

CONTRACT NO.: SEPCO,CHINA/SK/1160201/253

OFF-SHORE SERVICES 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

Sl. No. : 12955 Date: 05/3/2009. Rs.: 100/-

Sold To : Krishna

S/o. : Ramaiah. R/o. Hyd.

To Whom : Wardha Power Company Private Limited.

(Chattisgarh)

R, 476120

[Signature]

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 OFF-SHORE SERVICES Contract is made and executed on this the 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 "**Owner**" 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 "**Contractor**", which expression shall unless repugnant to

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Offshore Services Contract

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

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

RECITALS

WHEREAS

- A. The Owner is setting up a 3600 MW Coal based Power Plant ("**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 Owner is the ultimate owner of the Power Plant equipment being supplied by Contractor.
- B. The Contractor is engaged in the business of undertaking and procurement activities, delivering various kinds of Complete Plants and providing services for various power plants.
- C. The Owner proposes to engage the Contractor to design, engineer, project management, supervisory services, training for Owner's personnel for the Power Plant.
- D. The Contractor desires to render services either directly or through its Sub-Contractors and Affiliates on lump sum price basis in accordance with the Payment Terms set out in Article 10 and subject to the terms and conditions set forth herein.
- E. The Contractor has satisfied itself by careful examination as to the nature and magnitude of the Contract and the availability of resources and has obtained necessary information as to the matters in connection with the performance of the Contract.
- F. The Contractor hereby confirms and warrants that the Contractor has the necessary expertise and resources to perform their obligations under the Contract and that it has designed similar plants, systems and other Services for various coal based power

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plants; and

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

NOW, THEREFORE, THE CONTRACT WITNESSETH as follows:

1. DEFINITIONS

1.1 Definitions

The following terms shall have the meanings specified in this Article and 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 Complete Plant 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 Contractor and/or the Owner 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 9.5 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 Services for the Plant as presently delineated in the Contract, so long as the change requested is reasonably related to the Plant 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 Project Schedule, or the Performance Guaranteed Values. Correction of errors or omissions or Miss Outs by Contractor shall not be deemed a Change and shall be performed at Contractor's sole cost and expense.

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

"Change in Law" shall mean (a) any enactment or issuance of any new Applicable Law; or (b) any amendment, alteration, modification or repeal of any existing Applicable Law; or (c) any change in the application or interpretation of any Applicable Law by any Competent Authority which is contrary to the existing accepted application or interpretation thereof, in each case with respect to a) , b) and c) above coming into effect after Feb 21, 2009 and which was not reasonably foreseeable by the Contractor on the date of the Contract. Provided that, the statutory variations in taxes and duties shall not constitute a Change in Law.

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"Claim" shall have the meaning set forth in Article 25.5

"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 Owner or the Contractor) or commission under the direct or indirect control of such local or State Government or Union Territory or the Government of India or any political subdivision thereof or any court, tribunal or judicial or quasi-judicial body within India.

"Commissioning" shall mean, in relation to each part, the first successful integrated operation of all the Equipment and materials supplied by the Contractor in accordance with 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 Owner to Contractor certifying the Commissioning Date.

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

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

"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, Chimneys, 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, Pipings, Hangers, Supports, Valves, Fittings, Painting and Protective Coatings, Effluent Treatment Plant, Reverse Osmosis (RO) Plant System,

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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 8.

"Contract Period" shall mean the time for completion of the Works 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.

"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, including all latest, but not limited to the following, 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 Explosives Act and rules and regulations made thereunder;
- (d) Indian Factory 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 for the time being in force in India.

"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.

"Delay Liquidated Damages" shall have the meaning as set forth in Article 20.1.

"Documentation/Documents" shall mean, design basis report (DBR), Drawings, designs, engineering information, data sheets, calculations, computer data (insofar as stored in computer diskettes/ Compact Disc), other than the proprietary information, 3D model, "as-built" drawings, method statement, erection drawings and instructions, fabrication drawings, and other manuals and information of a similar nature, to be submitted by the Contractor.

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

"Dispute" shall have the meaning as set forth in Article 25 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 Owner/Lender and notified in writing by the Owner to the Contractor to act as Engineer for the purpose of the Contract. Unless any change is notified, the project head of the Owner shall act as the Engineer.

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

"Final Acceptance" has the meaning as set forth in Article 22.

"Final Acceptance Certificate" means the certificate as specified in Article 22.2.

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

"Force Majeure" has the meaning as set forth in Article 23.1.

"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 Contractor, equipment manufacturer or operator applying the standards generally adopted by Indian and/or international Contractors, equipment manufacturers and operators in the construction or operation of coal based power plant or the manufacture of equipment thereof, except insofar as necessary to comply with any Applicable Law.

"Guaranteed Completion Date" means the date as provided in Article 4.12.2.

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



"Indemnified Party" shall have the meaning set forth in Article 17.3.

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

"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 services and / or (ii) the Owner or sponsor for the set-up, procurement and construction of Power Plant.

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

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

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

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



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

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

"Month" means any calendar month.

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

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

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

"Owner Event of Default" shall have the meaning set forth in Article 24.2.

"Owner Indemnified Party" shall have the meaning set forth in Article 17.1.B.

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

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



"Payment Term" or "Terms of Payment" shall have the meaning given to it in Article 10.

"Performance Guaranteed Values" means the guaranteed levels of performance of the Complete Plant as set out in Article 19.5.4.

"Performance Guarantee Tests" means the tests to be conducted so as to establish the Performance Guarantee parameters in the manner set forth in Article 19.5.4.

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

"Performance Liquidated Damages" means the damages relating to the performance of the Complete Plant set out in Article 20.2.

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

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

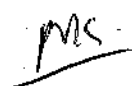
"Project or Power Plant" shall mean the 3600MW coal based power plant to be set up on Build, Own and Operate ("**BOO**") basis at the Site.

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

"Reliability Run Test" shall mean as defined in Article 19.5.3 as well as in Technical Specifications.

"Requirements" shall mean under the Contract all Applicable Laws, Contractor Permits, Good Industry Practices, Scope of Work, 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 Work/Works" means and includes the services to be carried out and/or rendered by the Contractor in accordance with Schedule 2 and Article 4.1.

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

"Sub-Contractor" means any Person (other than the Contractor or the Owner) to whom the Contractor has sub-contracted any part of his Scope of Work including any such Person's legal successors in title or permitted assigns and, unless otherwise stated, all sub-sub-Contractors and Contractors of any tier to such Person.

"Sub-Contracts" has the meaning given in Article 2.2.

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

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

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

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

"Technical Dispute" shall have the meaning as ascribed to it in Article 25.3 of the Contract.

"Technical Expert" shall have the meaning as ascribed to it in Article 25.3 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 Complete Plant.

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

"Unit Price" shall be a sum of USD 810,000 being one-sixth of the Contract Price.

"Warranty Period" has the meaning given in Article 15.

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

"Zero Date/Effective Date" shall have the meaning as set forth in Article 4.12.3 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 Owner.

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

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

1.2.8 Contract Documents:

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

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

2. RELATIONSHIP OF OWNER, CONTRACTOR AND SUB CONTRACTORS

2.1 Assignment and Sub-Contract

2.1.1 Assignment by the Contractor

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

2.1.2 Assignment by the Owner

The Owner shall not without the prior written consent of the Contractor, assign to any person any benefit of or obligation under the Contract in whole or in part save that the

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

2.2 Sub-Contracting

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

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

Provided that the Contractor shall obtain the approval of Owner of the list of Sub Contractors who shall provide Works aggregating to in excess of USD 2 Million (such Sub Contractor being a "Major Sub-Contractor").

2.2.3 The Owner reserves the right to reject a Sub-Contractor if the financial and technical performance of such Sub-Contractor is found to have deteriorated before the award of a Sub-Contract by the Contractor to the Sub-Contractor. In the case of Sub Contractor(s)

not already identified in the Contract, the experience list of the Sub-Contractor(s) under consideration by the Contractor shall be furnished to the Owner for approval prior to procurement of all such Items as covered under the Scope of Work under the Contract. The Owner shall provide their decision in this regard within 7 (seven) Business days from the Contractor furnishing details of the Sub-Contractor.

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

2.2.5 The Contractor shall inform Owner about any part of plant or system design outsourced by the Contractor within 1 month from the date of such subcontract.

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

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

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

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





transferred to the Owner.

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

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

2.3 Scope of Work

2.3.1 The Contractor shall be solely responsible for basic engineering, design & engineering services, technical services as per Schedule 2 including interfacing integration and demonstration of Performance Guaranteed Values of respective Units, as well as training of Owner's Personnel (hereinafter referred to the "Scope of Work"), irrespective of whether services have been rendered by him directly or his Affiliates and/or Sub-Contractors,

2.3.2 The Contractor shall sequence his Works matching the Project Schedule approved by the Owner to meet the requirements of Scope of Work 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 Owner's Final Taking Over of the Units.

2.3.3 The obligations of the Contractor under the Contract shall include single point

responsibility for all necessary co-ordination in respect of the independent Works & allied activities to be performed to ensure that the Project is completed in every respect as contemplated. Thus the Contractor needs to ensure that the Scope of Work is completed in accordance with the Guaranteed Dates, the Technical Specifications and the Performance Guaranteed Values and the overall performance of the Plant as agreed.

3. CONTRACTOR TO INFORM HIMSELF FULLY

- 3.1 The Contractor is deemed to have carefully examined the Technical Specifications mentioned in Schedule 2 to his entire satisfaction before signing of the Contract. The Contractor is deemed to have made independent enquiries and satisfied himself for all the required information, inputs, conditions, circumstances and factors having effect on the Contract Price and on execution of the Works covered in the Contract.
- 3.2 The Contractor 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 Owner shall not permit any change in Project Schedule or any financial adjustment arising due to lack of information on the part of the Contractor. Any information obtained by the Contractor from the Owner, which is not in writing, shall not in any way relieve the Contractor of the Contractor's responsibility to fulfill his obligation under the Contract.
- 3.4 The Contractor shall be deemed to have inspected the Site and its surroundings and to have satisfied itself as to all technical, commercial, geographical, topological, social and general condition of and all circumstances affecting the Site including the nature of the ground and sub-soil, the form and nature of the Site, the extent and nature of Works necessary for the delivery of the Complete Plant at Site.
- 3.5 The Contractor shall not, except as expressly provided in the Contract and save to the extent of any misrepresentation or misinformation given to it by or on behalf of the Owner, be entitled to any extension of time for any of the Items listed in the 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 Contractor

from the Owner, which is not in writing, shall not in any way relieve the Contractor of his responsibility to fulfill his obligation under the Contract.

4. CONTRACTOR'S OBLIGATIONS

4.1 Scope of Work

- 4.1.1 The Contractor shall perform all its obligations related to design and engineering of the Complete Plant and complete the Scope of Work in accordance with the Technical Specifications in Schedule 2.;
- 4.1.2 Approval of design & engineering of indigenous equipment and related technological structures provided by Indian Affiliates of under the Contractor.
- 4.1.3 Co-ordination work related to Interfacing, integration, synchronization, Trial run and demonstration of Performance Guarantee of respective Units.
- 4.1.4 Training to Owner's personnel in China.
- 4.1.5 Supply of Drawings, Technical Documents and Information specified in Schedule-2 of the Contract.

4.2 Conformance to Requirements

- 4.2.1 Contractor shall render Works to the Owner in accordance with all Requirements and Good Industry Practice. The Contractor shall perform all the Works in a good and workmanlike manner. All the Works shall be conforming to internationally acceptable standards set out for such material, considering strength, durability and free from defects and imperfection. Liberal factors of safety shall be used throughout the works and especially for all parts subject to alternating stresses or shocks. The Contractor shall render Works as per Technical Specifications, with safety conforming to acceptable level of safety as per standard set out for such Plant dependability, efficiency and economy, in each case using qualified, competent and, where necessary, licensed personnel. The Contractor shall render Works necessary for start-up and Commissioning and Taking Over of the Power Plant.





4.2.2 Coordination with O&M Contractor:

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

4.3 Completeness of Works:

The Works shall be complete in all respects that are required to be designed in accordance with Good Industry Practices, including Miss Outs, even if it is not specifically detailed in the Technical Specifications. The Contractor shall not be eligible for any extra payment in rendering services for mountings, fixtures, fittings, and accessories 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.

4.4 Engineer

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

4.4.2 Compliance with the Engineer's Decision

4.4.2.1 The Contractor 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 16 hereof shall be binding and complied with by the Contractor. In respect of all matters, which are left to the decision of the Owner including the granting or withholding of the certification, the decision of the Engineer shall be final.

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

4.4.2.3 If required by the Owner, the Contractor shall also undertake to train the Owner's Personnel (selected and deputed by the Owner) at the manufacturer Works without any additional liability to the Owner. The period and the nature of training for the individual personnel shall be agreed upon mutually between the Contractor and the Owner. The Owner's Personnel shall be given special training in the shops, where the Item/s will be manufactured and / or in their collaborator's works and wherever possible, in any other plants where Item/s manufactured by the Contractor or the Contractor's collaborator is under installation, operation or testing to enable these personnel to become familiar with the Item being furnished by the Contractor. The details of the number of persons to be trained, period of training, nature of training etc. shall be outlined in accompanying Technical Specifications. For details, Article no. 15.03.00 of Section-III, Vol-II of the Technical Specifications shall be referred.

4.4.2.4 All the traveling and living expenses for the engineering personnel to be trained during the total period of training will be borne by the Owner. The Owner shall also arrange necessary travel documents for them to China. Lodging and boarding in China to be borne by Owner for these personnel. Local conveyance to be borne by the Contractor. The Contractor shall, however, assist in arranging visa for such trainees, wherever necessary. These engineering personnel while undergoing training shall be responsible to the Contractor for discipline.

4.5 Drawings of the Plant



- 4.5.1 The Contractor shall supply and deliver all the general arrangement drawings (as provided for in the Technical Specification) including mechanical, electrical, control and instrumentation and civil Drawings, data sheets and the like for approval of the Owner along with the design calculations and general write up wherever involved. All electrical, Control and instrumentation, civil and mechanical drawings shall be properly coordinated.
- 4.5.2 While scrutinizing the Drawings, the Owner shall indicate the corrections to be made in these Drawings which the Contractor shall incorporate or justify its correctness.
- 4.5.3 The Contractor then shall submit the revised drawings for approval of the Owner. On approval of the same, Contractor shall furnish 8 (eight) hard copies and soft copy on CD of these approved Drawings to the Owner as per the distribution to be intimated. Approval of any drawings by Owner shall not absolve responsibilities of Contractor to comply with requirements of codes/rules/competent authority in existence without any extra cost to Owner.
- 4.5.4 Any delay in approval of Drawings by Owner, due to submission of incorrect data, non-submission of data, non-updating the Drawings in line with the corrections indicated shall be to the Contractor's account. During the currency of the Contract, if any approved Drawings are required to be modified, such details of the modifications required to be carried out shall be separately maintained and obtain Owner approval.
- 4.5.5 Within 1 (one) month from the successful completion of Reliability Run Test of each Unit, the Contractor shall incorporate all the changes necessitated in the drawings for the systems completed for that Unit and submit 2 (two) sets 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, IBR approved third party certificate, erection drawings and instructions, and other manuals and information of a similar nature, for the records of the Owner. As the Drawings shall to be submitted approved based on the basic information furnished by the Contractor., approval by the Contractor shall not absolve the Contractor of his responsibilities towards correctness of design and performance of the Complete Plant.
- 4.5.6 The Contractor shall be responsible for and shall perform any alterations or remedial

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work to the Scope of Work 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 Owner.

- 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 Owner may have incurred on account of changes made by the Contractor in the Drawings provided by the Contractor after they have been approved by the Owner, shall be recovered from the Contractor.
- 4.5.8 The sizing calculations of the Complete Plant other than the proprietary information shall be provided by the Contractor to the Owner 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 Owner's approval.
- 4.5.9 The Contractor shall also prepare and supply Documents pertaining to the Plant in sufficient detail to satisfy the requirements of the Contract and applicable Codes. The Contractor shall prepare such documents in accordance with Project Schedule, which shall be agreed to between the Owner and the Contractor. The Contractor 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 Owner's approval.
- 4.5.10 The Owner 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 Owner shall either approve or comment within 14 (fourteen) days of receipt of first submission. For subsequent submissions, if any, the Owner 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 Owner's approval of such documents. In the event that the Contractor commences such manufacturing, it shall take into account Owner's comments at its risk and expense. The Contractor shall not depart from any approved



documents unless the Contractor has first submitted to the Owner an amended document and obtained the Owner's approval thereof.

4.5.12 The documents under approval category, once approved by the Owner, shall be submitted to the Owner 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 Owner'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 Owner at an earlier date as mutually agreed. Owner 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 Contractor at the Contractor'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 Owner in relation to all the Drawings and /or the documents shall not relieve the Contractor of its obligations under the Contract. Any approval and/or consent given by the Owner shall not be considered representations concerning the propriety, fitness or usefulness of any proposed action by the Contractor, and shall not affect Contractor's obligation to strictly comply with the terms of the Contract.

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

4.6 Manuals

4.6.1 Operation and Maintenance Manuals

The Contractor shall submit to the Owner 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 Owner'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 Contractor with phone number, fax number and other necessary details. The Contractor shall ensure that these O&M Manuals are made available to the Owner well before starting of Initial Operation of the Unit/s and/or the Complete Plant.

4.6.2 Erection Manuals

In order to enable the Engineer appointed by the Owner to supervise the Works properly, Contractor 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.

4.6.3 Permits

The Contractor shall obtain and maintain any and all Permits, visa, necessary or desirable for the Works under the Contract ("Contractor Permits). The Contractor shall obtain and maintain the Contractor Permits at Contractor's sole cost and expense. Contractor shall also cause all its Sub-Contractors to maintain their Permits.

4.7 Contractor's Representative and Personnel

4.7.1 The Contractor shall provide all requisite superintendence during Works envisaged under the Contract until proper completion of the Contractor obligation under the Contract. Such superintendence shall be through experienced and qualified personnel, with prior experience in similar Project setup and adequate knowledge (including knowledge of operations to be carried out, preventive steps and procedures on accidents) facilitating timely implementation of the Project.

4.7.2 The Contractor shall provide superintendence to comply with the Project Schedule solely at its cost to complete the performance under the Contract.

4.7.3 The Contractor shall not recruit, or attempt to recruit, its staff and labour from amongst



the employees of the Owner. Likewise, the Owner shall not recruit, or attempt to recruit, its staff from amongst persons in the service of Contractor.

4.7.4 The Contractor 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 Contractor shall promptly pay and afford to its employees all their rights under employment with the Contractor. The Contractor shall be required to ensure that all such employees obey all Applicable Laws, including those concerning safety. The Contractor undertakes to include in each of its sub contracts a provision that the Sub-Contractor will comply with the foregoing labour Laws and worker's rights requirements with respect to its employees and that of any Sub-Contractors. Nothing contained in any part of this Contract shall be construed to create any privity of relationship between the Owner and the Contractor or the Sub-Contractor or the employees, if any, deployed by the Contractor or the Sub-Contractor for the purpose of performance of the Scope of Work including but not limited to principal-agent, master-servant and employer-employee.

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

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



4.8 Consultation with Owner, no release from responsibility

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

4.9 Access

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

4.10 Compliance with Requirements, Codes and Standards of Care

4.10.1 Compliance with Applicable Law

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

regulations and laws prevailing in India.

4.10.1.2 All the Works shall be delivered by the Contractor in accordance with Applicable Laws in effect from time to time. If and to the extent that any Change in Law gives rise to the requirement to make a modification to the Complete Plant, such Change in Law shall be treated as if it were a Variation/Change Order instructed by the Owner, upon which Article 16 of the Contract shall apply.

4.10.1.3 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.

4.10.2 Divergences from Statutory Requirements

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

If 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 Contractor shall promptly upon becoming aware of the same, inform the Owner in writing of its proposed amendment for removing the divergence, and with the Owner's consent and subject to agreement on any variation in the Contract Price, the Contractor shall deliver the Works for the Complete Plant 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.

4.10.3 Codes

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



4.10.3.2 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 Contractor shall comply with the same. However, if such compliance calls for any modification of the design of the Complete Plant or any item thereof with financial implication, the same shall be discussed and mutually agreed to between the Contractor and the Owner.

4.10.3.3 At all times, the Contractor 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.

4.11 Program of Works

The Contractor shall so organize its resources and perform its obligations as to meet the Project Schedule of each Unit of the Complete Plant 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

4.12 Project Schedule

4.12.1 The Scope of Work covered under the Contract shall be programmed ("Project Schedule") in such a way that each Unit is Commissioned and handed over to the Owner within the time period specified below:

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

| Unit No. | Reliability Run Test completion (months) from Zero Date | Reliability Run Test completion (months) from |
|----------|--|--|
|----------|--|--|

| | (best effort basis) | Zero Date (Guaranteed Completion Date) |
|------------|---------------------|--|
| 1 X 600 MW | 36 | 38 |
| 2 X 600 MW | 40 | 42 |
| 3 X 600 MW | 44 | 46 |
| 4 X 600 MW | 48 | 50 |
| 5 X 600 MW | 52 | 54 |
| 6 X 600 MW | 56 | 58 |

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

- Contractor shall submit ABG within 30 days from the date of LoA issued for 10% of the Contract Price.
- Owner shall pay any advance payment within 7 business days from receipt of swift message and a scanned image of the ABG to the bankers of Owner to be notified by Owner, confirming that the ABG has been issued on behalf of Contractor. Owner shall arrange for the confirmation of the ABG, if required, for which the necessary charges shall be to the account of Owner. In case, of delay of payment of advance beyond 7 business days from receipt of swift message and a scanned image of the ABG, Guaranteed Completion Date will be extended by corresponding period of such delay.
 - 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.
- All the area within the boundary wall shall be handed over to Contractor within 6 months from Zero Date with the formal confirmation letter from Owner. Failing to do so by Owner, the Guaranteed Completion Date shall be extended by the corresponding period of such delay.




- Owner will furnish the letter signed by their banker within 5 months from 'Effective Date' that debt finance has been tied up. Failing to do so by Owner, the Guaranteed Completion Date shall be extended by the same period of the delay of such furnishing.

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

4.12.5 The Contractor shall for approval of the Owner, 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 design, engineering and drawing;

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

4.13 Grounds for Extension of Guaranteed Completion Date

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

- any Variation/Change Order issued in accordance with Article 16 hereof;
- events or circumstances of Force Majeure as defined in Article 23 hereof;
- Owner's failure to fulfil any of its obligations under the Contract;
- an instruction of the Owner to suspend the whole or any part of the Works for reasons not attributable to the Contractor.




4.13.2 Grant of Extension of Time

As soon as reasonably practicable following the occurrence of any of the circumstances described in Article 4.13.1 hereof but subject to the provision thereto, the Owner shall grant the Contractor from time to time in writing either prospectively or retrospectively such extension to the relevant Guaranteed Completion Date as shall be fair and reasonable.

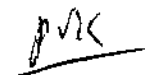
4.14 Project Schedule

The Contractor shall arrange supply of the Documentation sequentially as per agreed Project schedule.

The Works shall be rendered by the Contractor in accordance with the Project Schedule and the Project Schedule may, subject to the prior approval of the Owner, be amended from time to time. The Project Schedule and sequence of all the Documentation of the Plant shall be so as to ensure that the schedule of the Works by the Contractor is met to enable the Commissioning of each Unit and/or the Complete Plant to occur within the period as specified under and enable the Taking Over of each Unit and/or the Complete Plant, as the case may be, by the Owner, after successful completion of Reliability Run Test and completion of Performance Guarantee Test.

4.15 Progress Reports

The Contractor shall constantly monitor the progress of all activities in connection with rendered services in accordance with the Project Schedule and shall submit a detailed Progress Report, in 6 (six) copies in print and soft copy in a CD, to the Owner every Week. The Progress Report shall contain such information, as the Parties shall mutually agree. The Progress Report shall detail the actual status of procurement of raw materials and sub-contracted equipment, manufacture, assembly, inspection, testing and delivery of the Complete Plant and each Item of such Complete Plant 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.



4.16 Patent Rights, Royalties and License Fees

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

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

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

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

4.17 Financing Matters

- 4.17.1 The Contractor hereby consents to assignment of the Contract to the Lenders of the Project for their security purposes.
- 4.17.2 The Contractor shall cooperate with the Owner and the Lenders and shall execute, deliver, and perform under such documents as may be reasonably required by the Lenders.
- 4.17.3 Contractor shall provide complete support on documentation with respect to Owner Usance / Buyers Credit facility with its bankers.

4.18 Interconnection.

Owner and Contractor acknowledge and agree that the design, engineering and installation of the electrical equipment within Contractor's scope within the Battery Limits of Power Plant will require coordination among Owner, Contractor and the State Transmission Utility (STU) in Chhattisgarh or its successors and Power Grid Corporation of India Limited (PGCIL). Contractor shall be responsible for Works within Contractor's scope and Interconnection equipment to enable timely interface with the Grid. Transmission Line and equipment beyond Contractor Battery Limits are not within the Scope of Works under the Contract. The Owner 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 Contractor.

4.19 Punch List.

Contractor shall co-operate with the Owner for preparation and submit a list of Works of uncompleted Scope of work, 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 Owner 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, Owner 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 Contractor before PG test completion date. All Works which Owner believe to be deficient after the Take Over Date but within Warranty Period, as applicable, shall be submitted to Contractor as warranty work pursuant to Article 15 and the Contractor shall rectify such services.

5. OWNER'S OBLIGATIONS

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

5.1 Make Payments

The Owner shall be liable to make Payments to the Contractor in the manner as set forth in Article 10 of the Contract.

5.2 Owner's Representative

5.2.1 The Owner shall depute an English-speaking employee or representative to act on its behalf as its authorized representative ("**Owner's Representative**") who will act as an in-charge for all the Works under the Contract. The Contractor's resident engineer shall report to the Owner's Representative for all the day-to-day Works.

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

5.2.3 The Owner shall cause the Owner's Representative to perform every act required under the Contract to be performed by the Owner's Representative and any obligation stated under the Contract to be an obligation of the Owner's Representative shall be deemed to be an obligation of the Owner. The Owner shall be responsible for any act, neglect or omission of the Owner's Representative as if it were an act, neglect or omission of the Owner.



5.2.4 The Contractor shall proceed with the Works in accordance with decisions, instructions and orders given by the Owner's Representative subject to and in accordance with the Contract, including provisions for Variations as set out in Article 16 hereof.

5.2.5 The Owner's Representative may issue written and/or oral instructions in case of emergencies with which the Contractor shall immediately comply. The Owner's Representative shall confirm any oral instruction in writing within 36 (thirty six) hours of its issuance.

5.3 Owner's Staff/Representative not personally liable

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

5.4 Approvals / Consents

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

5.5 Document Review.

The Contractor may send to the Owner for review any data, documentation, or specifications, drawings ("Documentation"). The Owner's reviewer will verify the accuracy of the information and data that Contractor has supplied. All Documents submitted by Contractor to Owner for approval must be either approved or rejected by Owner with comments within 14 (fourteen) days from the date the Documents are delivered to Owner, where after they shall be deemed approved. In the event they are rejected by the Owner, the Contractor shall resubmit the same, and the Owner shall comments within 10 (ten) days from the date they are delivered to Owner, 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) days by the Owner shall not be applicable in such a 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 Contractor.

7. PROGRESSIVE AND FINAL CERTIFICATES

- 7.1 The Contractor 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 Contractor 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 Contractor progressive certificate certifying completion of works up to a said date, within 7 days after receiving of an application, therefor, made in accordance with this Article.

- 7.3 Every progressive certificate shall certify value of the Works duly executed pursuant to the Contract, up to the date named in the application for the certificate. If any Works 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 Owner or the Contractor against each other. The Engineer may, in any certificate, give effect to any corrections or modifications that should properly be made in respect of any previous certificate.

- 7.5 Application for the final certificate may be made by the Contractor to the Engineer at the end of the Warranty Period, provided the Contractor has fulfilled the necessary obligations under the Contract in totality.
- 7.6 The Engineer shall issue the Contractor a final certificate 15 days after receiving an application thereof with complete documentation. The final certificate shall certify the total or all amounts comprised in progressive certificates previously issued in respect of the Works or the portion thereof to which the final certificate relates subject to such additions thereof or reductions therefrom, as may be 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 Owner shall not be liable to the Contractor for any matter or thing arising out of or in connection with the Contract unless the Contractor shall have made a claim in writing in respect thereof within 90 (ninety) days from the cause thereof.

8. CONTRACT PRICE

- 8.1 In consideration of the Contractor rendering the Scope of Work, the Owner hereby covenants to pay to the Contractor the Contract Price amounting to **USD 4,860,000 (Say US Dollars four million eight hundred and sixty thousand only)** at the time and in the manner set forth in the Contract subject to such deductions/adjustments as may be allowable in the Contract. Insurance will be arranged by or on behalf of Owner.
- 8.2 The following provisions shall apply in respect of Contract Price:

- i) The invoice will be raised in US \$ as per the original Contract Price with reference rate of RMB to USD (1USD equivalent to 6.82RMB) and payment will be released for this invoice as detailed above.

- ii) Any exchange rate variation with respect to the reference rate of RMB to USD (1USD equivalent to 6.82RMB), based on the USD buying rate published by Bank of China on the date of payment release shall be to the account of the Owner and the contract price varies accordingly, the Contractor shall raise a debit/credit invoice on the Owner, which shall be duly supported by the relevant back up documents of exchange rates and the variations thereof.
- iii) The Owner shall, in the event of unfavourable exchange rate variation, settle on quarterly basis, such Exchange Rate Variation for payments made in preceding quarter based on the formulae explained below, within 2 working days of receipt of approval of such payment by RBI (Reserve Bank of India) which is expected to be not more than 1 month for first payment and 21 days for subsequent payments. Similarly the Owner shall be entitled to recover/adjust any favourable exchange rate variation from the succeeding invoices proposed/due for payment to the Contractor.
- iv) Exchange rate variation for the quarter = $\sum \text{each payment during the respective quarter} \times (6.82 - \text{the exchange rate between RMB and USD at the date when the Owner made the payment}) \div \text{the exchange rate between RMB and USD at the date when the Owner made the payment.}$
- v) The above principle will be followed for all payments to be made under the Contract including payments against Bank Guarantees. However the adjustment in value for exchange rate variation of Advance Bank Guarantee will be made on each subsequent Advance Bank Guarantee submission.
- vi) The Exchange rate variation payments shall be made in US \$.

9. PAYMENTS

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

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

9.2 Due dates for payment

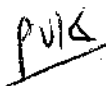
The Owner shall make progressive payment as and when the Payment is due as per the terms of payment set forth. The Payment shall become due and payable by the Owner within 21 days from the date of receipt of the Contractor's bill/invoice/debit note by the Owner provided the documents submitted are clear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

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

The Owner shall make timely payments to the Contractor of all amounts due to the Contractor under the Contract in accordance with the terms and provisions of the Contract. Any undisputed amount owed to either Party hereunder that is not paid by the owing Party after the date such amount is due under the Contract shall accrue interest each day such amount is not paid at an interest rate of 7% (seven percent) per annum. Such interest will be paid in USD upto US LIBOR (for the period of such delay) plus 200 basis points subject to 7% and the balance in Indian Rupees.

9.3 Payment Schedule (Billing Break-Up)

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





9.4 Application for Payments

9.4.1 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.

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.

9.5 Bank Guarantee

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

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

9.5.3 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 Contractor, the Contractor shall, within 7 days prior to their expiry, arrange such extension. If the Contractor fails to arrange such extension or fails to arrange substitute the Bank Guarantees (in form and substance satisfactory to the Owner), the Owner shall be entitled to call the entire amount available under the Bank Guarantees. In case such extension is due to reasons that have nothing to do with the Contractor, the Contractor shall not have any obligation for extension of the validity of the Bank Guarantees.

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

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

9.5.5 The ABGs shall be furnished within 30 days from the Zero Date for 10% of the Contract Price.

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

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

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

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

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

9.5.8 The Bank Guarantees shall be submitted by the tested swift message in favour of an

Indian bank nominated by the Owner. If the Bank Guarantee confirmation is required, it shall be arranged by the Owner. All bank confirmation charges applicable in India in shall be to the Owner's account.

10. TERMS OF PAYMENT

10.1 The Owner shall make progressive payment as and when they are due as per the agreed Payment Schedule. The charges for payment remittances in India shall be borne by Owner and that applicable in China shall be borne by Contractor. Further the Charges of respective correspondent banks/intermediary bank in USA shall be borne by each party.

a) Subject to any deductions/adjustment from the Contract Price as per the Contract, the Contractor shall be entitled to receive the Contract Price, progressively, in the following manner:

- 10.1.1 10% of Contract Price as advance payment against submission of Advance Payment Bank Guarantee (ABG) of equal amount.
- 10.1.2 5% of Contract Price against approval of basic engineering drawings after incorporating all the comments by WPCPL and/or the consultants.
- 10.1.3 15% of the Contract Price on approval of boiler pressure parts designed by IBR Authorities (prorated for each Unit).
- 10.1.4 15% of Contract Price on approval of all piping drawings by IBR Authorities (prorated for each Unit).
- 10.1.5 35% of Contract Price on mechanical completion of the first Unit.
- 10.1.6 5% of the Contract Price against first Synchronization (prorated for each Unit)
- 10.1.7 10% against successful completion of Reliability Run Test (prorated for each Unit)
- 10.1.8 5% against successful completion of PG test (prorated for each Unit)

b) Owner shall release any advance payment against ABGs within 7 business days from receipt of ABGs by Owner.

c) Contractor shall furnish first PBG equivalent to 6% of Contract Price 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 Bank Guarantee shall be reduced prorata



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 render the service 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

10.2 Certificate Not to Affect Right of Owner and Liability of Contractor

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

11. TAXES AND DUTIES

11.1 All taxes and duties applicable in India shall be to the Owner's account.

11.2 All taxes and duties applicable outside India shall be to the Contractor's account.

11.3 If Owner may be required to withhold or deduct or pay any taxes under Applicable Law in India under the Contract on Contractor's behalf such taxes and other sums, if any then Owner shall forthwith inform the Contractor about the same. Upon receipt of such notice from the Owner, the Contractor shall promptly within the due date indicated in such notice inform in writing to Owner, the Contractors intention to either seek legal remedy or its agreement to pay the tax or other sums. In case any such tax is determined to be

payable by Owner after due legal process, Owner reserves the right to deduct the same from Performance Bank Guarantee available with the Owner. Consequent to the above action Contractor shall restore the bank guarantee to the required value.

- 11.4 The Contractor shall indemnify the Owner and/or its affiliated companies and its or their employees and directors from and against all liability, cost, damages, loss and expense:

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

- 11.5 Notwithstanding anything stated above, the Owner will deduct taxes as per the provisions 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 Competent tax authorities is provided to the Owner by the Contractor before deduction of tax.

12. STATUTORY VARIATION FOR TAXES AND DUTIES

- 12.1 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 Contractor is required to pay any amount towards this tax or duty and the Owner shall reimburse the Contractor such payments against documentary proof. Likewise, if the variation results in decrease in taxes/duties/levies the resultant benefit will be passed on to Owner by the Contractor. This provision will be applicable only to the direct transactions between the Contractor and the Owner.
- 12.2 Any variation in the rates/input credit regulation of applicable taxes and duties with effect from the next day to Feb 21, 2009, shall also be settled between the Contractor and the Owner at actuals against documentary evidence as per Statutes.
- 12.3 No claim for any increase towards the statutory variation shall be entertained by the



Owner during the extended period of the Contract, if any, provided the extension of the Contract is required by causes attributable to the Contractor.

13. REPRESENTATIONS AND WARRANTIES

13.1 Representations and Warranties of the Contractor

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

13.1.1 Organization and Standing

The Contractor 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 Contractor is duly qualified or licensed to do business and is in good standing in each jurisdiction where the failure to be so qualified or licensed would have a material adverse effect on Contractor.

13.1.2 Authorization

The Contractor has all requisite legal and corporate power to enter into the Contract and to carry out and perform all of its obligations hereunder. All corporate action on the part of the Contractor and its officers, directors and shareholders that is necessary for the authorization, execution and delivery of the Contract and for the performance of the Contractor's obligations hereunder has been taken.

13.1.3 Compliance with Other Instruments

The execution, delivery and performance by the Contractor of the Contract and the consummation of the transactions contemplated hereunder will not result in any violation, be in conflict with or constitute, with or without the passage of time or the giving of notice, a default under, or require any consent or waiver under, any provision

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

13.1.4 Binding Obligation

The Contract constitutes a legal, valid and binding obligation of the Contractor enforceable against the Contractor in accordance with the terms hereof, except as limited by bankruptcy, insolvency, reorganization, arrangement, moratorium and similar laws relating to and affecting the rights of creditors generally and by general principles of equity.

13.2 Representations and Warranties of the Owner

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

13.2.1 Organization and Standing

The Owner 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 Owner 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 Owner.

13.2.2 Authorization

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



13.2.3 Compliance with other Instruments

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

13.2.4 Binding Obligation

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

14. CO-ORDINATION MEETINGS

- 14.1 The Engineer and the Contractor'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, programme as per Project Schedule.
- 14.2 The Contractor's Representative will also be called upon to attend to design co-ordination meetings with the Engineer, other contractors and consultants of the Owner. The Contractor's Representative shall attend such meetings at the Contractor's own cost as and when required and fully co-operate with the Owner and other agencies involved.
- 14.3 In the event any of the Works or activity is not likely to be completed within the Project Schedule and for completion of such work/activity, the Owner and the Contractor may arrive at new date which may be beyond the Delivery schedule, this Contract shall not be construed to be extension in time limit approved by the Owner but shall be agreed without any prejudice to other terms and conditions of the Contract.

15. WARRANTY PERIOD

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

- (a) **New Works.** The Contractor warrants (the "New Works, Warranty") that all Works and other materials and components of the Power Plant provided in connection with the Works shall be new when first installed in the Power Plant, shall conform to all Requirements.
- (b) **Materials and Workmanship.** The Contractor warrants (the "Materials and Workmanship Warranty") that the Works, shall be performed in accordance with all Requirements, and (i) the Works, shall be free from defects, in activity, workmanship, and materials; and (ii) the remainder of the Works, shall be free from defects in systems engineering, Works, , workmanship, and materials. For purposes of this Article 15.1(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 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 Works only for claims for such defects made during the Warranty Period.

15.2 Limitation on Warranty.

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

- (i) Failure to operate the equipment as per the operating manual provided by the





Contractor;

- (ii) failures resulting from abuse, neglect, and/or improper repair outside of Prudent Engineering Practice;
- (iii) failures resulting from unauthorized repair or adjustments;
- (iv) damage to parts, fixtures, housings, attachments, and accessory items which are not part of the Works under the Contract.

15.3 Owner's Responsibilities under Warranty.

Under this Warranty the Owner is responsible for:

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

15.4 Compliance with Laws, Codes and Standards.

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



15.5 Latent Defects.

The Owner and Contractor hereby agree to mitigate and remedy the defects in the Works, if any, arising after the Warranty Period, in mutually agreed terms. The Contractor acknowledges that such latent defects, to the extent not covered under insurance, would cause significant financial loss to the Owner and undertakes to cooperate with the Owner / O & M Contractor to the extent possible for remedy of such latent defects. This commitment of the Contractor shall be valid till completion of two years from the expiry of Warranty Period. In case of any delay in remedying such latent defects, the procedure as prescribed under Article 15.6, hereinabove shall be followed.

15.6 Remedy.

Except as provided in Articles 15.3 and 15.4, if any Works, works Warranty is breached during the Warranty Period, Owner's sole remedy and Contractor's sole liability (subject to Article 15) shall be as set forth in this Article:

- (a) Provide, at site, new, or reconstructed facility to correct the defect. The items replaced under this warranty become the property of Owner.
- (b) Provide reasonable or customary labor (including overtime labor) and technical direction needed to correct the defect, including labor to carry out Works if required. In the event that Contractor desires to utilize the Owner's site maintenance personnel / O & M Contractor to effect a repair, at Owner's request Contractor shall reimburse the Owner / O & M Contractor for the hourly rate of Owner's personnel / O & M Contractor. In this case Contractor shall provide necessary technical supervision of Owner's personnel / O & M Contractor.
- (c) Provide reasonable travel expenses for authorized Works, personnel, including meals, mileage, and lodging, when Contractor chooses to make the repair on-site.
- (d) Provide for transportation of the materials to the project Site, including cost of shipment, insurance, other taxes,



- (e) Provide special tools for the removal, replacement, reconnection, mounting and calibration of the defective components. Special tools, as necessary, may be borrowed from the Owner's stock on site. Heavy lifting tools, except for those normally kept by Owner on Site, shall be provided by the Contractor.

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

Contractor acknowledges that failure to make repairs on a timely basis after Owner's notification of a warranty claim may cause significant financial loss to the Owner. Therefore, Contractor shall make repairs in an expeditious manner. If, after notification of a breach of Works, Warranty, Contractor shall unreasonably delay in diligently commencing, continuing or completing the remedy required by this Article 15.6, then Owner may complete said remedial action, and Contractor shall be liable for all reasonable and necessary costs, charges, and expenses incurred by Owner in connection with such remedial action, and shall pay such costs, charges, and expenses within fifteen (15) Days after receipt of verifiable invoices certified by Owner.

16. VARIATION/CHANGE ORDERS

- 16.1 The Contractor 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.
- 16.2 If any changes required for completion of the Scope of Work as per Technical Specifications, the Contractor shall not be entitled to any addition in the Contract Price or to an extension of time.



- 16.3 No alterations, amendments, omissions, suspensions, or variations of the Works ("**Variation/Change Orders**") under the Contract as detailed in the Contract Documents, shall be made by the Contractor except as directed in writing by the Engineer.
- 16.4 The Engineer shall have full powers, subject to the provisions hereinafter contained, from time to time during the execution of the Contract, by notice or order ("**Variation/Change order**") in writing, to instruct the Contractor to make such Variations, alterations without prejudice to the contract. Any deviations in the Works executed shall be rectified by the Contractor without any extra costs.
- 16.5 If any suggested Variation/Change Order would, in the opinion of the Contractor, 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, he shall notify the Engineer thereof in writing and shall mark a copy to the Owner and the Engineer in concurrence with the Owner shall decide whether or not the same shall be carried out and if the Engineer confirms his instructions, Contractor's obligations and guarantees shall be modified to such an extent as may be mutually agreed.
- 16.6 If any Variation in Works as per Article 16.4 and/or 16.5 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.
- 16.7 All Change Orders shall be in writing and executed by an authorized representative of each of Owner and Contractor. Except as otherwise provided in Article 16.8 & 16.9, no Changes shall be made except in accordance with a duly issued and fully executed Change Order. Change in inflation or indexation, exchange rates subject to Article 8.2 will not construe a reason for change order.
- 16.8 Owner may submit a written request to Contractor to make a Change. Within fifteen (15) Days following receipt of such request, or such other period as shall be agreed upon by the Parties, Contractor and Owner shall agree upon adjustment to the Scope of Work, Performance Guaranteed Values, Project Schedule, Contract Price, or other

terms of this The Contract, if any necessitated by the proposed Change and Owner shall issue a Change Order. The Contractor shall proceed and execute the Change Order. If Owner elects not to issue any Change Order, Contractor shall not be compensated any costs and the Contract Price stands unaltered.

- 16.9 Contractor shall provide Owner with written notice of any condition or event that Contractor becomes aware of that Contractor reasonably believes will require a Change. Such notice must be issued within five (5) Business Days following actual knowledge of such condition by an officer of Contractor or by management personnel of Contractor responsible for the performance of the Scope of Work and such notice shall describe such condition or event in reasonable detail. Within fifteen (15) Business Days following delivery of such notice, Owner and the Contractor shall decide on the notified Change. If Owner elects to proceed, Owner shall issue a Change Order and Contractor shall proceed with the Change Order and the Contractor shall not be compensated for any additional cost incurred if any, so long as the change is within the scope of Work. If the Owner elects not to proceed with the Change, the Owner shall perform the obligations under the Contract as per the Scope of Work specified in the Contract. The foregoing notwithstanding, Contractor shall not propose or carry any Change Order which keeps the Owner indifferent / neutral on financial terms and causes any financial loss to the Owner due to changes in this order resulting in defaults in other Contractual obligations of the Owner.
- 16.10 In the event and to the extent that a Force Majeure affects Contractor's ability to meet the Project Schedule, an adjustment in Project Schedule shall be made by agreement of Owner and Contractor based on the numbers of days on which the Works is effected. Contractor shall not be compensated for any additional cost or expense incurred due to the Force Majeure, except to the extent Owner receives insurance proceeds based on such costs incurred by Contractor, in which event Contractor shall be reimbursed to the extent of such related proceeds. Any dispute relating to a Force Majeure caused Change Order may be submitted to dispute resolution pursuant to Article 25.
- 16.11 All claims by Contractor for adjustments to one or more of the Contract Price, Project Schedule, and the Performance Guaranteed Values as a result of Changes under this Article 16 shall be supported by such documentation as is sufficient for the Owner to determine the accuracy thereof.





17. INDEMNIFICATION

17.1.A Contractor's Indemnity

The Contractor shall protect, defend, indemnify and hold harmless Owner, Lenders and the O & M Contractor, each of their respective Affiliates, and the agents, officers, directors, shareholders, employees, permitted successors and permitted assigns (each, a "Contractor Indemnified Party"), from and against any and all losses, costs, damages, injuries, liabilities, claims, demands, penalties, interest and causes of action, including reasonable attorneys' fees and court costs (collectively, the "Damages"), directly or indirectly arising out of, resulting from or related to claims for personal injury or death, or for damage to or loss of tangible property of persons resulting from, or in connection with, performance or non-performance of the Works or breach of any term of the Contract by the Contractor, its Sub-Contractors, including claims regarding negligence, whether caused in whole or in part by the Contractor, its Sub-Contractors; provided, that the Contractor shall not be liable for, and shall not be obligated to indemnify any Contractor Indemnified Party against, any such claims to the extent such claims result from (a) the negligence or wilful misconduct of any Contractor Indemnified Party or (b) any failure of Owner to perform under the Contract.

17.1.B Owner's Indemnity.

Owner shall protect, defend, indemnify and hold harmless Contractor, each of its Affiliates and the agents, officers, directors, shareholders, employees, permitted successors, and permitted assigns (each, an "Owner Indemnified Party") from and against Damages, directly or indirectly arising out of, resulting from, or related to claims for personal injury or death, or for damage to or loss of tangible property of persons resulting from, or in connection with, performance or non-performance by Owner 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 Owner or any other Contractor Indemnified Party; provided, that Owner shall not be liable for, and shall not be obligated to indemnify any Owner Indemnified Party against, any such claims to the extent such claims result from (a) the negligence or willful misconduct of any Owner Indemnified



Party or (b) any failure of the Contractor to perform hereunder.

17.2 Patent and Copyright Indemnification

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

17.3 Notice and Legal Defense

In the event a Person indemnified pursuant to Articles 17.1 or 17.2 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.

17.4 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.

17.5 Survival

The provisions of this Article 17 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.

18. PROPRIETARY INFORMATION

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

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



18.2 The Owner is granted a limited license for any Software delivered by the Contractor, whether as Item of any Complete Plant or separately. Owner is not granted a license for any other Software. This license allows Owner to:

- (a) Use the Software only on the Plant on which it is installed at the time of delivery or, if Software is supplied separately, in connection with Complete Plant supplied by Contractor. The Owner must obtain a supplementary license from Contractor before using the Software in connection with any other equipment or for any other purpose.
- (b) Make one copy of the Software in machine-readable form solely for backup purposes. Owner must reproduce on each copy the copyright notice and any other proprietary legends that were on the original copy.
- (c) Transfer the Software and all rights under this license to another party as part of the sale of the Complete Plant with which it is used.
- (d) The Owner may not distribute copies of the Software to others or electronically transfer the Software from one computer to another over a network. The Software contains trade secrets. In order to protect them Owner may not decompile, reverse engineer, disassemble, or otherwise reduce the Software to a human-perceivable form. The Owner may not modify, adapt, translate, rent, lease, loan, resell for profit, distribute, network, or create derivative works based upon the software or any part thereof.
- (e) All Software is protected by the copyright laws of the India. No rights under copyrights are transferred to Owner, except as specifically provided above.
- (f) "Software" means a computer program supplied with the Complete Plant or any Item/s thereof, for performance of Complete Plant or such Item/s including data recording, storage and retrieval.

19 COMMISSIONING AND ACCEPTANCE TESTS

19.1 The entire Commissioning and Taking Over of the Power Plant is dependent on the

quality, effectiveness and the successful Commissioning and Taking Over of the Complete Plant. The Contractor shall ensure that the Scope of Work relating to the Complete Plant shall be of such quality that it meets the Performance Guaranteed Values set out herein below.

- 19.2 The Liquidated Damages for not meeting the Performance Guaranteed Values during the Performance Guarantee Test shall be assessed and recovered from the Contractor. Such Liquidated Damages shall be levied, in accordance with the Contract and shall be without prejudice to all the other conditions of the Contract.
- 19.3 If the Rejection Criteria specified below are not achieved due to reasons attributable to Contractor, within 120 days after successful completion of Reliability Run Test, the Owner at their discretion may reject the Unit/s or accept it after levying and recovering Liquidated Damages.
- 19.4 Any recoveries by the Owner from the Contractor due to shortfall in guaranteed performance shall be independent of provisions of Article 20 herein below.
- 19.5 The Acceptance Tests for the successful Commissioning and Taking Over of the Power Plant shall comprise of the following:

19.5.1 Trial Run

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

19.5.2 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 Complete Plant. Based on the observations made during

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

19.5.3 Reliability Run Test

After satisfactory Initial Operation, the Complete Plant shall be put on Reliability Run Test (RRT) as mentioned in the Technical Specification 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 Owner's discretion) and further demonstrate operation at various other loads like 80%, 60%, 40% or any other load mutually agreed. Any minor failure of auxiliary equipment (which shall be set right immediately), which does not force the Unit shut down, will not be treated as failure of RRT.
- (c) Each RRT may have maximum two shut downs of Unit with total hours of interruption not exceeding 8 hours.
- (d) In case total number of hours of interruption of operation exceeds 8 hours, such RRT shall be treated as unsuccessful.
- (f) If RRT of any Unit is not successful based on above criteria, the Contractor shall repeat the RRT. In case the Contractor could not conduct RRT successfully within 38 months, the Contractor shall be liable for Liquidated Damages (LD) on account of delay.

- (g) However, in case the Contractor could not conduct RRT successfully within 38 months, the Owner would permit one additional RRT without levying LD. In case of major shut down due to 'Boiler tube leakage' in any Unit, the repeat RRT shall start immediately after repair but not later than 36 hours from the time of Unit shut down.
- (h) In the event such repeat RRT is also not successful, the Owner may permit one more additional RRT without levying LD. In case of major shut down due to 'Boiler tube leakage' in any Unit, provided the repeat RRT starts immediately after repair but not later than 36 hours from the time of Unit shut down. But, in any Unit not more than two additional RRTs are permitted.
- (i) In any case, all the additional RRTs for the total six Units shall not exceed 8 tests. The cost of consumables in such additional tests shall be borne by the Owner.

19.5.4 Performance Guarantee Test

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

The Contractor shall ensure the following performance guarantees 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 at TMCR condition (%) | 7.017 |

| Sr. No. | Parameter description | Performance guaranteed Values |
|---------|---|-------------------------------|
| 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 Contractor guaranteed Turbine cycle Heat Rate as 1950 kcal/kWh. The Contractor agreed to guarantee Unit Gross Heat Rate as 2239.77 kcal/kWh, considering (minimum) 99.5% piping efficiency. However improved piping efficiency shall be considered later based on the actual Main steam parameters measured during PG Test. Formula to be used for calculating piping efficiency shall be $\{ (1 - (i_B - i_T)/i_B) \times 100 \}$, where i_B , i_T are values of enthalpy of main steam at Boiler outlet & Turbine inlet respectively. Contractor indicated that piping loss is not considered on BE calculation. The Unit gross heat rate shall be calculated by the formula, $UHR = THR/BE/PE$.

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

19.5.4.3 All the tests shall be binding on both the Owner and the Contractor to determine the Complete Plant with the Performance Guarantees.

19.5.4.4 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 Owner and the Contractor shall be used.

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

19.5.4.6 Should the results of these tests show any decrease from guaranteed values, the Owner shall intimate the Contractor and the Contractor shall replace or repair such Item of the Complete Plant 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.

19.5.4.7 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.

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

20. LIQUIDATED DAMAGES

20.1 Liquidated Damages for Delay (Delay Liquidated Damages)

20.1.1 All the Works shall be started and completed in accordance with the Project Schedule as per Article 4.12

20.1.2 Subject to Article 4.12, no necessity for an extension of time is anticipated, but if untoward or extraordinary circumstances arise beyond the control of the Contractor, Owner should entitle the Contractor to a reasonable extension of time, such extension may be granted but shall not operate to relieve the Contractor of any of the Contractor's obligations under the Contract.

20.1.3 The Contractor shall promptly notify the Owner any event of conditions which might

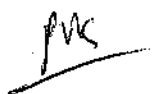
delay the completion of Works in accordance with the Delivery Schedule and the steps being taken to remedy such situation.

20.1.4 The time stipulated in the Project Schedule for the completion of the Reliability Run Test shall be deemed to be the essence of the Contract. In the event, the Contractor fails to complete the Reliability Run Test of the Unit and/or the Complete Plant, as the case may be, within the time period specified in it, it shall be viewed seriously and the Contractor shall be bound to pay the Owner Liquidated Damages as stated herein. The Owner may, without prejudice to any method of recovery, deduct the amount for such damages from any amounts due or which may become due to the Contractor. In the event any extension of time is granted by the Owner, in writing, for the Reliability Run Test according to the provision of 19.5.3 above, the Liquidated Damages shall be applicable for any further delay beyond such extended period.

20.1.5 If the Contractor fails to achieve Reliability Run Test of the Unit/s within the time period specified within Guaranteed Completion Date due to reasons attributable to the Contractor, the Owner shall levy Liquidated Damages and not as a penalty, equivalent to 0.5% (Zero point five percent) of Unit Price of the Complete Plant (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 Works of the Complete Plant (excluding taxes and duties).

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

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



20.1.8 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.

20.2 Liquidated Damages for Poor Performance (Performance Liquidated Damages)

20.2.1 The Contractor shall furnish Performance Guarantees in accordance with Sub-article 19.5.4.1. These guarantees shall be met by the Contractor.

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

Liquidated damages towards shortfall in Performance Parameters:

| Sr. No. | Variation Factor | Liquidated Damages for shortfall in performance |
|---------|---|--|
| 1. | Unit Gross Heat Rate:- Unit gross heat rate in kcal / kWh at rated steam parameters & 0.1 ata as exhaust pressure, with zero percent make up, at TMCR condition and at reference ambient parameters as per Technical Specifications. | Unit Gross Heat rate – USD 717.72 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 (%) | USD 3.74 per kW (or part thereof) of increase in guaranteed value. |
| 3. | Unit Gross electrical power output at Generator terminals (MW) | USD 3.74 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) | USD 107.66 for each one tonne/hr. or part thereof decrease in steam generating capacity. |
| 5. | Unburnt Carbon in fly ash by weight (%) | USD 747.62 for every 1% (or part |

| Sr. No. | Variation Factor | Liquidated Damages for shortfall in performance |
|---------|------------------|--|
| | | <p>thereof) increase of unburnt Carbon in fly ash beyond the guaranteed value.</p> <p>For Ex. Guaranteed value is 1.5%. Actual value is 1.9%.</p> <p>LD value shall be = $(1.9-1.5) \times$ USD 747.62 = USD 299.05</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.

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

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

20.2.5 Noise Level Guarantees

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

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

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

20.2.6 The Liquidated Damages indicated above are in addition to the Liquidated Damages as stipulated in Article 20.1. 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).

20.2.7 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).

20.2.8 If the performance shortfall is such that the shortfall exceeds Rejection Criteria as given below, in Article 21.2, then the Owner will be entitled at the Owner's own discretion to reject the Item, Unit and/or the entire Complete Plant as the case may be, terminate the Contract and recover from the Contractor any loss the Owner has suffered.

20.3 Set-off; Payment of Liquidated Damages

Owner, whether original or assignee, shall at Owner's discretion, (a) subject to set-off against any undisputed amount that is due and owing by Owner to Contractor, though running bills and/or (b) liquidate the Performance Bank Guarantee. The Contractor shall replace the Performance Bank Guarantee for the required quantum under Article 9.5.1 for maintaining the Bank Guarantee during the Warranty period.

21. REJECTION OF WORKS

21.1 If the Contractor fails to demonstrate to the Owner, the performance guarantees, subject to the tolerance(s)/limits agreed hereinbelow, and as is recorded during the first PG test carried out as per Annexure A Clause No. 6.00.00 of the Technical Specification/specifications, the Contractor shall be given a further period of 30 days subsequent to the first PG test to make corrections and conduct any retest. In the event of failure of the Contractor to demonstrate the performance parameters even during such retests, the service for particular equipment(s) under the Scope of Works will stand rejected. In case the said Works could not be rectified, the said Works will have to be replaced at site, within reasonable time, at no extra cost basis to the Owner.

21.2 Rejection Criteria of Off-shore Works of the Power Plant:

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

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

21.3 Payment after Rejection

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

22 FINAL ACCEPTANCE

- 22.1 On successful completion of the Acceptance Tests as specified in Sub-article 19 herein above the Owner shall give the Contractor a Final Acceptance Certificate indicating the date from which the Complete Plant or Unit/s thereof has been successfully Commissioned.
- 22.2 On conducting the Performance Guarantee Test, if it is established by the Owner as per contract guarantees that each Item, Unit and the Complete Plant is performing as specified in the Technical Specifications, the Owner shall issue to the Contractor a

Final Acceptance Certificate.

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

23. FORCE MAJEURE

23.1 Definition of "Force Majeure"

- (A) "Force Majeure" shall mean any event or circumstance or combination of events or circumstances beyond the reasonable control of Contractor and Owner which, or the effects of which, materially and adversely affects the performance by that Party of its obligations under or pursuant to the Contract.
- (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 Contractor and or sub Contractor) 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 Owner or Contractor 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 Owner 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;
 - (v) fire or explosion, except as may be attributable to Contractor;
 - (vi) air crash or ship wreck.
- (C) Notwithstanding the foregoing, Force Majeure shall expressly not include conditions caused by the negligence or wrongful acts of the Party claiming Force Majeure. Force Majeure shall also expressly not include the following conditions, except and to the extent that the following conditions result directly from Force Majeure:
- (i) late delivery to Owner of machinery, Equipment, materials, spare parts or consumables;
 - (ii) a delay in the performance of Contractor to comply with, and complete, the obligations specified in the Contract in a timely manner;
 - (iii) normal wear and tear or random flaws in materials and Equipment or breakdowns in Equipment; and



- (iv) the ability of a Party to pay any monies due pursuant to the Contract.

23.2 Procedure for Force Majeure

- (a) If by reason of Force Majeure a Party is wholly or partially unable to carry out its obligations under the Contract, the affected Party shall (a) give the other Party notice of such Force Majeure as soon as reasonably practicable, and (b) give the other Party a second notice, describing the Force Majeure in reasonable detail and, to the extent that can be reasonably determined at the time of the second notice, providing an evaluation of the obligations affected (including the anticipated effect on critical activities (if the Force Majeure is ongoing) or actual effect (if the Force Majeure has ended)), a preliminary estimate of the period of time that the affected Party will be unable to perform the obligations, and other relevant matters as soon as practicable, but in any event, not later than the later of (i) seven (7) Business Days after the initial notice of the occurrence of the Force Majeure is given by the affected Party; or (ii) twenty-four (24) hours after the resumption of any means of providing such notice between the Contractor and the Owner. When appropriate or when reasonably requested to do so by the other Party, the affected Party shall provide further notices to the other Party more fully describing the Force Majeure and its cause(s) and providing or updating information relating to the efforts of the affected Party to avoid and/or to mitigate the effect(s) thereof and estimate, to the extent practicable, the time that the affected Party reasonably expects it will be unable to carry out any of its affected obligations due to the Force Majeure. The affected Party shall also provide notice to the other Party of (A) the cessation of the Force Majeure and (B) the affected Party's ability to recommence performance of its obligations under the Contract by reason of the cessation of the Force Majeure as soon as possible, but in no event later than seven (7) Business Days after the occurrence of each of (A) and (B) above.
- (b) The affected Party shall use all commercially reasonable efforts to mitigate the effects of Force Majeure, including (A) minimizing 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.

23.3 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 23.2 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 23.4 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 23.2(a), the affected Party shall be excused for such failure or delay pursuant to Article 23.4 from the date of commencement of the relevant Force Majeure.

23.4 Excused Performance

So long as the affected Party has at all times since the occurrence of Force Majeure complied with the obligations of Article 23.2(b) and continues to so comply, then the affected Party shall not be liable for any failure or delay in performing its obligations under or pursuant to the Contract, and any performance deadline that the affected Party is obligated to meet under the Contract, including the Guaranteed Completion Date shall be extended, one (1) day for a disruption / delay of one (1) day; provided that:

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

23.5 Termination for Force Majeure.

Notwithstanding anything contained in this Article 23 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 23.5 shall be handled in accordance with the procedures set forth in Article 24.6 for a termination of the Contract.

24 EVENTS OF DEFAULT, TERMINATION AND SUSPENSION

24.1 Contractor Event of Default

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

- (a) Failure by Contractor to (i) make payment of any undisputed amounts due to Owner under the Contract, or (ii) timely submission of a Advance Bank Guarantee as required for Performance Security under the Contract;
- (b) Contractor is in breach of any material provision of the Contract, other than a

breach constituting a Contractor Event of Default under subsection (a) immediately above, including any violation of any Requirement, if (i) such breach continues for a period of thirty (30) Days after notice of such breach or (ii) if Contractor shall commence within such thirty (30) Days and shall thereafter proceed with all due diligence to cure such breach, such breach is not cured within such longer period as shall be necessary for Contractor to cure the same with all due diligence, such longer period not to exceed forty five (45) Days after notice;

- (c) Contractor files, or consent to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy, for liquidation or to take advantage of any bankruptcy or insolvency law of any jurisdiction; or Contractor makes an assignment for the benefit of its creditors' or Contractor consents to the appointment of a custodian, receiver, trustee, or other officer with similar powers, for substantially all its property, or be adjudicated insolvent; or an order for relief shall be entered against Contractor in any case or proceeding for liquidation or reorganization or otherwise to take advantage of any bankruptcy or insolvency law of any jurisdiction, or ordering the dissolution, winding up or liquidation of all or any part of Contractor's property; or any petition for any such relief is filed against Contractor; or any 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) Contractor abandons the Works and such abandonment on an aggregate basis exceeds sixty (60) Days.

24.2 Owner Event of Default

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

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

24.3 Remedies for Breach

- (a) Subject to Articles 23.2, upon the occurrence and during the continuation of any Contractor Event of Default, Owner may give written notice to Contractor specifying such Contractor Event of Default; and Owner shall have the right, at Owner's election, to terminate the Contract and/or, subject to Article 28, sue Contractor for damages and/or injunctive or other equitable relief arising in

connection with such Contractor Event of Default or pursue any other remedy to which it is entitled under either law or equity.

- (b) Upon the occurrence and during the continuation of any Owner Event of Default, Contractor may give written notice to Owner, specifying such Owner Event of Default, and thereafter Contractor shall have the right, at Contractor's election, to terminate the Contract and/or, subject to Article 28, sue Owner for damages and/or injunctive or other equitable relief arising in connection with such Owner Event of Default or pursue any other remedy to which it is entitled under either law or equity. Notwithstanding the foregoing, Contractor shall pursue no remedy against Owner without first (i) giving Lender a second notice (in addition to that set forth in Article 24.2) specifying the nature of the Owner Event of Default, and (ii) allowing Lender sixty (60) Days after the receipt of said second notice in which to either cure the Owner Event of Default or assume Owner's obligations under the Contract. If Lender assumes the Contract, Contractor shall treat the assumption as if it were a fresh notice to Owner under Article 24.2, shall give the assuming party all of Owner's rights to cure under such Article 24.2 and shall perform all obligations herein for the benefit of the assuming party as if for Owner. Without the prejudice to Article 24.7, despite the existence of a Owner Event of Default, Contractor shall expeditiously continue with its performance of the Scope of Work until such time as it is allowed to exercise its remedies under this paragraph.
- (c) If Owner elects to terminate the Contract pursuant to a Contractor Event of Default, Contractor shall provide Owner and Lender, at Contractor's expense, with the right to continue to use any and all patented and/or proprietary information (subject to reasonable proprietary restrictions, including, without limitations, confidentiality agreements and agreements which limit the use of the information to the completion of the Power Plant) reasonably necessary to complete and/or operate the Power Plant; provided that such information (i) shall be used only for purposes of completing and/or operating the Power Plant and not for any other purpose, and (ii) shall not be distributed to any Persons other than those who need to know such information in order to complete and/or operate the Power Plant. Owner shall be required to mitigate reasonably the cost for completion of such Works but may make such expenditures as in

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Owner's reasonable judgment will best accomplish the timely completion of the Power Plant; provided, Owner shall not be required or expected to mitigate any such costs by breaching, terminating, repudiating or renegotiating any agreement entered into between Contractor and any Sub Contractor (including, without limitation, any Sub Contractor that is an Affiliate of Owner). Contractor shall be entitled to receive any further payments under the Contract only as provided in Article 24.3(f).

- (d) If Owner elects to terminate the Contract pursuant to a Contractor Event of Default, the Owner shall, without prejudice to any other right he may have under the Contract, shall be free to use the equipment of the Contractor for the purpose of completion of Works (without being responsible for any wear and tear to the equipment), which the Contractor shall allow without any hindrance and (ii) if the termination be due to reason(s) mentioned in Article 24.1(d), be entitled to have the RRT and/or PGT performed by any reliable third party of its choice, recover the costs thereof from the Contractor, bind the Contractor by the results achieved thereby and consider the same for the purpose of levy of Delay Liquidated Damages and Performance Liquidated Damages , as applicable, pursuant to Article 20.
- (e) If Owner elects to terminate the Contract upon a Contractor Event of Default, Contractor shall, at Owner's request and at Contractor's expense, perform the following Works, in addition to those required under Article 24.3(c) and (d), relating to the Works so affected:
 - (i) deliver to Owner all information as may be requested by Owner that is reasonably necessary for the completion of the Works and/or, to the extent such information was to be provided as part of the Works, reasonably necessary to the operation of the Power Plant, and
 - (ii) render services requested by Owner and reasonably necessary for the completion and operation of the Power Plant.
 - (iii) compensate the Owner for all financial losses suffered , other than consequential damages, limited to value of the contract, Subject to Article



24.3(g), if Owner terminates the Contract pursuant to a Contractor Event of Default, Owner shall pay to Contractor as a "Termination Payment under Contractor Default".

- (iv) final payment 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 Owner.
- (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 Contractor on the above items shall be upon Contractor 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 Owner, and Contractor's sole remaining compensation and reimbursement under the Contract. The Owner shall be entitled to retain payments to the Contractor and apply the balance which may otherwise be due to the Contractor for completion of the Works. The Owner shall be entitled to recover any excess amount expended, over and above the balance amount, on the execution of Works. Such excess amount shall be over and above the Liquidated Damages as per terms of the Contract. The Contractor shall make all the payments due to the Owner within thirty (30) days after Owner gives Contractor notice of the amounts due from the Contractor.
- (g) If Owner terminates the Contract pursuant to a Contractor Event of Default, then as soon as practicable after Owner has received all Works that were intended to be rendered under the Contract as part of the Scope of Work, Owner shall determine the total reasonable and necessary expense incurred and accrued in completing the Works, including all amounts charged by any substitute provider of Works to finish the Scope of Works and additional reasonable and necessary overhead incurred and accrued by Owner to effect





such takeover and to complete the Scope of Works. If the total reasonable and necessary expenses incurred by Owner in completing the Works exceeds the balance of the Contract Price unpaid at the time of the Contractor Event of Default, then Contractor shall be liable for and shall pay to Owner the amount of such excess within thirty (30) Days following receipt of Owner's demand for such payment; provided, that Contractor's liability shall be subject to (and limited by) Article 15.

- (h) If Contractor terminates the Contract pursuant to a Owner Event of Default, Owner shall pay to Contractor as a final payment an amount equal to the sum of (i) amount payable for any Works completed with price specified in the Contract and (ii) expenses incurred in relation to the services ordered for the Project, rendered to the Owner ; (iii) cost for the Contractor to demobilize from the site the temporary facilities and send them back home; (iv) cost for demobilization of personnel employed solely for the Project at the date of termination. The Contractor shall raise a substantiated invoice (subject to satisfaction of the Owner, who may choose to have the same certified by the Lenders Engineer and whose certification subject to and in accordance with the contract shall be final of any such Equipment, as "Termination Payment under Owner's Default".
- (i) With respect to any Owner Event of Default or Contractor Event of Default arising out of a late payment, besides the due amount, the remedy for such Event of Default shall be the interest on the overdue amount accruing at the stipulated Rate from and after the day the payment became overdue until the day it is paid.

24.4 Termination by Contractor under Special Circumstances

- (a) Rights. If, and only if, Owner abandons or suspends the Contract for a period more than 90 days as per Article 24.7, Contractor may terminate the Contract in whole or in part at any time by written notice thereof to Owner. Upon such notice, the Contractor shall, unless the notice mentions otherwise: (i) immediately discontinue the Services on the date and to the extent specified in such notice; (ii) place no further orders or subcontracts for Equipment or

materials required for the Works; (iii) promptly make every reasonable effort to procure cancellation upon terms reasonably satisfactory to Owner of all orders, subcontracts and rental agreements to the extent they relate to the performance of the Scope of Works that is discontinued; and (iv) thereafter execute only that portion of the Scope of Works as may be necessary to preserve and to protect Equipment at the Site or in transit thereto.

- (b) Payments for such termination under this Article 24.4 shall be made to Contractor within Forty Five (45) Days after Owner's receipt of a substantiated invoice (subject to satisfaction of the Owner, who 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 Works, as "Termination Payment under Special Circumstances". The substantiated invoice will be for an amount equal to the sum of (i) amount payable for any Works finished with price specified in the Contract and (ii) expenses incurred in relation to the Works ordered for the Project, = ; (iii) cost for demobilization of personnel employed solely for the Project at the date of termination, provided however, that the title of the Documentation will be passed on to the Owner.

24.5 Termination for Owner's Convenience

- (a) The Owner may for its own convenience terminate the Contract, in full or part any time upon 90 days notice to the Contractor specifying the details of such termination and effective date of termination. Upon such notice, Contractor shall, unless the notice mentions otherwise: (i) immediately discontinue such part of Services on the date and to the extent specified in such notice; (ii) place no further orders or subcontracts for part of Works; (iii) promptly make every reasonable effort to procure cancellation upon terms reasonably satisfactory to Owner of such orders, subcontracts and rental agreements to the extent they relate to the performance of such Scope of Works that is terminated; and (iv) thereafter execute only that portion of the Scope of Works that is not terminated.
- (b) Payments for such termination under this Article 24.4 shall be made to Contractor within Forty Five (45) Days after Owner's receipt of a substantiated

invoice (subject to satisfaction of the Owner, who shall choose the Lenders Engineer for due certification) of any such Works as "Termination Payment upon Owner Convenience". The substantiated invoice will be for an amount equal to the sum of (i) amount payable for any Works finished with price specified in the Contract and (ii) expenses incurred in relation to the Work ordered for the Project; (iii) cost for demobilization of personnel employed solely for the Project at the date of termination, provided however, that the ownership of documentation will be passed on to the Owner.

24.6 Termination upon Prolonged Force Majeure

- (a) If, and only if, the Contract is terminated as per provisions of Article 23.5 Contractor shall be entitled as a final payment ("Termination Payment under Force Majeure") an amount equal to the sum of (i) amount payable for any Works finished with price specified in the Contract and (ii) expenses incurred in relation to the Works ordered for the Project; (iii); cost for demobilization of personnel employed solely for the Project at the date of termination, provided however, that the title of Documentation will be passed on to the Owner. The Contractor shall raise a substantiated invoice subject to satisfaction of the Owner, who may choose to have the same certified by the Lenders Engineer and whose certification subject to and in accordance with the contract shall be final of any such Works, as "Termination Payment under Force Majeure".
- (b) Upon such termination, the Contractor shall cease and cancel all activities related to the scope.

24.7 Suspension of the Work

- (a) General. Owner may at any time or from time to time, and for any reason, suspend the Works or any portion thereof by giving ten (10) Business Days prior notice to Contractor (a "Suspension Notice"). Such suspension shall continue for the period (the "Suspension Period") specified in the Suspension Notice; provided, however, the aggregate duration of all Suspension Periods shall not exceed 90 Days. At any time after the effective date of the suspension, Owner may require the Contractor to resume the Works.

- (b) Extension of Time. In the case of any suspension under this Article 24.7, Guaranteed Completion Date for performance by Contractor shall be extended by one Day for each Day of the Suspension Period the Parties acknowledge that the time required for subsequent completion of the Works may exceed the number of days of suspension or delay due to Contractor's scheduling constraints and the time required for demobilization and remobilization of the Works effort.
- (c) Compensation to the Contractor. In the event that suspension is solely attributable to the Owner, any necessary and demonstrable costs incurred by the Contractor as a result of such suspension of the Works shall be paid by the Owner, provided the costs are sustained to the satisfaction of the Owner Engineer subject to and in accordance with the contract.
- (d) Suspension arising out of Contractor / Other Contractor defaults. The Owner shall not be liable and responsible for any suspension or delay arising out of default due to the Contractor, its Sub Contractors and other Contractors. No compensation shall be paid to the Contractor due to Suspension under this Article.
- (e) Suspension arising out of Owner defaults. If the Owner fails to pay to the Contractor any undisputed payment and such failure continues for 60 (sixty) days after written notice thereof has been given to the Owner by the Contractor, then the Contractor may suspend any Works or part thereof. After the payment is made, the Contractor shall resume the Works.
- (f) Special Suspension Provisions. If a suspension is more than ninety (90) Days in duration, Owner will pay Contractor pro rata for the portion of the Works completed when the suspension was notified.
- (g) Termination. If the suspension continues for an aggregate period exceeding 120 Days, due to reasons solely attributable to Owner, the Contract shall be terminated. Any termination under this Article 23.7 shall be handled in accordance with the procedures set forth in Article 24.4 for a termination of the

Contract.

25. DISPUTE RESOLUTION

25.1 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.

25.2 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 25.2, 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.

25.3 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 25.4 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.

25.4 Arbitration

- (a) Any Dispute that has not been resolved within twenty (20) Days of the delivery of a notice in accordance with Article 25.2, or that is not subject to resolution pursuant to Article 25.3 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 25.2, 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 25.2. Within twenty (20) Days after any demand for arbitration under this Article 25.4, 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 25.4. 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 25.4. In the event the arbitrators find a breach of the terms and conditions of the Contract to have occurred and be continuing, the arbitrators shall have express authority to order the payment of damages in accordance with the provisions of the Contract.

- (c) Any payment of damages ordered by the arbitrators shall bear interest at the Stipulated Rate, which interest shall accrue daily, from the date as of which such damages are calculated to the date on which the Party entitled thereto receives payment thereof in full. The award of the arbitrators shall be final, except as otherwise provided by Applicable Law.
- (d) Judgment upon such award may be entered on behalf of the prevailing Party in any court having jurisdiction thereof, and application may be made by such Party to any such court for judicial acceptance of such award and an order of enforcement. The expenses of the arbitration, including attorney's fees, shall be borne by the unsuccessful Party unless the arbitrators by their award shall otherwise provide.
- (e) Contractor and Owner each hereby consents to the submission of any dispute for settlement by final and binding arbitration in accordance with this Article.

25.5 Continuance of Work

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

25.6 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.



26. LIMITATION OF LIABILITY

26.1 No Consequential Damages

Except for Liquidated Damages, the proceeds of insurance, any interest paid on delayed payments, disputed amounts under Article 25 and all liabilities and amounts as provided in the Contract, in no event, whether as a result of breach of Contract, tort liability (including negligence or strict liability), strict liability, warranty, indemnity, or otherwise, and whether arising before or after completion of the Scope of Works, shall either (a) Contractor or the Sub Contractors be liable to Owner or Lender or (b) Owner or Lender be liable to Contractor or Sub Contractors, for special, indirect, or consequential damages of any nature whatsoever, including losses or damages caused by reason of unavailability of the Power Plant, shutdowns or service interruptions, loss of use, loss of profits or revenue, loss due to variation in currency exchange rates, inventory or use charges, cost of purchased or replacement power, interest charges or cost of capital or claims of Owner's or Owner's customers.

26.2 Limitation on Liquidated Damages

The total liability of Contractor 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 Contractor's other liabilities and obligations arising under or in connection with the Contract (including without limitation (i) achieve minimum performance standards, (ii) the plant to meet the emission standards, iii) indemnification to the Owner under Article 17.

This Article shall survive the termination of the Contract.

26.3 Maximum Liability

Notwithstanding any other provisions contained in the Contract, the aggregate liability of Contractor to the Owner with respect to any and all claims arising out of the performance or non-performance of obligations in connection with Works, 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.

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

27. SECRECY AND CONFIDENTIALITY

27.1 Confidential Information

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

has come within the public domain otherwise than by breach of this Article.

27.2 The technical information, drawings, specifications and other related documents forming part of the Contract are and shall always remain the property of the Owner and shall not be used by the Contractor or the Sub-Contractor or any other employees, agents, Contractor, labourers of the Contractor or the Sub-Contractor for any other purpose, except for execution of the Works under the Contract. All rights, including rights in the event of grant of a patent and registration of designs are reserved. The technical information, Drawings, specifications, 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 Owner's previous consent in writing, except to the extent required for the execution of the Contract. All the technical information, Drawings, specifications and other related Documentation shall be returned to the Owner with all approved copies and duplicates, if any, immediately after they have been used for the agreed purpose.

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

27.4 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:

27.4.1 to any Affiliate of such Party or, in the case of the Owner, to any Competent Authorities having jurisdiction over the implementation of the Facility;

27.4.2 to any outside consultants, Contractors, Contractors or advisers engaged by or on behalf of such Party in connection with the Scope of Work or the implementation of the Facility and acting in that capacity;

27.4.3 to any Persons or Sub-Contractors from whom the Contractor intends to invite tenders

in respect of the sub-contracting of any element of the Scope of Work;

27.4.4 to any security trustee, any bank or other financial institution and its advisers from which such Party is seeking or obtaining finance;

27.4.5 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;

27.4.6 to any insurer under a policy of insurance required to be taken out by either Party under the Contract; or

27.4.7 to the directors, employees and officers of such Party; provided that:

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

28. GENERAL PROVISIONS

28.1 Waiver

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

28.2 Independent Contractor

The Parties are independent. The Contractor shall perform and execute the provisions

of the Contract as an independent Contractor to Owner and shall not be an agent, representative or employee of Owner. Subject to the terms of the Contract, the Contractor shall be solely responsible for services applicable to the performance of the Scope of Works of the Complete Plant.

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

28.3 Survival

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

28.4 Language

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

28.5 Severability

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

enforceability of any provision in any other jurisdiction.

28.6 Entire Contract

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

28.7 Amendments

No amendments, supplements or modifications of the Contract shall be valid unless (a) evidenced in writing and signed by duly authorized representatives of both Parties or (b) when by way of a Variation Order by the Owner in terms of Article 16.

28.8 Third Parties

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

28.9 Headings

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

28.11 Governing Law and Jurisdiction

The Contract shall be governed by and construed in accordance with, the Laws of India. Subject to the provisions of Article 25, the Owner and the Contractor each hereby submits to the jurisdiction of the relevant courts in India as per Law and for the purposes of all legal proceedings arising out of or relating to the Contract or the transactions contemplated hereby. Owner and Contractor each hereby irrevocably waives, to the fullest extent permitted by the laws governing the interpretation and enforcement of the Contract, any objection which it may now or hereafter have to the laying of the venue of any such proceeding brought in such a court and any claim that such proceeding brought in such a court has been brought in an inconvenient forum.



The Owner and the Contractor each hereby irrevocably consents to the service of any and all process in any such action or proceeding by a mailing of copies of such process to it at its address specified in the Contract.

28.12 Counterparts

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

28.13 Attorneys' Fees

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

28.14 Binding Effect

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

28.15 Specific Performance

Without first having to proceed to dispute resolution pursuant to Article 25 each Party shall not be entitled to seek a decree compelling specific performance with respect to any actual or threatened breach of, any material covenant or obligation of the other Party under the Contract.

28.16 Notices

- (a) Unless explicitly stated to the contrary elsewhere herein, notices, demands, approvals, disapprovals or requests required or which may be given hereunder to the respective Parties shall be in writing in the English language and either (i) delivered personally, (ii) sent by facsimile or telex with confirmed answerback, (iii) sent by registered or certified mail, return receipt requested, or (iv) sent by



recognized overnight courier; addressed as follows:

Owner Contact Persons:

Company: Wardha Power Company Private Limited

Name: G.P.Rao

Position: Project Head

Phone: 0091 40 23559922

Fax: 0091 40 23559930

Mobile: 0091 9959911039

E-mail: gprao@ksk.co.in

Contractor Contact Person:

Company: SEPCO Electric Power Construction Corporation

Name: Mr. Peng Lianyong

Position: Project Manager

Phone: 0086 531 88623175

Fax: 0086 531 88609977

Mobile : 0086 13964146717

E-mail: wpcplh-doc@sepcoc1.net

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

28.17 Rights / Ownership on the accruing Intellectual Property Right

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

IN WITNESS WHEREOF, the undersigned have each caused the Contract to be duly

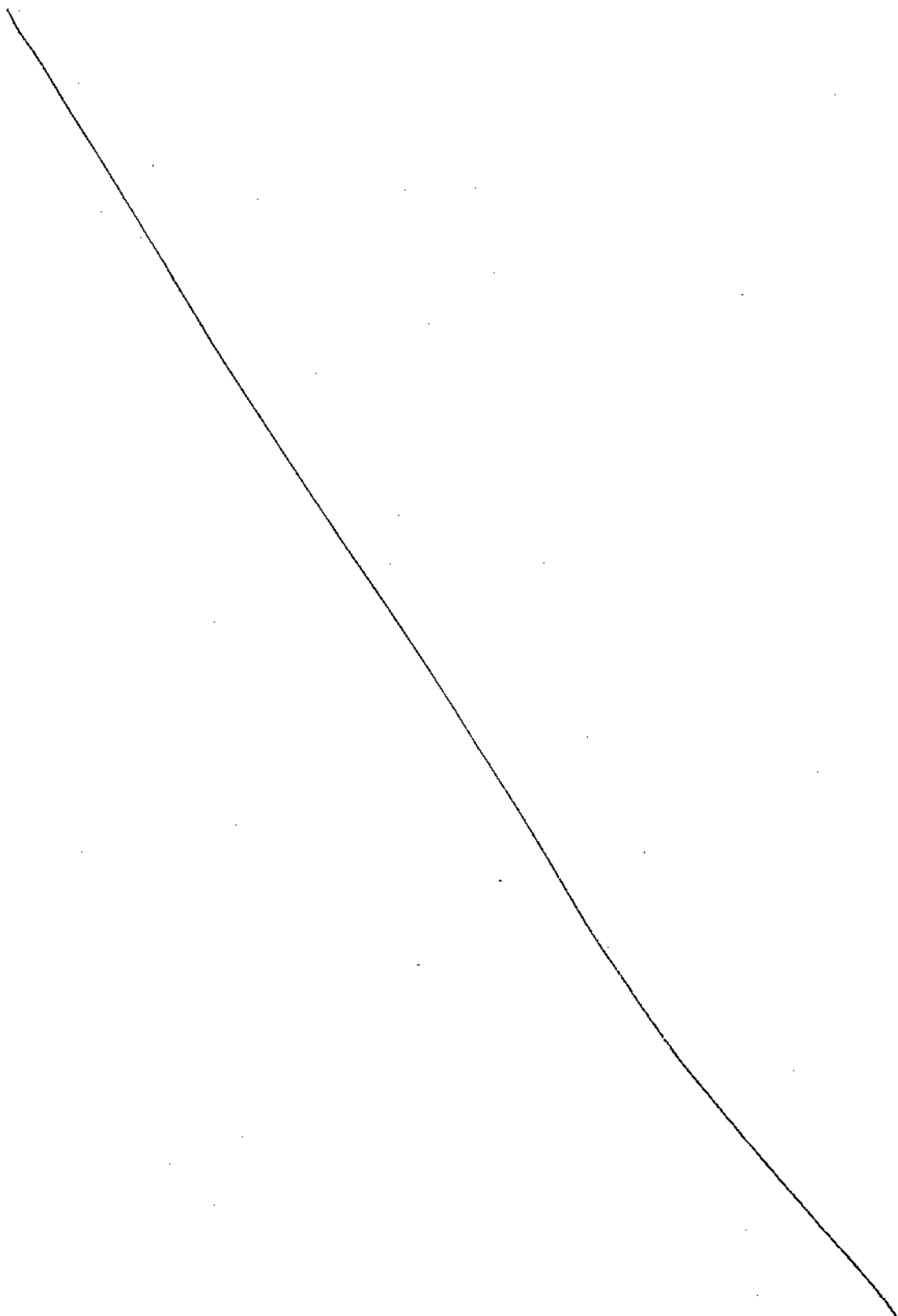


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executed and delivered as of the date signed below:

pk

A handwritten signature, possibly reading "M. J.", is written over a vertical line.A large, solid diagonal line is drawn across the page, extending from the upper left towards the lower right.

**WARDHA POWER COMPANY PRIVATE
LIMITED**

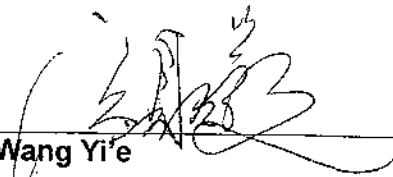


S.Kishore

Director

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

**SEPCO ELECTRIC POWER
CONSTRUCTION CORPORATION**



Wang Yi'e

President

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

Witness:

1)



G.P.Rao

Project Head

2)

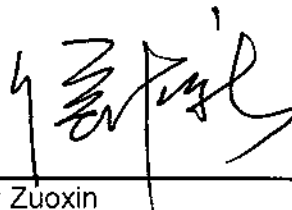


Anil Kumar Kutty

Director

Witness:

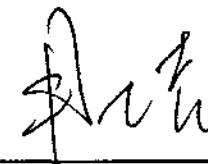
1)



Hou Zuoxin

Chairman (SEPCO I)

2)



Yin Shiji

Dy.General Manager

SCHEDULE 1**Cash Flow**

(Total 2 pages)

| MONTH | Cumulative Percentages of Contract Price |
|-------|--|
| 0 | 10.00% |
| 1 | 10.00% |
| 2 | 10.00% |
| 3 | 10.00% |
| 4 | 10.00% |
| 5 | 10.00% |
| 6 | 15.00% |
| 7 | 15.00% |
| 8 | 15.00% |
| 9 | 15.00% |
| 10 | 30.00% |
| 11 | 30.00% |
| 12 | 30.00% |
| 13 | 30.00% |
| 14 | 30.00% |
| 15 | 30.00% |
| 16 | 30.00% |
| 17 | 30.00% |
| 18 | 80.00% |
| 19 | 80.00% |
| 20 | 80.00% |
| 21 | 80.00% |
| 22 | 80.00% |
| 23 | 80.00% |
| 24 | 80.00% |
| 25 | 80.00% |
| 26 | 80.00% |
| 27 | 80.00% |
| 28 | 80.00% |

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| MONTH | Cumulative Percentages of Contract Price |
|-------|--|
| 29 | 80.00% |
| 30 | 80.00% |
| 31 | 80.00% |
| 32 | 80.00% |
| 33 | 80.00% |
| 34 | 80.00% |
| 35 | 80.00% |
| 36 | 80.00% |
| 37 | 80.83% |
| 38 | 80.83% |
| 39 | 83.33% |
| 40 | 83.33% |
| 41 | 84.17% |
| 42 | 84.17% |
| 43 | 86.67% |
| 44 | 86.67% |
| 45 | 87.50% |
| 46 | 87.50% |
| 47 | 90.00% |
| 48 | 90.00% |
| 49 | 90.83% |
| 50 | 90.83% |
| 51 | 93.33% |
| 52 | 93.33% |
| 53 | 94.17% |
| 54 | 94.17% |
| 55 | 96.67% |
| 56 | 96.67% |
| 57 | 97.50% |
| 58 | 97.50% |
| 59 | 100.00% |

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SCHEDULE 2

Technical Specification

(Total pages)

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Annexure 1
Letter of Award
(Total 11 pages)

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Wardha Power Company Private Limited

Works

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

Registered Office

8-2-293/82/A/431/A,
Road No. 22, Jubilee Hills,
Hyderabad - 500033
Tel: +91-40-23559922-25
Fax: +91-40-23559930

Ref.No : SEPCO,CHINA/GPRAO/1160201/157

Letter of Award for offshore services

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 render off-shore services such as design, engineering and technical services ("**Off-shore Services**") for and in relation to the setting up of the complete Power Plant in accordance with agreed Technical Specifications;
- D. AND WHEREAS, pending finalisation and execution of a detailed Contract for the Off-shore Services, 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 Offshore Services, based on and read with the tender specifications, mails exchanged and the resolutions reached through various meetings held till date ending with the meeting held upto and including 26.02.2009 in China and in India. as cited in the references enclosed herewith.

PKC *g.h.*

[Signature] *[Signature]*

2. CONTRACT PRICE

The price of Off-shore Services ("Contract Price") shall be USD 4,860,000, inclusive of all taxes, cesses, duties, etc. as applicable in China and exclusive of all taxes, cesses, duties, etc. as applicable in India.

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:

- 3.1 10% of Contract Price as advance against submission of Advance Bank Guarantee (ABG) of equal amount.
- 3.2 5% of Contract Price against approval of basic engineering drawings after incorporating all the comments by WPCPL and/or the consultants.
- 3.3 15% of the Contract Price on approval of boiler pressure parts design by IBR Authorities.
- 3.4 15% on approval of all piping drawings by IBR Authorities.
- 3.5 35% on mechanical completion of the first Unit.
- 3.6 5% of the Contract Price against first synchronization (prorated for each Unit)
- 3.7 10% against successful completion of Reliability Run Test (prorated for each Unit)
- 3.8 5% against successful completion of PG test (prorated for each Unit)

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

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

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

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

The invoice will be raised in US \$ as per the original contract value with reference rate of RMB to USD (1USD equivalent to 6.82 RMB) and payment will be released for this invoice as detailed per clause above.

Any exchange rate variation with respect to the reference rate of RMB to USD (1USD equivalent to 6.82 RMB), based on the USD buying rate published by Bank of China, on the date of payment release shall be to the account of WPCPL and the contract price varies accordingly..

The WPCPL/SEPCO shall, on quarterly basis, settle the Exchange Rate Variation for payments made in preceding quarter based on the formulae explained below, within 2 working days of receipt of approval of such payment by RBI (Reserve Bank of India) which is expected to be not more than 1 month for first payment and 21 days for subsequent payments ::

Exchange rate variation for the quarter = \sum each payment during the respective quarter $\times (6.82 - \text{the exchange rate between RMB and USD at the date when the WPCPL made the payment}) \div \text{the exchange rate between RMB and USD at the date when the WPCPL made the payment.}$

The above principle will be followed for all payments to be made under this contract including payments against Bank Guarantees. However the adjustment in value for exchange rate variation of Advance Bank Guarantee will be made on each subsequent Advance Bank Guarantee submission.

The payments for the Off-shore service shall be made in US \$

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

4. SCHEDULE OF OFF-SHORE SERVICES

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

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

All the area within the boundary wall shall be handed over to SEPCO within 6 months from Zero Date with the formal confirmation letter from 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 Off-shore Services under this LOA and or the Contract shall be capable of the delivering the following performance guarantees for the Power Plant:

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| Sr. No. | Parameter description | Performance guarantee |
|---------|---|-----------------------|
| 1 | Unit GROSS HEAT RATE:- Unit gross heat rate in kcal / kWh at rated steam parameters & 0.1 ata as exhaust pressure, with zero percent make up, at TMCR condition and at reference ambient parameters as per tender specifications | 2239.77 |
| 2. | Total auxiliary power consumption of all auxiliaries at TMCR condition (%) | 7.017 |
| 3. | SPM – mg/Nm 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 |

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, $UHR = THR/BE/PE$.

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.

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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 – USD 717.72 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 (%) | USD. 3.74 per kW (or part thereof) of increase in guaranteed value. |
| 3. | Unit Gross electrical power output at Generator terminals (MW) | USD 3.74 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) | USD 107.66 for each one tonne/hr. or part thereof decrease in steam generating capacity. |
| 5. | Unburnt Carbon in fly ash by weight (%) | USD 747.62 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 = $(1.9-1.5) \times \text{USD } 747.62 = \text{USD } 299.05$ |

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

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

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

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

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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 OFF-SHORE SERVICES

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

Rejection Criteria of Off-shore Services of the Power Plant :

WPCPL may reject the any part of the Off-shore Services 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 Off-shore Services and their performance upto and including the Performance Guarantee Test of Power Plant except for those deviations already agreed

12. GOVERNING LAW, JURISDICTION & DISPUTES:

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

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

13. CONFIDENTIALITY

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

14. NON-DISCLOSURE

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

15 EXECUTION OF CONTRACT:

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

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[Signature]

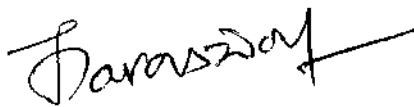
[Signature]

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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[Signature]

[Signature]
Page 10 of 11

- 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 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

PVK



certificate issued by the project consultant as appointed by you (Beneficiary, i.e. Wardha Power Company Private Limited) to prove that the Party is in breach of his obligation(s) under the contract and stating the respect in which the Party is in breach. Any such demand made on us shall be conclusive as regards the amount due and payable to you by us under this guarantee.

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



restricted to US Dollar _____ (say US Dollar _____ only) This guarantee shall remain valid up to _____ at the counters of _____. Unless a claim in writing is lodged with us within a period of 60 days (sixty days) from the date of expiry of the guarantee i.e. up to and including _____ (Date) at the counters of _____, all your rights under this guarantee shall stand forfeited and we shall be released and discharged from all liabilities under this guarantee whether or not this document shall have been returned to us.

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

SIGNED AND DELIVERED this -----

For and on behalf of

Bank: _____

Address: _____, No.

(AUTHORISED SIGNATORY OF BANK)

PVK



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 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.
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.

PVK



6. We further agree that you shall have the fullest liberty without our consent and without affecting in any manner our obligations hereunder to vary any of the terms and conditions of the said contract with the Party.
7. This Guarantee shall not be affected by any change in your constitution / management / or of Party / or the Bank by absorption with any other body, corporation or otherwise and this Guarantee will be available for enforcement by such body or corporation.
8. We, ____, __ Branch, also undertake not to revoke this guarantee during its currency and until the discharge Certificate is issued by you in writing through your Bank.

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

(AUTHORISED SIGNATORY OF BANK)

fuic

[Signature]



सत्यमेव जयते

INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

e-Stamp

| | |
|---------------------------|--|
| Certificate No. | : IN-DL321221716243810 |
| Certificate Issued Date | : 30-Mar-2016 12:45 PM |
| Account Reference | : IMPACC (IV)/ dl815803/ DELHI/ DL-DLH |
| Unique Doc. Reference | : SUBIN-DL815803630732840498620 |
| 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 Stand Paper forms an integral Part of First Amendment to the off shore services contract

For KSK Mahanadi Power Company Limited

[Signature]
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

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

Between

KSK MAHANADI POWER COMPANY LIMITED

And

**SEPCO ELECTRIC POWER CONSTRUCTION
CORPORATION**



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

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

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

1.1 The Purchaser commits to release monthly payment before the 20th day of each month as per the cash flow statement annexed as Annexure 1 herewith 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 4.12.2 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 20.1.5 of OSC is hereby deleted and substituted with the following:

If the Contractor fails to achieve RRT (according to the conditions of RRT of Contract only) of the Unit#2, #5, #1 and #6 within the RRT dates above due to reasons attributable to the Contractor, The Owner shall levy Liquidated Damages and not as a penalty, equivalent to 0.5% (Zero point five percent) of Total Unit Value 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 9.5.7 of OSC shall stand amended to the following

- For EPC Unit #2 & #5 - USD 81,000 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 81,000 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 9.5.5 is hereby as amended by the First Amendment deleted and substituted with the following:

The Owner shall retain Contractor furnished ABGs for an aggregate value of USD [324,000]. The balance ABGs shall be released by the Owner to the Contractor in mutually agreed time frame.

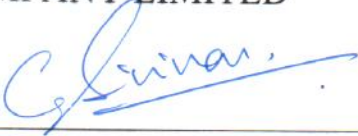

The ABGs so furnished by the Contractor shall be valid upto the completion of Reliability Run Test of the fourth Unit. The amount of the Guarantee shall be progressively reduced on quarterly basis in proportion to the value of services rendered made hereinafter and progress payments received thereto.

2. Miscellaneous

Save and to the extent amended by this Amendment Agreement, the SC, 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 SC, as amended earlier, shall apply mutatis mutandis to this Amendment Agreement, as if set out specifically herein and incorporated into this Amendment Agreement:

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

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


Witness


Witness

Annexure - 1

| | For Commissioning upto 4 Units (USD) | For Commissioning last 2 units (USD) | Total (USD) |
|--------|--|--|----------------|
| Mar-16 | | | 0 |
| Apr-16 | 81000 | | 81000 |
| May-16 | 81000 | | 81000 |
| Jun-16 | 135000 | | 135000 |
| Jul-16 | 135000 | | 135000 |
| Aug-16 | 135000 | | 135000 |
| Sep-16 | 135000 | | 135000 |
| Oct-16 | 135000 | | 135000 |
| Nov-16 | 135000 | | 135000 |
| Dec-16 | 135000 | | 135000 |
| Jan-17 | 135000 | 135000 | 270000 |
| Feb-17 | 135000 | 135000 | 270000 |
| Mar-17 | 135000 | 135000 | 270000 |
| Apr-17 | 135000 | 135000 | 270000 |
| May-17 | 135000 | 135000 | 270000 |
| Jun-17 | | 135000 | 135000 |
| Jul-17 | | 135000 | 135000 |
| Aug-17 | | 135000 | 135000 |
| Sep-17 | | 135000 | 135000 |
| Oct-17 | | 135000 | 135000 |
| Nov-17 | | 135000 | 135000 |
| Dec-17 | | 135000 | 135000 |
| | 1782000 | 1620000 | 3402000 |

For KSK Mahanadi Power Company Limited

C. Srinan
Authorised Signatory

[Handwritten Signature]

