties as on Feb 21, 2009 except entry tax / octroi duties.

1.3 New Article 12.2.5 shall be added in OSC, as amended by the Tripartite Amendment Agreement, after Article 12.2.4 as under:

12.2.5 Advance Payment will not be released for certain Plant and Equipments as mentioned in Annexure 2 of the Amendment Agreement.

1.4 Article 12.3.1 of the OSC, as amended by the Tripartite Amendment Agreement, shall stand amended as under:

12.3.1 Balance Payment shall be governed by the following Articles:

- a) (i) 75% of the Contract Price against receipt for Onshore Supplies at site on prorata basis as per a billing schedule to be approved by the Purchaser.
- (ii) In respect of the Plant and Equipments as referred in Article 12.2.5, 85% of the Contract Price against receipt at site on prorata basis as per a billing schedule to be approved by the Purchaser.
- b) 5% of the Contract Price against first synchronization (prorated for each Unit);
- c) 5% of the Contract Price against successful completion of Reliability Run Test (prorated for each Unit) and on submission of Performance Bank Guarantee (PBG) by Supplier;
- d) 5% of the Contract Price against successful completion of PG Test (prorated for each Unit).

Such payments shall be made by telegraphic transfer/any other electronic mode within 21 days from receipt of complete & correct documents, on receipt of complete set of required documents, the Purchaser shall process the documents within 7 days. Any delay in approval / comments from the Purchaser within 7 days, same shall be treated as approval for payment. On approval from the Purchaser, the Purchaser shall release the payment within 14 days.

1.5 The 12.3.2.1 of the OSC, as amended by the Tripartite Amendment Agreement, shall stand amended as under:

12.3.2.1 Documentation list for 75% / 85 % prorated Onshore supplies payments



(a) Signed commercial invoices in two original and three copies) invoice format need to be mutually discussed & approved by Purchaser.

Signed Commercial invoice shall among other things contain the following:

- Total invoices shall be in INR-----
- The Goods are as per On Shore Supply Contract no..... dated.....
- Name and complete postal address of the Consignor;
- Name and complete postal address of the Consignee;
- Name and complete postal address of the place where the equipment is proposed to be physically delivered;
- Mode of conveyance –
- Mode of payment giving details of the beneficiary bank;
- Invoice number and date;
- Reference of the contract / purchase order. Pursuant to which the equipment is being invoiced;
- No. of Packages and Package Reference number(s);
- Consignee code (by Purchaser);
- Gross & net weight of the package / equipment;
- Dimensions of each package (in Packing List);
- place of manufacture;
- Description of the equipment along with quantity/unit price/value (in numbers and words);
- Terms of payment - % of the Contract Price to be payable as per the contract;
- Reference to the insurance policy number covering the transit risks

(b) The following document shall accompany the Invoice. Further, a common reference No. shall appear on Invoice & these documents for cross reference:

Inspection / Inspection Waiver Note as applicable and Quality/test Certificate as per QAP;

Detailed packing list. Detailed packing list will have each component listed with its dimensions, qty, volume, type of packing, etc.

Dispatch details must be conveyed within seven days of the shipment to the applicant by fax/telex/email and copy of such fax/telex/email to accompany documents. Original LR copy for inland transportation (Purchaser provided waybill to Supplier). Project site entry Gate Pass.





Signed jointly (Representatives of Purchaser & Supplier at the site) Inward Goods Inspection report as proof of complete and safe receipt of goods at site.

2. **Miscellaneous**

2.1 Save and to the extent amended by Clause 1 of this Amendment Agreement, the OSC, as amended by the Tripartite Amendment Agreement, shall continue to remain in full force and effect in accordance with its terms.

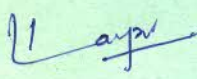
2.2 The Parties agree that all of the provisions of the OSC, as amended by the Tripartite Amendment Agreement, shall apply *mutatis mutandis* to this Amendment Agreement, as if set out specifically herein and incorporated into this Amendment Agreement:

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

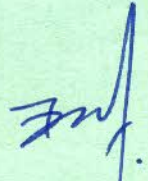
For KSK MAHANADI POWER COMPANY LIMITED 	For SEPCO ELECTRIC POWER CONSTRUCTION CORPORATION 
S.Kishore, Director duly authorized representative for and on behalf of KSK MAHANADI POWER COMPANY LIMITED	Mr. Du Qiwei, Project Head duly authorized representative for and On behalf of SEPCO ELECTRIC POWER CONSTRUCTION CORPORATION

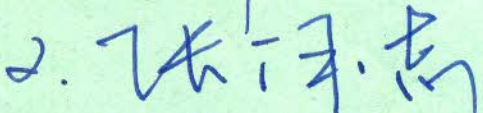
Witness

1. PRANAV KOMERWAR
PVK

2. PASALA SRINIVASARAO


Witness


1.  Wang chengwei

2. 
(Zhang Deshi)

ANNEXURE 1

SCOPE OF SUPPLY

S.N.	Item Name	Amount(in Indian Rupee)
1	Fire-fighting	307,601,914
2	Fire tender	8,845,800
3	Boiler Elevator	34,799,943
4	Turbine Elevator	14,076,000
5	Chimney Elevator	12,475,106
6	Service Elevator	3,519,000
7	Cooling Tower	576,798,600
8	Pneumatic Ash System	167,816,600
9	Wet bottom ash handling	243,570,000
10	Hydrogen Tank	28,750,000
11	HCSD Design and Mixer,slury plc control supply	64,920,950
12	Weigh Bridge	1,063,750
13	Rail Weigh Bridge	2,875,000
14	220V DC Cabinet	24,222,879
15	CW Steel Plate and Channel	400,194,462
16	Steel plate for chimney	146,004,000
17	Steel plate for coal bunker	78,098,295
18	Steel plate and angle for tanks	54,972,300
19	Cable Tray	6,264,070
20	Steel support for Cable Tray	5,790,825
21	Cable	80,500,000
22	Earthing material	6,422,204
23	Fork lift	4,600,000
24	Hydra	5,750,000
25	Automatic Bottom Open Device for Wagon	2,300,000
26	Insulation Materials including clading	580,464,835
27	Refractory for boiler	106,079,579
28	Enclosed Sheet for MPH/CHP etc.	96,213,600
29	Tarriff meter	18,400,000
30	Turbine oil	72,450,000
31	Fire-resistant & Lubricating oil	48,300,000
32	Transformer Oil	94,758,850
33	Rolling machinery Oil	28,980,000
34	Painting and antiseptis material	97,750,000
35	Ventilation & AC material	32,200,000
36	Lighting equipment & material	127,807,754
	Total	3,585,636,314




ANNEXURE 2

LIST OF PLANT AND EQUIPMENTS FOR WHICH NO ADVANCE PAYMENT SHALL BE MADE

S.N.	Item Name	Amount(in Indian Rupees)
1	Fire tender	8,845,800
2	Cooling Tower	576,798,600
3	Pneumatic Ash System	167,816,600
4	Wet bottom ash handling	243,570,000
5	Hydrogen Tank	28,750,000
6	Rail Weigh Bridge	2,875,000
7	Steel plate and angle for tanks	54,972,300
8	Fork lift	4,600,000
9	Hydra	5,750,000
10	Automatic Bottom Open Device for Wagon	2,300,000
11	Insulation Materials including clading	580,464,835
12	Refractory for boiler	106,079,579
13	Enclosed Sheet for MPH/CHP etc.	96,213,600
14	Tarriff meter	18,400,000
15	Ventilation & AC material	32,200,000
	Total	1,929,636,314





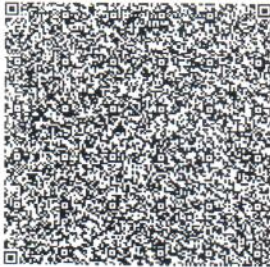
सत्यमेव जयते

INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

e-Stamp

Certificate No.	: IN-DL321146116478990
Certificate Issued Date	: 30-Mar-2016 12:39 PM
Account Reference	: IMPACC (IV)/ dl815803/ DELHI/ DL-DLH
Unique Doc. Reference	: SUBIN-DL815803630843064474750
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 second amendment to the onshore supply contract

- For KSK Mahanadi Power Company Limited

C. Srinivas
Authorised Signatory

[Signature]



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 30th DAY OF MARCH 2016

**SECOND AMENDMENT TO THE
ONSHORE SUPPLY CONTRACT**

Between

KSK MAHANADI POWER COMPANY LIMITED

And

**SEPCO ELECTRIC POWER CONSTRUCTION
CORPORATION**

C. Srinivas

[Signature]

This **SECOND AMENDMENT TO THE ONSHORE SUPPLY CONTRACT** ("**Amendment Agreement**") is made as of this 30th 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 Supply Contract ("OSC") on April 1, 2009, first amendment to the Construction Contract on 9th June, 2011 ("**First Amendment**") 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 Supply 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 change of Scope of Works under the OSC, as amended by the First Amendment, Tripartite Amendment Agreement and mutually agreed to amend the Scope of Work and the Contract Price 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, as amended by the First Amendment shall be effective immediately on and from the date of execution of this Amendment Agreement, the First Amendment shall be substituted with this Amendment Agreement with respect to clause as modified under this Amendment Agreement ("Second Amendment") :



1.1 Article 12.3.1 of the OSC, as amended by the First Amendment, Tripartite Amendment Agreement 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 4.21.2 of OSC is hereby deleted and substituted with the following revised dates:

Units	First Commissioning
Third Unit (Unit # 2)	31 st December 2016
Fourth Unit (Unit # 5)	30 th April 2017
Fifth Unit (Unit # 1)	31 st October 2017
Sixth Unit (Unit # 6)	31 st 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 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 from LD Application Dates (excluding taxes and duties) per week (7 days) of delay or part thereof of each Unit 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 11.5.7 of OSC shall stand amended to the following:



- For EPC Unit #2 & #5 - USD 1,245,012 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 1,245,012 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 11.5.5 is hereby deleted and substituted with the following:

The Owner shall retain Contractor furnished ABGs for an aggregate value of USD [966,056]. 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 supplies made hereinafter and progress payments received thereto

2. Miscellaneous

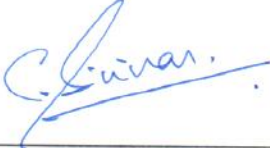

Save and to the extent amended by this Amendment Agreement, the CC, as executed and amended earlier, shall continue to remain in full force and effect in accordance with its terms.

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

[Rest of the page has been intentionally left blank]




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. Wu chuanman 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	7		7.0
Apr-16	7		7.0
May-16	7		7.0
Jun-16	7		7.0
Jul-16	7		7.0
Aug-16	7		7.0
Sep-16	7		7.0
Oct-16	7		7.0
Nov-16	12		12.0
Dec-16	14		14.0
Jan-17	14	7.00	21.0
Feb-17	0	7.00	7.0
Mar-17	0	7.00	7.0
Apr-17	0	7.00	7.0
May-17	0	7.00	7.0
Jun-17	0	7.00	7.0
Jul-17	0	7.00	7.0
Aug-17	0	7.00	7.0
Sep-17	0	7.00	7.0
Oct-17	0	7.00	7.0
Nov-17	0	13.00	13.0
Dec-17	0	14.00	14.0
Total	96.00	97.00	193

For KSK Mahanadi Power Company Limited


Authorised Signatory



