

CONTRACT NO.: SEPCO,CHINA/SK/1160201/256

CONSTRUCTION CONTRACT

BETWEEN

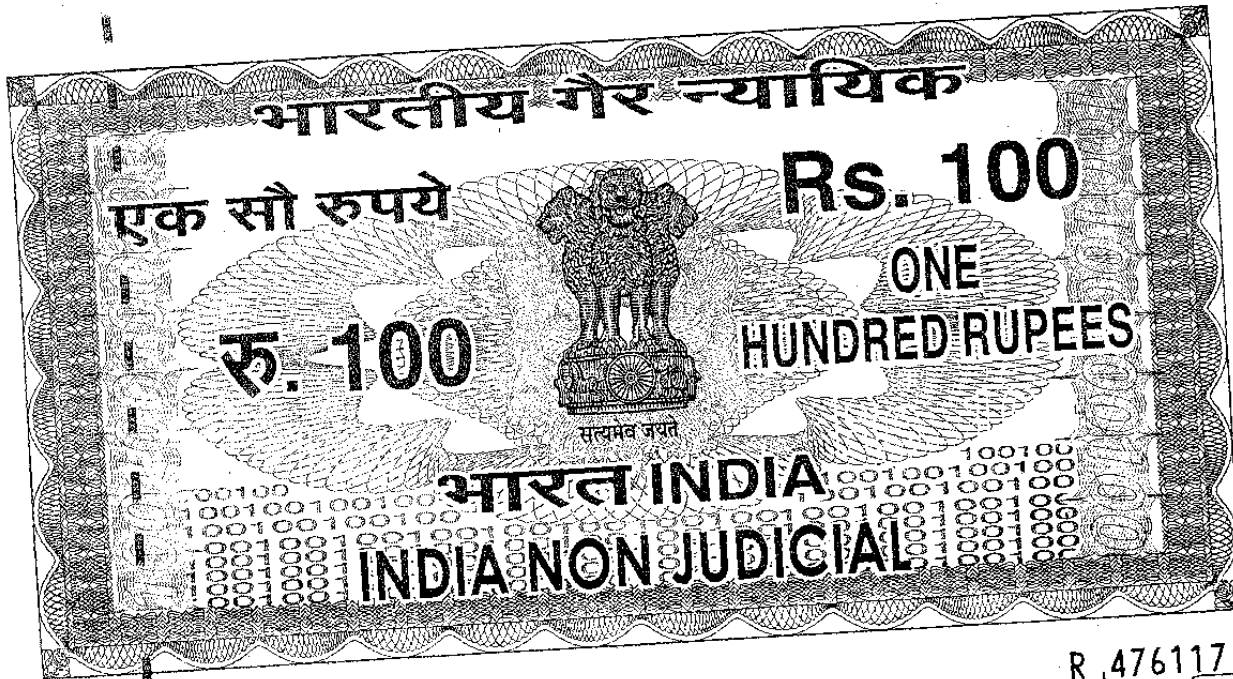
WARDHA POWER COMPANY PRIVATE LIMITED

AND

**SEPCO ELECTRIC POWER CONSTRUCTION
CORPORATION**

REGARDING

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



ఆంధ్రప్రదేశ్ ఆంధ్ర ప్రదేశ్ ANDHRA PRADESH

Sl. No. : 2952 Date: 05/3/2009. Rs.: 100/-

Sold To : Krishna

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

To Whom : Wardha Power Company Private Limited.
(Chattisgarh)

R 476117
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 Construction 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 the context otherwise, include its successors and permitted assigns) as party of the second part;

Construction Contract

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

RECITALS

WHEREAS

- A. The Owner is setting up a 3600 MW coal based power plant (hereinafter referred to as the "Project" or the "Power Plant") on build, own and operate ("BOO") basis at Nariyara, Janjgir – Champa District, Chattisgarh State, India (hereinafter referred to as the "Site") for the purpose of selling electrical energy to the participating consumers or their successors and assigns.
- B. The Contractor is engaged in the business of undertaking construction works, supervising services and other allied services for various power plants similar to the Complete Plant to be set up by the Owner.
- C. The Owner is purchasing Plant & Equipment and other materials along with related services for one "Complete Plant" for installation at the Owner's Power Plant, proposed to be located on the Site.
- D. The Owner wishes to engage the Contractor to provide such construction works as civil, architectural, structural works including but not limited to project management services and other services described in greater detail under the term ("Works") defined herein below and as set out for Complete Plant at Site in Schedule 2 of the Contract.
- E. The Contractor has agreed to provide such Works on price basis in accordance with the terms and Conditions set forth in the Contract.
- F. The Contractor has satisfied itself by careful examination as to the nature and magnitude of the Contract and the availability of resources and has obtained necessary information as to the matters in connection with the performance of the Contract.
- G. The Contractor hereby confirms and warrants that it has the necessary expertise and resources to perform their obligations under the Contract and has rendered such similar Works for various coal based power plants.

- H. The Owner and the Contractor wish to enter into the Contract to set forth the terms and conditions under which the Contractor shall render the agreed Works for the Complete Plant as specified in Schedule 2 to the Contract.
- I. The Owner has agreed to award to the Contractor and the Contractor has agreed to undertake the Works based on the understanding recorded in the Letter of Award dated 26.2.2009 and annexed hereto as Annexure-A ("LoA") and the Parties desire to document the terms and conditions under which the Contractor will perform the Works, being these presents.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual promises made herein, and intending to be legally bound by the Contract, the Owner and the Contractor hereby agree as follows:

1. DEFINITIONS

1.1 Definitions

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

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

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

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

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

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

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

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

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

"Change / Variation Order" means a written order to Contractor signed by Owner and Contractor during the execution of Scope of Work under the Contract authorizing a Change and, if appropriate, an adjustment in one or more of the Contract Price, the Project schedule, the Delivery Schedule, or the 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 at the date of the Contract. Provided that, the statutory variations in taxes and duties shall not constitute a Change in Law.

"Claim" shall have the meaning set forth in Article 26.5

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

- (a) Indian Boiler Act and Rules and Regulations made thereunder including those laid down by the State of Chhattisgarh;
- (b) The Electricity Act 2003 and rules and regulations made thereunder;
- (c) Indian Factory Act and rules and regulations made thereunder;
- (d) Indian Explosives Act and rules and regulations made thereunder;
- (e) Indian Petroleum Act and rules and regulations made thereunder;
- (f) A.S.M.E. Test codes;
- (g) A.I.E.E. Test Codes;
- (h) American Society of materials testing codes (ASTM);
- (i) Indian Standards (IS);
- (j) MoEF, Center and CECB, Chhattisgarh 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;

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

"Commissioning" shall mean, the first successful integrated operation of each Unit thereof 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 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.

"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.

"Complete Plant or Plant" shall mean construction works for the equipment and materials capable to generate electric power meeting the Performance Guaranteed Values, such as Boiler with Auxiliaries, Turbine with Auxiliaries, Generator with Auxiliaries, Transformers, complete plant DCS system, Auxiliary/Start-up Boiler and Control and Instrumentation System for these, Coal Handling System, Fuel Oil Handling System, Pulverizers, Stacker-cum-Reclaimer, Ash Handling System, Raw Water Treatment System, DM Water System, Potable and Service Water System, Cooling Water System, Auxiliary Cooling Water System, Cooling Tower, CW Treatment Plant, Fire Protection System, Compressed Air System, Air conditioning System, Ventilating System, EOT Crane, Hoists, Pippings, Hangers, Supports, Valves, Fittings, Painting and Protective Coatings, Effluent Treatment Plant, Reverse Osmosis (RO) Plant System, Ash Dyke, Evaporation Pond, Reservoir, lab equipments, workshop equipments. Electrical System including switchyard, control and instrumentation system and other systems / equipments / tools & tackles complete and infrastructural works included but not limited to roads and drains, grading, boundary wall, plant and non plant buildings as further defined in the Technical Specifications

"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, flow sheets, designs, engineering information, construction information, operation criteria, and other intangible information related to the Project.

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

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

"Contract Price" means the Contract Price as set forth in Article 8.1

"Contractor Event of Default" shall have the meaning set forth in Article 25.

"Contractor Indemnified Party" shall have the meaning set forth in Article 17.

"Contractor Permits" shall have the meaning set forth in Article 5.7.

"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 the Contractor's representative for the purposes of the Contract which may include from time to time a representative of a Sub-Contractor.

"Contractor's Works" means the place of work used by the Contractor, its Sub-Contractors, manufacturers, collaborators for the performance of the Works.

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

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

"Delay Liquidated Damages" means the damages relating to the performance of the Complete Plant as set out in Article 22.

"Dispute" shall have the meaning as set forth in Article 26 of the Contract.

"Documentation/Documents" shall mean, design basis report (DBR), Drawings, designs, data sheets, calculations, computer data (insofar as stored in computer diskettes/ Compact Disc), other than the proprietary information, samples, patterns, models, type tests as applicable, quality plans, inspection reports, field quality plans, test reports/protocols, pour cards/certificates, "as-built" drawings, method statement, fabrication drawings, and other manuals and information of a similar nature, to be submitted by the Contractor.

"Drawings" shall mean the, drawings, diagrams, plans, specifications related to the Site, Complete Plant and its parameters, supporting fuel and power lines, pressure, temperature ranges, foundation support points for the Units/modules, and other information furnished by the Contractor or the Owner.

"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 5.3 by the Owner/Lender and notified in writing by the Owner to the Contractor to act as Engineer for the purpose of the Contract. Unless any change is notified, the project head of the Owner shall act as the Engineer.

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

"Field Quality Plan" shall mean as set out in Article 5.18.

"Final Acceptance" has the meaning as set forth in Article 21.10.

"Final Acceptance Certificate" means the certificate as specified in Article 21.10.

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

"Force Majeure" has the meaning as set forth in Article 24.

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

"Guaranteed Completion Date" shall mean as per Article 5.13

"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.



"Initial Operation" shall mean the first integral operation of the Complete Unit Plant and each Unit thereof covered under the Contract with all incidental and auxiliary equipments of systems.

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

"Item" shall mean any item being a part of the Unit/s and/or the Complete Plant in accordance with schedule 2.

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

"KW" shall mean electrical kilowatts.

"KWh" shall mean electrical kilowatt-hours.

"Latent Defect" shall mean, in respect of each Item defects which are inherent or not visible at the time of Taking Over of the said Items 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.

"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.

"Lender" shall include the services enabling or Institutions or financing entity providing construction, interim or long-term financing (including any refinancing thereof) (i) for KSK Energy Ventures Private Limited (sponsors) for the Works and / or (ii) the Owner or sponsor for the set-up, procurement and construction of Power 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 for respective Unit supplied is installed and tested / pre-commissioned in accordance with Engineering Documents / Instruction Manuals and documented through protocols, as set forth in the Technical Specifications and confirmed by a Certificate of Owner, date of which shall happen before Commissioning Date.

"Miss Outs" shall mean the Scope of Work and related Technical Specifications which are not detailed in the Technical Specifications but which are essentially required to complete the Scope of Work, 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 1000 electrical kilowatts.

"Operation and Maintenance (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 engaged by the Owner for execution of specific 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 25.

"Owner Indemnified Party" shall have the meaning set forth in Article 17.

"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 the Owner's representative for the purposes of the Contract.

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

"Payment Term" or "Terms of Payment" shall have the meaning given to it in Article 8.

"Performance Guarantee Tests" means the tests to be conducted so as to establish the Performance Guaranteed Value parameters in the manner set forth in Schedule 2.

"Performance Guaranteed Value(s)" means the guaranteed level(s) of performance of the Complete Plant as set out in Schedule 2.

"Performance Liquidated Damages" means the damages relating to the performance of the Plant and Equipment set out in Article 22.2

"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 5.16.

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

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

"Quality Assurance Programme (QAP)" or "Quality Plan" or "Field Quality Plan" has the meaning given to it in Article 5.15.

"Reliability Run Test" shall mean as defined in Article 21.8 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" means and includes all the Works to be rendered by the Contractor for the Complete Plant in accordance with Schedule 2 and as specified in the Contract in Article 2.

"Site" shall mean the site in Nariyara, Janjgir – Champa District, 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 its Scope of Work or with whom the Contractor has entered into any contract for the supply of goods, services, materials or equipment in connection with the Scope of Work, including any such Person's legal successors in title or permitted assigns and, unless otherwise stated, all Sub-Contractors and contractors of any tier to such Person.

"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).

"Taxes" shall mean all taxes, duties, and cess imposed by the Government of India or any of its subdivisions, excise, storage and consumption taxes, service tax, license fees, sales and/or purchase taxes (including value added tax), works contract tax, octroi, entry tax, and labour cess applicable to any portion of the Works or any other tax, duty or fee of similar nature irrespective of the nomenclature used for the same. For the avoidance of doubt, it is agreed that all taxes on income, profit, other real and personal property and franchise taxes, as well as personal income taxes of the Contractor or any authorised persons acting on behalf of the Contractor; and all applicable national, state and local payroll, social security, workers' compensation, employment taxes and contributions imposed by Applicable Law with respect to or measured by compensation (wage, salaries or other) paid to employees of the Contractor, including taxes, health and welfare funds, pensions and annuities, disability insurance and all other similar social payments will not be considered as Taxes.

"Technical Dispute" shall have the meaning as ascribed to it in Article 26 of the Contract.

"Technical Expert" shall have the meaning as ascribed to it in Article 26.3 of the Contract.

"Technical Specifications/ Specifications" means the technical specifications set out in the 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 Plant and Equipment proposed to be set up at the Site.

"Unit Price" shall be a sum of Rs. 4,800,833,333 being one-sixth of the Contract Price.

"Works" shall mean earthworks, dewatering during construction, grading and leveling, excavation, foundations, buildings, all other civil works, architectural works, structural works, procurement services, project management services, procurement services, expediting, Site mobilisation, supervising, co-ordination, inspection, Contractor's permits and clearances, expediting and such services as may be required from to time for timely Commissioning of the Complete Plant, as defined in Technical Specifications and Schedules to the Contract and as specified in detail in the Contract and hand over Complete Plant to the Owner

"Warranty Period" has the meaning given in Article 11.

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

"Zero Date/Effective Date" shall have the meaning as set forth in Article 5.13 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 etc. is understood to be a function of the Owner.
- 1.2.6 Wherever provision is made for the giving of notice, approval or consent by any Person, unless otherwise specified such notice, approval or consent shall be in writing and the words "notify" and "approve" shall be construed accordingly.
- 1.2.7 The invalidity or unenforceability of any portion or provision of the Contract shall not affect the validity or enforceability of any other portion or provision. Any invalid or unenforceable portion or provision shall be deemed severed from the Contract. The Parties agree in such circumstances to interpret and to negotiate an equitable amendment to the provisions of the Contract to give effect to the underlying purposes of the Contract.

1.2.8 Contract Documents:

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

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

2. SCOPE OF WORK

- 2.1 The Contractor's obligations under the Contract shall be to undertake the Works and complete the same in the manner and within the time stipulated under the Contract. The Contractor shall sequence the Works in accordance with Project Schedule approved by the

Owner to meet the requirements of erection at Site and to facilitate achieving completion of successful Reliability Run Test/Taking Over of the Units by the respective Guaranteed Completion Date and satisfactory completion of Performance Guaranteed Value Tests thereon and the Owner's Final Taking Over of the Units.

The following items are excluded from the Scope of Work :

Landscaping including green belt

Breaking / Cleaning of any existing concrete / paving

Demolishing / removal of debris for any existing structure / foundation.

2.2 Project Co-ordination and Management

The obligations of the Contractor under the Contract shall include single point responsibility for all necessary co-ordination in respect of the independent services to be performed to ensure that the Project is completed in every respect as contemplated or as the change approved and signed by the Owner. Thus the Contractor ensures that the Scope of Works shall be completed in accordance with the Project Schedule, subject to extension of Guaranteed Completion Date as per terms of the Contract,

2.3 The Works shall conform to standard of engineering, design and workmanship in all respects which is mentioned in Technical Specification and shall be capable of performing in continuous operation in satisfactory manner. The Contractor within the Contract Price shall provide all Works including any equipment or accessories not specified herein but necessary for the Work.

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

2.5 It is the responsibility of the Contractor to obtain any permit or license etc. wherever applicable for the Works.

2.6 The Scope of Work to be performed by the Contractor shall be subject to the Schedules and

Conditions for civil works attached to the Contract.

3. ASSIGNMENT AND SUB-CONTRACTS

3.1 Assignment

3.1.1 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.

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

3.2 Sub-Contracting

3.2.1 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 Scope of Work accomplished by Sub-Contractors pursuant to written sub-contracts between the Contractor and such Sub-Contractors (or in the case of Sub-Contractors who are also the Contractor's affiliates, pursuant to whatever method the Contractor chooses). However, the creation of any sub-contract relationship shall not relieve the Contractor of any of its obligations under the Contract.



3.2.2 The Contractor shall be solely responsible for the engagement, payment and management of Sub-Contractors in the performance of the Scope of Work by Sub-Contractors, and for all acts and omissions of Sub-Contractors. No contractual relationship or privity of contract shall exist between the 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.

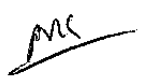
Provided that the Contractor shall obtain the approval of the Owner of the list of Sub-Contractors who shall provide the Works or materials in excess of Rs Fifty (50) Million (such Sub-Contractor being a "Major Sub-Contractor".)

3.2.3 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 of the Complete Plant. The Owner shall provide their decision in this regard within 7 (seven) business days from the Contractor providing the Sub-Contractor details.

3.2.4 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 the Guaranteed Completion Date and performance for any Item, shall be equivalent terms of the Contract as signed with the Owner.

3.2.5 The (un-priced) copies of the sub-contracts with Major Sub-Contractor including the technical and functional specifications shall be submitted to the Owner, within 2 months from the date of order placement, by the Contractor. The quality plans of the Sub-Contractor/s shall be as per the Quality Assurance Programme under the Contract.

3.2.6 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.



3.2.7 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 shall agree, 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.

3.2.8 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.

3.2.9 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.

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

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

4. CONTRACTOR TO INFORM ITSELF FULLY

4.1 The Contractor is deemed to have carefully examined all Technical Specifications mentioned in Schedule 2 to his entire satisfaction before signing of the Contract. The Contractor is deemed to have made independent enquiries and satisfied itself 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.

- 4.2 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.
- 4.3 The Owner shall not permit any change in the 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 its responsibility to fulfill its obligation under the Contract.
- 4.4 The Contractor shall be deemed to have inspected the Site and its surroundings and to have satisfied itself as to all technical, commercial, geographical, topological, social and general condition of and all circumstances affecting the Site including the nature of the ground and sub-soil, the form and nature of the Site, the extent and nature for rendering the Work for the Complete Plant at Site.
- 4.5 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 its responsibility to fulfill its obligation under the Contract.

5. CONTRACTOR'S OBLIGATIONS

5.1 Scope of Work

The Contractor shall render and provide the agreed Works covered under the Scope of Works, set out in the Contract and as further described in Technical Specifications.

5.2 Conformance to Requirements

The Contractor shall provide the Works for the Complete Plant to the Owner in accordance with all Requirements and Good Industry Practice. The Contractor shall perform all Works in a good and workmanlike manner. Liberal factors of safety shall be used throughout the

Contract Period. The Contractor shall ensure that the construction of systems are as per Requirements, conforming to acceptable level of safety as per the standard set out for such services, dependability, efficiency and economy, in each case using qualified, competent and, where necessary, licensed personnel. The Contractor shall carry out the Works necessary for start-up and Commissioning and Taking Over of the Complete Plant.

5.3 Engineer

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

5.3.2 Compliance with the Engineer's Decision

The Contractor shall proceed with the Works in co-ordination with the Engineer and during the course of activities, the decisions, instructions and orders given by the Engineer subject to and in accordance with the Contract, including provisions for Variations as set out in Article 13. thereof, 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.

5.4 Co-ordination, Co-operation and Compliance

5.4.1 Co-ordination with O & M Contractor

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

5.4.2 Co-operation and Interfacing with Other Contractors and Engineers

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

5.5 Drawings Documents of the Complete Plant

- 5.5.1 The Contractor shall submit all the Drawings and the like for approval of the Owner and general write up wherever involved. All Civil and structural drawings shall be properly coordinated with the electrical and mechanical drawings.
- 5.5.2 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.
- 5.5.3 The Contractor then shall submit the revised drawings for approval of the Owner. On approval of the same, The Contractor shall furnish 8 (eight) hard copies and soft copy on CD of these approved Drawings to the Owner as per the distribution to be intimated. As the Drawings shall be approved based on the basic information furnished by the Contractor, approval by the Owner shall not absolve the Contractor of his responsibilities towards correctness of design and performance of the Complete Plant
- 5.5.4 Any delay in approval of Drawings by the Owner, due to submission of incorrect data, non-submission of data, non-updating the Drawings in line with the corrections indicated shall be to the Contractor's account. During the currency of the Contract, if any approved Drawings are required to be modified, such details of the modifications required to be carried out shall be separately maintained and executed only after obtaining Owner's approval.
- 5.5.5 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 of all the "As Built" drawings along with data sheets, computer data (insofar as stored in computer diskettes/ Compact Disc) other than the proprietary information, type tests as applicable, inspection reports, test reports, fabrication drawings and other manuals and information of a similar nature, for the records of the Owner.
- 5.5.6 The Contractor shall be responsible for and shall perform, at its own cost, any alterations or

remedial work to the Works 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.

- 5.5.7 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 it after they have been approved by the Owner, shall be recovered from the Contractor.
- 5.5.8 The sizing calculations (excluding building dimensions) 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 to 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.
- 5.5.9 The Contractor shall prepare and supply Documentation pertaining to the Complete Plant in sufficient detail to satisfy the Requirements of the Contract and applicable Codes. The Contractor shall prepare such Documentation 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 Documentation identifying those documents under approval and information categories for the Owner's approval.
- 5.5.10 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 on receipt of first submission. For subsequent submissions if any the Owner shall similarly respond within 10 (ten) days of respective receipts.
- 5.5.11 No construction activities covered under approval category of Documents shall commence prior to Owner's approval of such Documents. Before submission of Drawings for Owner's approval, Contractor shall obtain Owner's approval of the relevant GA (General Arrangement) drawing. In the event that the Contractor commences such construction, it shall take into account Owner's comments at its risk and expense. The Contractor shall not depart from any approved Documentation unless the Contractor has first submitted to the Owner an amended Documentation and obtained the Owner's approval thereof.

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

5.5.13 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.

5.5.14 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.

5.6 Compliance with the Manuals

The Contractor shall ensure that all the Works to be performed under the Contract shall be in the manner as provided in the Manuals provided by the Contractors and other contractors of the Complete Plant.

5.7 Permits and Licenses

The Contractor shall obtain and maintain any and all Permits, visa, necessary or desirable for the construction of the Complete plant (the "Contractor Permits"). 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.

5.8 Contractor's Representative and Personnel

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

- 5.8.2 The Contractor shall provide superintendence to comply with the Project Schedule solely at its cost to complete the performance under the Contract.
- 5.8.3 The Contractor shall endeavor to depute / designate English-speaking personnel ("**Contractor Representative**") who shall be responsible for the performance of the Scope of Work by the Contractor and shall be authorized to execute Variation/Change Orders and to act on behalf of the Contractor. The Contractor shall provide the Owner with the name, current address, telephone and facsimile numbers of such personnel.
- 5.8.4 No obligation of the Contractor pursuant to this Article shall be construed as obligating the 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 the 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.
- 5.8.5 The Contractor shall employ in and about the execution of the Works only such persons as are careful skilled and experienced in their several trades and callings and the Engineer reserves the right to object to and require the Contractor to remove from the Site any person employed by the Contractor in or about the execution of the Works who in the opinion of the Engineer mis-conducts himself or is incompetent or negligent in the proper performance of his duties or whose activities directly or indirectly adversely effect the quality and/or the progress of the Work and such persons shall not be re-employed upon the Works without the permission of the Owner's Engineer. Based on the knowledge and skill available with local personnel and their suitability for the Works, contractor will give priority for engagement of local personnel for Works.

5.9 Consultation with the Owner; No Release from Responsibility

The Contractor's Representative shall be available to consult with the Owner's Representative concerning the Works. Inspection or review by the Owner or the Owner's representative shall not (a) constitute either (i) an approval, endorsement or confirmation of any design or engineering or (ii) an acknowledgment by any such Person that any design or engineering satisfies any of the Requirements; or (b) relieve the Contractor from any (i) of

its obligations to perform the Works in accordance with all the Requirements, or (ii) liability or responsibility for injuries to persons or damage to property.

5.10 Procurement Services

The Contractor shall cause procurement of cement, reinforcement steel, and other materials / equipment as per the Technical Specifications. All the left over materials shall be the Contractor's property after the Warranty Period is over, subject to due reconciliation.

5.11 Access

5.11.1 The Contractor shall facilitate inspection of the progress of the Scope of Work by the Owner's designated officers, at all reasonable times, provided such inspection shall not unreasonably interfere with the timely completion of the Scope of Works under the Contract. Upon such Inspection, the Owner shall be entitled to check for conformance of the progress with the requirements of the Contract and advise the Contractor appropriately.

5.11.2 Upon reasonable notice, the Contractor shall provide or arrange for the Owner access during normal business hours to the Contractor's Works to review the Works being rendered, 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.

5.11.3 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 review activities.

5.12 Compliance with Requirements, Codes and Standards of Care

5.12.1 Compliance with Applicable Law

(a) 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.

(b) All the Works shall be carried out by the Contractor in accordance with Applicable Laws in effect from time to time. If and to the extent that any Change in Law gives rise to the

requirement to make a modification to the Complete Plant, such Change in Law shall be treated as if it were a Variation instructed by the Owner, upon which Article 13 of the Contract shall apply.

- (a) Either Party shall indemnify the other Party against losses, claims and liabilities, including any governmental penalties and sanctions payable to a Competent Authority, together with any legal expenses incurred in connection therewith, to the extent arising out of any failure of the other party, to comply with this assurance on compliance with the Applicable Laws.
- (b) Nothing contained in any part of the Contract shall be construed to create any privity of relationship between the Owner and the Contractor or the Sub-Contractor or the employees, if any, deployed by the Contractor or the Sub-Contractor for the purpose of performance of the Scope of Works, including but not limited to principal-agent, master-servant and employer-employee.

5.12.2 Compliance with Requirements

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

5.12.3 Divergences from Statutory Requirements

If and to the extent that any Change in Law gives rise to the requirement to make a modification to the Plant, such Change in Law shall be treated as if it were a Variation instructed by the Owner upon which the Conditions of the Article 13 of the Contract shall apply.

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

If the Contractor or the Owner finds any divergence between the Applicable Law and the Performance Guaranteed Value 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 Contract on any variation in the Contract Price, the Contractor shall deliver the goods in accordance with such amendment. The cost and expenses (if any) involved in the above divergence shall be mutually discussed and agreed upon.

5.12.4 Codes

- (a) 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.
- (b) 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 Scope of Works of Complete Plant or any Item thereof with financial implication, the same shall be discussed and mutually agreed to between the Contractor and Owner.
- (c) The Contractor shall at all times execute and complete the Works in a safe, prudent and reliable manner in strict accordance with the Contract and with Good Industry Practices and shall exercise the same degree of care, skill and diligence in execution of the Works that is generally accepted internationally and commonly used in the international electric utility industry for the power station of the same size and characteristics similar to that of the Project.

5.13 Project Schedule

5.13.1 The construction of the Complete Plant including the excavation, foundations, buildings, civil works, architectural works, structural works, procurement services, inspection and expediting the Works of the Complete Plant covered under the Contract are to be programmed ("Project Schedule") in such a way that each Unit is commissioned and handed over to the Owner within the time period specified below:

5.13.2 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 (best effort basis)	Reliability Run Test completion (months) from Zero Date (Guaranteed Completion Date)
1 X 600 MW	36	38
2 X 600 MW	40	42
3 X 600 MW	44	46
4 X 600 MW	48	50
5 X 600 MW	52	54
6 X 600 MW	56	58

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

- Contractor shall submit ABG at the end of 3rd month from the date of LoA issued for 8% of the Contract Price and at the end of sixth month from the date of LoA issued for 2% of the Contract Price;
- 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.
 - For all other advance payments if such delay continued for 90 days from the due date, then the Contract Price and Guaranteed Completion Date shall be renegotiated
- All the area within the boundary wall shall be handed over to 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.

PMC

[Signature]

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.

Preliminary soil investigation shall be done in the Main Power Block (including chimney area) area by Owner at the cost of Contractor, under the supervision of the Engineers deputed by Contractor. The Contractor engineers will be away from the site and with the guidance of Contractor engineers, Owner engineers shall supervise the work being carried out by the agency appointed by Owner. It shall be completed within 2 months from Zero Date. The agency appointed by Owner shall be the agency chosen by Contractor and the terms thereof shall be decided mutually with the agency. The payment made by Owner will be reimbursed by Contractor, by deduction on the Contract Price. If the test data for the preliminary soil investigation can not be provided within 2 months from Zero Date, the Guaranteed Completion Date shall be extended by the same period of the delay in providing such data

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

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

- i) Design, Engineering Work and Drawing;
- ii) All civil, structural and architectural works;
- iii) Final commissioning and performance testing & handing over of the system offered as guaranteed.

Project progress shall be monitored as per the Project Schedule

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

5.13.7 Grounds for Extension of Guaranteed Completion Date

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:

- a) any Variation/Change Order issued in accordance with Article 13 hereof;
- b) events or circumstances of Force Majeure as defined in Article 24 hereof;
- c) other failure of the Owner to fulfil any of its obligations under the Contract;
- d) an instruction of the Owner to suspend the whole or any part of the Works for reasons not attributable to the Contractor;
- e) any stoppage in the Works caused by any Village Disturbance
 - exceeding 10 days in the aggregate before completion of Boundary wall
 - exceeding 30 days in the aggregate after completion of Boundary wall

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

5.13.8 Grant of Extension of Time

As soon as reasonably practicable following the occurrence of any of the circumstances described in Article 5.13.7 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 Project Schedule as shall be fair and reasonable.

5.14 The Works shall be carried out at Site 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 construction activities of the Complete Plant shall be so as to ensure that the schedule of Scope of Work 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 the Plant, as the case may be, by the Owner, after successful completion of Reliability Run Test and completion of Performance Guarantee Test.

5.15 Quality Assurance Programme

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

5.15.2 The QAP is a document, which presents in a tabular form the Quality Control checks to be exercised by the Contractor during the various stages of Works in order to meet the Requirements of the Contract. The QAP shall detail the components used, characteristics being controlled and acceptance norms for this characteristic and the agency responsible for performance and witnessing the checks.

5.15.3 The QAP shall be followed for inspection of the concerned Item/s.

5.15.4 The QAP shall be the basis of inspection and certification by the Owner of respective Works of the Contractor. The necessary hold points shall be identified in the QAP where the clearance by the Owner shall be required before proceeding further unless a waiver is given by the Owner. At such stages, the Contractor shall give at least 10 (ten) Days' notice in advance for the Owner to attend such inspection and the Owner at its discretion may either attend the test or give waiver. The Contractor shall be responsible to furnish copies of tests certificates and inspection reports to the Owner as per QAP before release of payment for such Works.

5.15.5 The details of the quality assurance / quality checks envisaged by the Contractor during carrying out the Works by the Contractor or procured through the sub-vendors/ Sub-Contractors of the Contractor, shall be detailed out in the quality plans to be submitted by the Contractor. The Contractor may also furnish any additional information regarding quality assurance / quality checks in the additional sheets, if required. After approval of the Owner is accorded various quality plans shall be bound as a booklet and shall be submitted to the Owner as soon as possible. The Contractor shall ensure that the approved quality plans are followed scrupulously by the Contractor and the sub-vendors, Sub-Contractors and the Works demarcated and to be carried out as per the QAP shall be taken up only after Owner has approved the QAP.

5.16 Progress Reports

The Contractor shall constantly monitor the progress of all activities in connection with completion of the Works in accordance with the Project Schedule and shall submit a detailed progress report, in 6 copies in print and 1 soft copy in CD to the Owner every week. The progress report shall contain such information, as the Parties shall mutually agree. The progress report shall detail the actual status with regard to Works as against the

Project Schedule and if any activities are behind schedule, shall set out the explanation therefore, consequences thereof, and the action being taken to remedy the delay.

5.17 Flow Model Test

The Contractor shall carry out the CFD (Computational Fluid Dynamics) analysis for the CW pump house and the details/test results will be submitted to Owner. Flow Model Test for CW Pump House will be carried out by the Owner. Based on the results of above two tests, the design of Pump house shall be carried out. Further Owner will carry out Wind Model Test for Chimneys and Contractor will design the Chimneys based on the study results.

5.18 Field Quality Plan

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

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

5.19 Patent Rights, Royalties and License Fees

5.19.1 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 used in the Works from and against all claims, demands, proceedings, Damages, costs, charges and expenses whatsoever in respect thereof and in relation thereto.

5.19.2 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 it alone shall be liable for payments of the same.

5.19.3 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 its 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.

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

5.20 Financing Matters

5.20.1 The Contractor hereby consents to assignment of the Contract to the Lenders of the Project for security purpose.

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

5.20.3 The Contractor shall provide complete support on documentation with respect to Purchaser Usance / Buyers Credit facility with its bankers.



5.21 Measurement of Work

Completed portion of the Work shall be measured jointly by the representatives of the Owner and the Contractor as per standard procedure for which the Contractor shall do all the arrangements. If at any time and for any reason whatsoever it becomes necessary to re-measure the Works, either in part or in full the Contractor shall arrange for the same and all expenses towards such measurement shall be borne by the Contractor.

5.22 Conditions for Site Works

5.22.1 Regulation of Local Authorities and Statutes

- (a) The Contractor shall comply with all the rules and regulations of local authorities during the performance of its field activities. It shall also comply with the Minimum Wages Act, 1948 and the payment of Wages Act (both of the Government of India) and the rules made there under in respect of any employee or workman employed or engaged by it or its Sub-Contractor.
- (b) All registration and statutory inspection fees, if any, in respect of the Work, pursuant to the Contract shall be to the account of the Contractor.

5.22.2 Access to Site and Works on Site

Suitable access to and possession of the Site shall be afforded to the Contractor by the Owner to enable it to execute the Site Works.

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

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

5.22.3 Contractor's Site Office



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

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

5.22.4 Manpower Report

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

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

5.22.5 Protection of Work

The Contractor shall have total responsibility for protecting the Contractor's Works till it is finally taken over by the Owner. For any damage or loss to the Contractor's Works, the Owner or the Engineer shall not be bound to entertain any claim and the Contractor shall be responsible for the complete restoration of the damaged Works to its original condition to comply with the Specifications and Drawings. Should any such damage to the Contractor's Works occur because of any other party not under the supervision or control of the Contractor, the Contractor shall make a claim directly with that concerned party. If disagreement or conflict or dispute develops between the Contractor and the other party or parties concerned regarding the responsibility for damage to the Contractor's Works, the same shall be resolved as per the provision of the Article 26. The Contractor shall not cause any delay in the repair of such damaged Works because of any delay in the resolution of such disputes. The Contractor shall proceed to repair the work immediately and no cause thereof will be assigned pending resolution of such dispute.

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5.22.6 Security

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

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

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

5.22.7 Field Tests

- (a) The Contractor or its Sub-Contractors and/or Affiliates along with the Owner shall perform the Field Tests in line with the Field Quality Plan (FQP).
- (b) The Contractor shall promptly forward to the Owner duly certified reports of all Field Tests and copies of the data upon which the reports are based.
- (c) If the Owner does not attend a test after having received notice thereof in accordance with the provisions of the Contract, or if the Owner and the Contractor agree that the Owner shall not attend a test, the Contractor may proceed with the Field test.
- (d) If, as a result of inspection, examination or testing, it is determined that all or a portion of the Works or workmanship is not in accordance with the Contract, the Owner or the Contractor may reject same. If the Owner rejects same, it shall notify to the Contractor promptly, within 10 days, stating its reasons. The Contractor shall then promptly repair the defect and ensure that such portion of the Works complies with the Contract.

- (e) If, due to rejection pursuant to Article 23, all or a portion of the Works requires retesting to verify compliance with the Contract, the necessary inspections, examinations and tests shall be repeated under the same terms and Conditions, at no additional cost to the Owner. If such correction and retesting (other than Performance Guarantee Test) cause the Owner to incur additional costs directly related to such retesting, such costs shall be reimbursed to the Owner by the Contractor.
- (f) Notwithstanding the above, the Contractor is solely responsible for complying with the Technical Specifications under the Contract including the quality parameters with respect to the Works / construction.

5.23 Permissions and Approvals

The Contractor shall obtain and maintain any and all permits necessary or desirable for the performance of any of the Works (the "Contractor Permits"). The Contractor shall obtain and maintain the Contractor Permits at his sole cost and expense. The Contractor shall also cause all its Sub-Contractors to maintain their permits.

5.24 Progress Report and Photographs

5.24.1 The Contractor shall so organize his resources and perform his obligations as to meet the Guaranteed Completion Date as per the Project Schedule of each Unit to achieve the relevant Commercial Operation Date/ Taking Over of such Unit after the Commercial Operation of such Unit applicable thereto, and to permit successful completion of Performance Guarantee Tests.

5.24.2 During the pendency of the Contract the Contractor shall submit periodic (normally once in a month Progress Report in 6 (Six) copies and one soft copy in CD, detailing out the progress achieved on various fronts as compared to the schedules. The Progress Report shall indicate the reasons for variance between the scheduled and the actual progress and the actions proposed for corrective measures wherever necessary.

5.24.3 The Contractor shall also furnish with the progress report 6 (Six) copies and one soft copy in CD of the coloured progress photographs. The coloured photographs shall be taken as and when indicated by the Engineer. The coloured photographs shall be adequate in size and number and shall have proper orientation to reveal actual status of Works.

5.25 Construction power

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

5.26 Construction water

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

5.26.2 Duty and taxes for water, if levied by the Competent Authority shall be payable by the Contractor. It is hereby clarified that the Construction Power and Construction Water shall not include any power or water required for the testing, commissioning and Reliability Run Test of the Units.

5.27 The Contractor shall supply at its own cost all materials, plant tools, appliances, ladders cordage, tackle, scaffolding and any temporary works, which may be required for the proper execution of the Work in the original, altered or substituted from and whether included in the Technical Specification or other document forming part of the Contract or referred to in these conditions or not and which may be necessary for the purpose of satisfying or complying with the requirements of the Contract as to any matter on which under these condition which is entitled to require together with carriage therefore to and from the Work. The Contractor shall also supply without charge the requisite number of persons with the

means and materials necessary for the purpose of setting out Works and counting, weighing and assisting in the measurement or examination at any time and from time to time of the Work of materials. Failing this the same may be provided by the Engineer-in-charge at the expense of the Contractor and the expenses may be deducted from any money due to the Contractor under the Contract or from his security deposit or the proceeds of sale thereof, or of a sufficient portion thereof.

6. 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:

6.1 Make Payment

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

6.2 Owner's Representative

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

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

6.3 Owner's Staff / Representative not Personally Liable

Neither any member of the Owner's staff nor the Engineer nor any of the staff/Representative 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.

6.4 Approvals / Consents

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

6.5 Document Review

The Contractor may send to the Owner for review any data, documentation, or specifications. The Owner's review will verify the accuracy of the information and data that the Contractor has supplied. All Drawings submitted by the Contractor to the Owner for approval must be either approved or rejected by the Owner with comments within 14 (fourteen) days from the date the Drawings are delivered to the Owner in accordance with Articles 6.4 & 6.5, where after the Drawings shall be deemed approved. In the event the data, documentation or specifications are rejected by the Owner, the Contractor shall resubmit the same, and the Owner shall comment within 10 (ten) days from the date the Drawings are delivered to the Owner where after the Drawings 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 case the time period for drawings approval shall be mutually discussed and agreed.

6.6 Information

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

- 6.7 Land shall be provided by the Owner for construction activities progressively meeting the Project Schedule requirements. However soil investigation and topography can be carried out as per schedule and land shall be fully handed over to the Contractor within 6 months. In case of any delay in providing any land required for the performance of the Works, beyond the scheduled date for land handing over, Guaranteed Completion Date shall be extended

by such delayed periods. Reasonable open space for the Contractor or its sub-Contractor's office, storage, colony, labour colony (within the Site) shall be provided on a leave and licence basis by the Owner free of cost until the completion of the Scope of Work.

7. Effectiveness of Contract

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

7.2 Progressive and Final Certificates

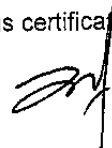
7.2.1 The Contractor may, at the times and in the manner explained hereunder, apply to the Engineer for progressive and final certificates for the Work executed in terms of the Contract.

7.2.2 The Contractor shall submit applications for progressive certificate upon the completion of milestone to be mutually decided and each application shall be accompanied by such evidence as the Engineer may reasonably require.

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

7.2.4 Every progressive certificate shall certify the Contract Price of the Power Plant and machinery supplied or Works duly executed pursuant to the Contract, upto the date named in the application for the certificate. If any construction activity completed does not comply with the Contract and for which a progressive certificate has been issued earlier by the Engineer, the value of such activity shall be subtracted from the next progressive certificate.

7.2.5 No progressive certificate shall be relied on as conclusive evidence of any matter stated therein, nor affect or prejudice any right of the Owner or the Contractor against each other. The Engineer may, in any certificate, give effect to any corrections or modifications that should properly be made in respect of any previous certificate.



- 7.2.6 Application for the final certificate may be made by the Contractor to the Engineer at the end of the Guarantee Period, provided that the Contractor has fulfilled its obligations under the Contract in totality.
- 7.2.7 The Engineer shall issue the Contractor a final certificate 15 days after receiving an application thereof with complete documentation. The final certificate shall certify the total or all amounts comprised in progressive certificates previously issued in respect of the Works or the portion thereof to which the final certificate relates subject to such additions thereof or reductions therefrom as may be authorised in the Contract.
- 7.2.8 A final certificate shall, save in the case of fraud or dishonesty relating or affecting any matter dealt with in the certificate, be conclusive evidence as to the sufficiency of the Works and of the value thereof.
- 7.2.9 The Owner shall not be liable to the Contractor for any matter or thing arising out of or in connection with the Contract unless the Contractor shall have made a claim in writing in respect thereof within 90 (ninety) days from the cause thereof.

8. CONTRACT PRICE AND PAYMENT

8.1 Contract Price

- 8.1.1 The Owner agrees to pay to the Contractor in the manner set forth in the Contract and the Contractor shall accept as full and complete compensation for Scope of Works under the Contract, the lump-sum, (the "Contract Price") INR (Indian Rupees) 28,805,000,000/- (say Indian Rupees twenty eight billion eight hundred and five million only) inclusive of all applicable taxes and duties as on Feb 21, 2009 except entry tax/octroi duties.
- 8.1.2 The Contract Price shall be subject to the following variations effective after Feb 21, 2009:
- (a) Any variation on account of changes in rates/input credit regulation of Taxes & Duties included in the Contract Price;
 - (b) Statutory variation in taxes/duties/levies and any new taxes/duties/levies imposed later to Feb 21, 2009 due to enactment of Applicable Law after Feb 21, 2009, but not included in the Contract Price.

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

8.2 Payments

- 8.2.1 The Owner, as per guidelines and conditions specified herein, shall arrange the payment to the Contractor only for the performance of the Works under the Contract. All payments during the currency of the Contract shall be "on account" payments only. The payments for the Works shall be made in INR.
- 8.2.2 It shall be the responsibility of the Contractor to effect payments to the Contractor's collaborator/associate, principal, sub-vendor, Sub-Contractor, etc. The Contractor shall hold the Owner harmless and indemnified from and against all such claims.

8.3 Due Dates for Payment

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

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

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

8.4 Payment Schedule (Billing Break-Up)

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

8.5 Application for Payments

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

8.6 Terms of Payment

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

The payment for civil and structural Works shall be released as follows.

8.6.1.1(a) 8% advance payment of the Contract Price against submission of ABG of equal amount at the end of third month from Zero Date.

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

8.6.1.2 10% of the Contract Price on completion of all ABCD row main column foundations (prorated for each Unit)

8.6.1.3 10% of the Contract Price on completion of Chimney including inside flues (prorated for each chimney)

- 2.5% of the Contract Price on completion of Chimney upto ground level

- 2.5% of the Contract Price on completion of Chimney shell upto +75 m level
- 2.5% of the Contract Price on completion of Chimney shell upto +150 m level
- 2.5% of the Contract Price on completion of Chimney including inside flues

8.6.1.4 10% of the Contract Price on completion of Turbine pedestals (prorated for each Unit)

8.6.1.5 10% of the Contract Price on completion of all UAT & GT and Station transformer foundations (prorated for each Unit)

8.6.1.6 5% of the Contract Price on completion of side concrete wall of Track hoppers (prorated for each track hopper)

8.6.1.7 5% of the Contract Price on completion of Track hoppers (prorated for each track hopper)

8.6.1.8 5% of the Contract Price on completion of Crusher house buildings (prorated for each crusher house building)

8.6.1.9 10% of the Contract Price on completion of Boiler foundation (prorated for each Unit)

8.6.1.10 5% of the Contract Price on completion of operating floor slab of AB bay (prorated for each Unit)

8.6.1.11 5% of the Contract Price on completion of control rooms (prorated for each room)

8.6.1.12 10% of the Contract Price against completion of cooling towers (prorated for each Unit)

8.6.1.13 5% of the Contract Price against successful completion of PG test (prorated for each Unit)

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

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 Unit wise on completion of the respective 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

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 completion of the respective Warranty Period. No further payments under the Contract shall be released to Contractor if the Performance Bank Guarantee is not submitted 30 days before the scheduled date of completion of Reliability Run Test of fourth Unit.

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

8.6.3 Documentation list for prorated milestone payments

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

- Works carried out are as per 'Construction Contract' -----and dated -----
- Total value of the invoices shall be in INR-----
- Mode of payment giving details of the beneficiary bank;
- Invoice number and date;
- Reference of the contract
- Terms of payment - % of the Contract Price to be payable as per the contract;
- Quality Certificate issued by Engineer as per FQP and QAP
- Reference to the insurance policy number covering the EAR risks.
- Signed jointly (Representatives of Owner & Contractor at the site) for completion of said construction works

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

shall be permitted to do so but the payment shall be limited to cumulative percentage for that month as per the agreed cash flow statement.

8.7 Bank Guarantees

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

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

8.7.3 If any extension of the validity of the Bank Guarantees is required as a result of a delay in the Reliability 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 not attributable to the Contractor, the Contractor shall not have any obligation for extension of the validity of the Bank Guarantees.

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

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

8.7.5 The ABGs shall be furnished at the end of third month from the Zero Date for 8% of the Contract Price, for 2% of the Contract Price at the end of sixth month from the Zero Date.

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.

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

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

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

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

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

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

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

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8.9 Payment not to Affect the Right of the Owner

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

9. TAXES AND DUTIES

- 9.1 The Contractor shall be liable to pay all Indian taxes, duties levies lawfully assessed against the Contractor in pursuance of the Contract (except entry tax/ Octroi Duties). In addition, the Contractor shall be responsible for payment of all Indian duties, levies and taxes lawfully assessed against the Contractor regarding its personal income and property as well as any corporate taxes including the personnel income tax of its supervisory personnel etc. In this connection attention of the Contractor is invited to the provisions of Indian Income Tax Act and the Circulars issued by the Central Board of Direct Taxes, Government of India, from time to time.
- 9.2 The Owner shall issue concessional Sales Tax declaration forms like "C/E" forms for the supply portion of the Contract Price to enable the Contractor to avail concessional Sales Tax for inter-state transactions.
- 9.3 The Contract Price includes all taxes and duties (including variations thereof) applicable to the transactions between the Contractor and its Sub-contractors for the Works related to purchase of raw materials, components, assemblies finished products etc. i.e. bought out items/ components/ Equipment of the Contractor for this project and there shall be no liability to the Owner on this account.
- 9.4 The Contractor should note that statutory deduction towards works contract tax (WCT) and withholding tax as applicable, shall be made and necessary withholding tax certificate as required under the applicable law shall be issued by the Owner. If any other withholding tax is brought into effect by a Competent Authority during the period or for the period of the Contract then the same shall be deducted at source as per the prevailing rules and necessary certificate/s to that effect shall be issued, under the applicable law, by the

Owner. However, no tax or lower rate tax will be deducted at source if a tax exemption certificate or lower rate tax certificate from the competent tax authorities is provided to the Owner by the Contractor before deduction of tax.

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

9.5 Statutory Variation for Taxes and Duties

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

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

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

10. ROLES AND RESPONSIBILITIES OF THE ENGINEER

10.1 The scope of the duties of the Engineer, pursuant to the Contract, shall include but not be limited to the following:

- a) Review and interpretation of all the Contractor's drawings, engineering data etc.

- c) Inspect, accept or reject any Work under the Contract;
- d) Issue certificate of acceptance and/or progressive payment and final payment certificates.
- e) Review and suggest modifications and improvements in Project Schedules from time to time.
- f) Supervise the Quality Assurance Programme and Field Quality Plan for implementation at all stages of the Works.

10.2 CO-ORDINATION MEETINGS

- 10.2.1 Co-ordination meetings between the Engineer and the Contractor shall be held at frequent intervals (at least once a week) to keep a close watch on the progress of Work, removal of any bottlenecks in the performance of the Contract.
- 10.2.2 The Contractor will also be called upon to attend to design co-ordination meetings with the Engineer, other contractors and consultants of the Owner. The Contractor shall attend such meetings at its own cost as and when required and fully co-operate with the Owner and other agencies involved.
- 10.2.3 In the event any of the Work or activity is not likely to be completed within the Project Schedule and for completion of such Work/activity, the Owner and the Contractor may arrive at new date which may be beyond the Project Schedule, this Contract shall not be construed to be extension in time limit approved by the Owner but shall be agreed without any prejudice to other terms and Conditions of the Contract.

11. REPRESENTATIONS AND WARRANTIES

11.1 Representations and Warranties of the Owner

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

- (a) **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.

- (b) **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 the Owner and its officers, managers and members that is necessary for the authorization, execution and delivery of the Contract and for the performance of the Owner's obligations hereunder has been taken.
- (c) **Compliance with Other Instruments:** The execution, delivery and performance by the 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 the Owner's clauses of incorporation, charter documents or bylaws, any material instrument, mortgage, deed of trust, loan, Contract, commitment or obligation to which the Owner is a party or by which the Owner or any of its properties or assets are bound.
- (d) **Binding Obligation:** The Contract constitutes a legal, valid and binding obligation of the Owner enforceable against the 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.

11.2 Representations and Warranties of the Contractor

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

- (a) **Organization and Standing:** The Contractor is a corporation duly organized, validly existing and in good standing under the laws of India, and has the requisite corporate power and authority to carry on its business as now conducted and as proposed to be conducted, to own or hold under lease its properties and to enter into and perform its obligations under the Contract. The Contractor is duly qualified or

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

- (b) **Authorization:** The Contractor has all requisite legal and corporate power to enter into the Contract and to carry out and perform all of its obligations hereunder. All corporate action on the part of the Contractor and its officers, directors and shareholders that is necessary for the authorization, execution and delivery of the Contract and for the performance of the Contractor's obligations hereunder has been taken.
- (c) **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 of the Contractor's clauses of incorporation, charter documents or bylaws, any material instrument, mortgage, deed of trust, loan, Contract, commitment or obligation to which the Contractor is a party or by which the Contractor or any of its properties or assets are bound.
- (d) **Binding Obligation:** The Contract constitutes a legal, valid and binding obligation of the Contractor enforceable against the Contractor in accordance with the terms hereof, except as limited by bankruptcy, insolvency, reorganization, arrangement, moratorium and similar laws relating to and affecting the rights of creditors generally and by general principles of equity.
- (e) The Contractor represents that it has inspected the Site and has reviewed weather data, marine data and all other data provided by the Owner and as required for the Contractor to enter into the Contract. The Contractor represents that the Site is an acceptable place to perform that portion of the Works required to be performed at the Site and has sufficient lay down areas and access.
- (f) The Contractor represents that it has satisfied itself with respect to all Conditions and circumstances affecting the Works, including the general and local conditions and technical information; access and egress; disposal, handling, and storage of materials; availability and conditions of roads and rights-of-way; availability of labour

and housing; climatic conditions and seasons and equipment and facilities needed for performance of the Works.

- (g) The Contractor represents that it is satisfied with the proximity of the existing road to adjacent facilities and structures as proposed mentioned in the Site and in the Contract.
- (h) The Contractor represents that it has made a complete examination of the condition of the waterfront and road, railroad and waterways that may be required to transport the Equipment and materials to the Site, including the conditions affecting transportation, access, disposal, handling, and storage of materials thereto and the local weather conditions based upon previous weather data.
- (i) The Contractor represents that it has made a complete examination of all other matters that might affect construction, transportation, startup, testing and Commissioning of the Project or the Contractor's performance of the Works.
- (j) The Contractor's failure to acquaint itself with any applicable condition, will neither relieve it from the responsibility for successfully performing the Contract, nor entitle the Contractor to a variation order adjusting the Contract Price or the time for performance.
- (k) Without limiting the generality of the foregoing, before the Contractor performs any applicable Works the Contractor shall check all Technical Specifications and be responsible for the correctness of the Works under the Contract. No extra charge or compensation will be allowed for duplication of Works because of an unverified difference between an actual dimension and the measurement indicated in the Technical Specifications. Any discrepancy shall be submitted in writing to the Owner for consideration before proceeding with the Works.

11.3 Warranty

11.3.1 The Contractor warrants that the Construction Works shall be new and in accordance with the Contract Documents and be free from defects in design, material and workmanship for a period of 12 (twelve) calendar months commencing immediately upon successful completion of the Reliability Run Test. If any Construction activity is undertaken by the Contractor after

PVR

[Signature]

11.6 Remedy.

Except as provided in Articles 11.3 and 11.4, if any Construction works Warranty is breached during the Warranty Period, Owner's sole remedy and Contractor's sole liability (subject to Article 11) 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 construction 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 construction 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 construction 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 construction work in which such repaired or replacement part was installed or in which such Services was re-performed.

Contractor acknowledges that failure to make repairs on a timely basis after Owner's notification of a warranty claim may cause significant financial loss to the Owner. Therefore, Contractor shall make repairs in an expeditious manner. If, after notification of a breach of Construction Warranty, Contractor shall unreasonably delay in diligently commencing, continuing or completing the remedy required by this Article 11.6, 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.

12. INSURANCE

Insurance will be arranged by or on behalf of Owner.

13. VARIATION/CHANGE ORDERS

- 13.1 The Contractor realizes and acknowledges the nature, magnitude of the Project and the possibility of Variation that may arise from time to time and agrees and ensures that it shall accept all the possible reasonable Variations as may be necessary for the Project to function as a whole.
- 13.2 If any changes required for completion of the Scope of Work as per specifications, the Contractor shall not be entitled to any addition in the Contract Price or to an extension of time.
- 13.3 No alterations, amendments, omissions, suspensions, or variations of the Works ("Change") under the Contract as detailed in the Contract Documents, shall be made by the Contractor except as directed in writing by the Engineer.
- 13.4 The Engineer shall have full powers, subject to the provisions hereinafter contained, from time to time during the execution of the Contract, by notice or order ("Variation / Change order") in writing, to instruct the Contractor to make such Variations, alterations without prejudice to the Contract. Any deviations in the Works executed shall be rectified by the Contractor without any extra costs.
- 13.5 If any suggested Variation / Change would, in the opinion of the Contractor, if carried out, prevent it from fulfilling any of its obligations or guarantees under the Contract, or that the

same is beyond the scope of the Contract, or involves a claim for additional payment, it shall notify the Engineer thereof in writing and shall mark a copy to the Owner and the Engineer in concurrence with the Owner shall decide whether or not the same shall be carried out and if the Engineer confirms its instructions, the Contractor's obligations and guarantees shall be modified to such an extent as may be mutually agreed.

- 13.6 If any Variation / Change in Works as per Article 13.4 and/or 13.5 results in increase or reduction of Contract Price, the Parties shall agree, to the extent of any change in the Contract Price. Any agreed difference in cost occasioned by any such Variation / Change shall be added to or deducted from the Contract Price as the case may be.
- 13.7 All Change Orders shall be in writing and executed by an authorized representative of each of Owner and Contractor. Except as otherwise provided in Article 13.8 & 13.9, no Changes shall be made except in accordance with a duly issued and fully executed Change Order. Change in inflation or indexation, exchange rates etc will not construe a reason for change order.
- 13.8 Owner may submit a written request to Contractor to make a Change. Within fifteen (15) Days following receipt of such request, or such other period as shall be agreed upon by the Parties, Contractor and Owner shall agree upon adjustment to the Scope of Works, Guaranteed Values, Project Schedule, Contract Price, or other terms of the Contract, if any necessitated by the proposed Change and Owner shall issue a Change Order. The Contractor shall proceed and execute the Change Order. If Owner elects not to issue any Change Order, Contractor shall not be compensated any costs and the Contract Price stands unaltered.
- 13.9 Contractor shall provide Owner with written notice of any condition or event that Contractor becomes aware of that Contractor reasonably believes will require a Change. Such notice must be issued within five (5) Business Days following actual knowledge of such condition by an officer of Contractor or by management personnel of Contractor responsible for the performance of the Scope of Works and such notice shall describe such condition or event in reasonable detail. Within fifteen (15) Business Days following delivery of such notice, Owner and the Contractor shall decide on the notified Change. If Owner elects to proceed, Owner shall issue a Change Order and Contractor shall proceed with the Change Order and the Contractor shall not be compensated for any additional cost incurred if any, so long as the change is within the scope of Works. If the Owner elects not to proceed with the Change, the Owner shall perform the obligations under the Contract as per the Scope of

Works specified in the Contract. The foregoing notwithstanding, Contractor shall not propose or carry any Change Order which keeps the Owner indifferent / neutral on financial terms and causes any financial loss to the Owner due to changes in this order resulting in defaults in other Contractual obligations of the Owner.

13.10 In the event and to the extent that a Force Majeure affects Contractor's ability to meet the Project Schedule, an adjustment in Project Schedule shall be made by agreement of Owner and Contractor based on the numbers of days on which the work is effected. Contractor shall not be compensated for any additional cost or expense incurred due to the Force Majeure, except to the extent Owner receives insurance proceeds based on such costs incurred by Contractor, in which event Contractor shall be reimbursed to the extent of such related proceeds. Any dispute relating to a Force Majeure-caused Change Order may be submitted to dispute resolution pursuant to Article 26.

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

14. STAFF AND LABOUR

14.1 Engagement of Staff and Labour

Except as otherwise stated in the Contract, the Contractor shall make its own arrangements for the engagement of all staff and labour, local or otherwise, and for their payment, housing, feeding and transport.

14.2 Rates of Wages and Conditions of Labour

The Contractor shall pay rates of wages, and observe conditions of labour, which are not lower than those established for the trade or industry where the Work is carried out. If no established rates or conditions are applicable, the Contractor shall pay rates of wages and observe conditions which are not lower than the general level of wages and conditions observed locally by employers whose trade or industry is similar to that of the Contractor, provided however that the rates shall not be lower than the rates fixed by the appropriate Governments.

14.3 Persons in the Service of Others

The Contractor shall not recruit, or attempt to recruit, staff and labour from amongst the Owner's personnel.

14.4 Labour Laws

14.4.1 The Contractor shall comply with all the relevant labour laws applying to its employees, including Laws relating to minimum wages, contract labour (regulation & prohibition), workmen's compensation and occupational health and safety. The Contractor shall promptly pay and afford to its employees all their rights under employment with the Contractor.

14.4.2 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.

14.4.3 The Contractor, every month shall submit a Compliance certificate of statutory compliances to the Owner in the format issued by Engineer.

14.5 Facilities for Staff and Labour

14.5.1 Except as otherwise stated in the Contract, the Contractor shall provide and maintain all necessary accommodation and welfare facilities for the Contractor's personnel. The Contractor shall also provide temporary site office for the Owner's personnel. Owner shall provide area for Contractor construction staff and labour as per Technical Specifications.

14.5.2 The Contractor shall not permit any of the Contractor's personnel to maintain any temporary or permanent living quarters within the structures forming part of the Works.

14.6 The Contractor's Superintendence

14.6.1 Throughout the design and execution of the Works, and as long thereafter as is necessary to fulfil the Contractor's obligations, the Contractor shall provide all necessary superintendence to plan, arrange, direct, manage, inspect, and test the Work.

14.6.2 Superintendence shall be given by a sufficient number of persons having adequate knowledge of the language for communications and of the operations to be carried out (including the methods and techniques required, the hazards likely to be encountered and methods of preventing accidents), for the satisfactory and safe execution of the Works.

14.7 Records of the Contractor's Personnel and Equipment

The Contractor shall submit, to the Owner, details showing the number of each class of Contractor's personnel and of each type of the Contractor's Equipment on the Site. Details shall be submitted each calendar month, in a form approved by the Owner, until the Contractor has completed all Work which is known to be outstanding at the Guaranteed Completion Date stated in the Taking-Over Certificate for the Works.

14.8 Disorderly Conduct

The Contractor shall at all times take all reasonable precautions to prevent any unlawful, riotous or disorderly conduct by or amongst the Contractor's personnel, and to preserve peace and protection of persons and property on and near the Site.

14.9 Health and Safety

14.9.1 The Contractor shall at all times be solely responsible for the adequacy, stability and safety of its operations at the Site. The Contractor shall prior to the commencement of Work at the Site, prepare and submit to the Owner for its approval, a safety action plan containing comprehensive set of surveillance and safety regulations in connection with the Works. The Contractor shall comply with and shall ensure that all of its employees, agents and Sub-Contractors of any tier engaged in Work at the Site comply with the provisions of such safety regulations.

14.9.2 The Contractor shall have on its staff at the Site a person dealing with the safety and protection against accidents of all staff and labour. This person shall be appropriately qualified for such work and shall have the authority to issue instructions and to take protective measures in connection with the prevention of accidents.

14.9.3 The Contractor shall maintain such records and make such reports concerning safety, health and welfare of persons at the Site and damage to property at the Site, as the Owner

shall from time to time reasonably require consistent with Good Industry Practice. The Contractor shall in any event report to the Owner details of any accident occurring at the Site or, if occurring elsewhere, which causes damage to the Facility, as soon as reasonable after its occurrence.

14.9.4 The Contractor shall at its own cost take all due precautions to ensure the health and safety of its staff and labour. In the event of the outbreak of any illness of an epidemic nature, the Contractor shall comply with and carry out such regulations, orders and requirements of any Governmental Authority for the purpose of dealing with and overcoming the same.

14.9.5 If the Contractor becomes aware of any hazardous, unsafe, unhealthy or unsound conditions, it shall promptly notify to the Owner and other affected Persons and promptly take appropriate steps and actions to eliminate, terminate, abate or rectify the condition. Whenever, in the opinion of the Owner, the Contractor has not taken sufficient precautions for the safety of the public or the protection of the Works or of structures or property on or adjacent to the Project creating in the opinion of the Owner an emergency requiring immediate action, then the Owner may, but shall not be obligated to, direct the Contractor to take such corrective action as the Owner may deem appropriate. The Contractor shall promptly execute corrective measures as directed by the Owner, and if it fails to do so the Owner may, but shall not be obligated to, take such actions at the cost and risk of the Contractor.

14.9.6 The Contractor shall initiate, maintain and supervise all surveillance and safety measures and programs in connection with the Works necessary to properly protect all persons in the proximity of the Power Plant from injury and danger to health and all property from damage or loss. The Contractor shall never permit a hazardous, unsafe, unhealthy or unsound condition or activity to be conducted at the Site.

14.9.7 The Contractor shall at all times take all reasonably necessary precautions to protect all staff and labour employed on the Site from insect nuisance, vermin and other pests and reduce the dangers to health and the nuisance occasioned by the same.

14.9.8 Prior to the commencement of Work at the Site, the Contractor shall submit to the Owner a list of any hazardous substances and associated hazardous substances data sheets with respect to any hazardous substances that the Contractor anticipates will be located at the Site, installed or otherwise incorporated into the Facility, or used in performing the Works. Such list and data sheets shall be updated by the Contractor as required for the Owner to

have a complete list of such hazardous substances actually located at the Site, installed or otherwise incorporated into the Facility, or used in performing the Works. The Contractor's use and disposal of hazardous substances shall at all times comply with Applicable Law. Except with the prior written approval of the Owner, the Contractor shall remove all hazardous substances from the Site as soon as possible. The Contractor shall not use or incorporate into the Facility any materials containing asbestos.

- 14.9.9 The Contractor shall take all reasonable precautions for the prevention of accidents on or about the Project and provide all reasonable assistance and emergency medical aid to accident victims.

15. ACCIDENT/ INJURY TO WORKMEN

- 15.1 The Owner shall not be liable for or in respect of any damage or compensation payable at law in respect or in consequence of any accident or injury to any workman or other person in the employment of the Contractor or any of its Sub-Contractors, save and except an accident or injury resulting from any act or willful default of the Owner.
- 15.2 The Contractor shall indemnify and keep indemnified the Owner against all such damages and compensations, save and except as aforesaid and against all claims, proceedings, costs charges and expenses whatsoever in respect thereof, or in relation thereto. The Contractor shall insure against accident etc. to workmen provided always that, in respect of a person employed by any of its Sub-Contractors, the Contractor's obligations to insure as aforesaid under this Article shall be satisfied if the Sub-Contractor shall have insured against the liability in respect of such persons in such manner that the Owner is indemnified under the policy, but the Contractor shall require such Sub-Contractor to produce to the Owner through the Contractor, when required, such policy or policies of insurance and the receipt for the payment of the current premium.
- 15.3 The Contractor should obtain such services through Indian Insurance Companies approved and acceptable to the Owner.

16. REPLACEMENT OF DEFECTIVE WORKS / MATERIAL

- 16.1 If, during the progress of the Works, the Engineer shall decide and inform in writing to the Contractor that the Works carried out / material procured by the Contractor are unsound or imperfect or the Contractor has carried out any activity inferior to the quality specified, the

Contractor, on receiving details of such defects or deficiencies, shall at his own expense within 15 (fifteen) days of receiving such notice, or otherwise within such time as may be reasonably necessary for making it good, proceed to alter, re-construct or remove such Works / material and carry out the activity up to the standard of the Technical Specifications. In case the Contractor fails to do so, the Engineer may, on giving the Contractor 15 (fifteen) days notice in writing of its intention to do so, proceed to remove/replace the portion of the Works /activities / material so complained of and at the cost of the Contractor perform all such Works provided that nothing in this Article shall be deemed to deprive the Owner of or affect any rights under the Contract which the Owner may otherwise have in respect of such defects and deficiencies. If the Engineer consider that any such inferior work or materials as described above may be accepted or made use of, it shall be within its discretion to accept the same at such reduced rates as it may fix thereof.

- 16.2 The Contractor's full and extreme liability under this Article shall be satisfied by the payments to the Engineer/Owner of the extra cost of such rework carried out, such extra cost being the ascertained difference between the price paid by the Engineer for such rework and the Contract Price portion for such defective Works.

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 other than the Owner or the Contractor 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 or Contractors, including claims regarding negligence, whether caused in whole or in part by the Contractor, its Sub-Contractors or Contractors; provided, that the Contractor shall not be liable for, and shall not be obligated to indemnify any Contractor Indemnified Party against, any such claims to the extent such claims result from (a) the negligence or willful

misconduct of any Contractor Indemnified Party or (b) any failure of the Owner to perform under the Contract.

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 other than Owner or Contractor resulting from, or in connection with, performance or non-performance or breach of any term of the Contract by Owner of its obligations under 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 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 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 Party¹ 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 4 (four) years after i.e. successful completion of Performance Guarantee Test or (ii) the date 4 (four) years after the date the Contract is terminated.

18. SECRECY AND CONFIDENTIALITY

18.1 Confidential Information

18.1.1 The Owner and the Contractor shall treat the details of the Contract and any information made available in relation thereto as private and confidential and neither of them shall publish or disclose the same or any particulars thereof (save insofar as may be necessary for the purposes of the Contract including the appointment and use of Sub-Contractors), without the previous written consent of the other Party, provided that nothing in this Article 18.1.1 shall prevent the publication or disclosure of any information that has come within the public domain otherwise than by breach of this Article.

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

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

18.2 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:

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

- (f) to any insurer under a policy of insurance required to be taken out by either Party under the Contract; or
- (g) to the directors, employees and officers of such Party;

provided that:

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

19. PROPRIETARY INFORMATION

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

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

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

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

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

20. INSPECTION

- 20.1 The Engineer, its duly authorised representative and / or an outside inspection agency acting on behalf of the Owner, shall have at all reasonable times, access to the Contractor's premises or Works and shall have the power at all reasonable times to inspect and examine the materials, workmanship and progress of the Works.
- 20.2 The Contractor shall give the Engineer / Inspector 15 (fifteen) day's written notice of any material being ready for testing. Such tests shall be to the Contractor's account except for the expenses of the Owner's Inspector. The Engineer / Inspector, unless witnessing of the tests is waived, will attend such tests within 15 (fifteen) days of the date on which the

material is notified as being ready for test / inspection, failing which the Contractor may proceed with the test, which shall be deemed to have been made in the Inspector's presence and it shall forthwith forward to the Inspector duly certified copies of tests in triplicate.

- 20.3 The Engineer or Inspector shall, within 7 (seven) days from the date of inspection as defined herein, give notice in writing to the Contractor of any objection to any Drawings and / or any workmanship which in his opinion is not in accordance with the Contract. The Contractor shall give due considerations to such objections and shall either make the modifications that may be necessary to meet the said objection or shall confirm in writing to the Engineer / Inspector giving reasons therein, that no modifications are necessary to comply with the Contract.
- 20.4 When the factory tests have been completed at Contractor's Works, the Engineer / Inspector shall issue a certificate to this effect within 7 (seven) days after completion of tests but if the tests are not witnessed by the Engineer / Inspector, the certificate shall be issued within 7 (seven) days of receipt of the Contractor's test certificate by the Engineer / Inspector. Failure of the Engineer / Inspector to issue such a certificate shall not prevent the Contractor from proceeding with the Works. The completion of these tests or the issue of the certificate shall not bind the Owner to accept the Works.
- 20.5 In all cases, where the Contract provides for tests whether at the Contractor's works the Contractor, except here otherwise specified, shall provide free of charge such items as labour, materials, electricity, fuel, water, stores, apparatus and instruments as may be reasonably demanded by the Engineer / Inspector or his authorised representative to carry out effectively such tests of Works in accordance with the Contract and shall give facilities to the Engineer / Inspector or to its authorised representative to accomplish testing.
- 20.6 The inspection by Engineer and issue of inspection certificate thereon shall in no way absolve or limit the liabilities and responsibilities of the Contractor towards quality of construction works under the Contract.

21 PERFORMANCE GUARANTEED VALUES, ACCEPTANCE TESTS

- 21.1 The entire commissioning and taking over of the Power Plant is dependent on the quality and effectiveness of the Works that are undertaken by the Contractor. The Contractor shall

ensure that the Works done shall be of such quality that it meets the Performance Guarantee Tests as have been indicated herein below.

- 21.2 The Liquidated Damages for not meeting the Performance Guaranteed Values during the Performance Guarantee Test shall be assessed and recovered from the Contractor. Such liquidated damages shall be levied, in accordance with stipulations made in Article 22 and shall be without prejudice to all the other conditions of the Contract.
- 21.3 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.
- 21.4 Any recoveries by the Owner from the Contractor due to shortfall in guaranteed performance shall be independent of provisions of Article 22 herein below.
- 21.5 The Acceptance Tests for the successful Commissioning and Taking Over of the Power Plant shall comprise of the following:

21.6 Trial Run

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

21.7 Initial Operation

After successful Trial Run of all the individual Item/s all the Item/s together shall be operated together as a Unit. Based on the observations made during Initial Operation, necessary corrections shall be effected in the Items to ensure proper integrated operation of the Unit and/or the Complete Plant as the case may be. After satisfactory completion of Initial Operation for each Item, the Unit, the Complete Unit shall be considered ready for Reliability Run Test. During Initial Operation, any adjustments/calibrations to the

instruments fitted in the Unit/ Complete Plant shall be done in the presence of testing staff of the Owner so as to enable them to familiarize themselves with its adjustments and maintenance except that the testing staffs of the Owner are not timely present after the notice of the Contractor.

21.8 Reliability Run Test

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

- (a) RRT of first Unit shall start not later than 37.5 months from Zero Date. RRT of subsequent Units shall start at 4 months gap (like 41.5 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.
- (e) If RRT of any Unit is not successful based on above criteria, the Contractor shall repeat the RRT. In case the Contractor could not conduct RRT successfully within 38 months, the Contractor shall be liable for Liquidated Damages (LD) on account of delay.
- (f) However, in case the Contractor could not conduct RRT successfully within 38 months, the Owner would permit one additional RRT without levying LD. In case of major shut down due to 'Boiler tube leakage' in any Unit, the repeat RRT shall start immediately after repair but not later than 36 hours from the time of Unit shut down.

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

21.9 Performance Guarantee Test

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

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

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

Signature

Signature

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, $UHR = THR/BE/PE$.

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

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

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

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

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



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

21.9.8 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.

21.10 Final Acceptance

21.10.1 On successful completion of the Acceptance Tests as specified in Article 21 herein above the Owner shall give the Contractor a Final Acceptance Certificate indicating the date from which the Plant and Equipment or Unit/s thereof has been successfully Commissioned.

21.10.2 On conducting the Performance Guaranteed 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

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

22 LIQUIDATED DAMAGES

22.1 Liquidated Damages for Delay (Delay Liquidated Damages)

22.1.1 All the Works shall be started and completed in accordance with the Project Schedule as per Article 5.13



- 22.1.2 Subject to Article 5.13.7, 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.
- 22.1.3 The Contractor shall promptly notify the Owner any event of conditions which might delay the completion of Works in accordance with the Project Schedule and the steps being taken to remedy such situation.
- 22.1.4 The time stipulated in the Project Schedule for the completion of the Reliability Run Test shall be deemed to be the essence of the Contract. In the event, the Contractor fails to complete the Reliability Run Test of the Unit and/or the Plant and Equipment, as the case may be, within the time period specified in it, it shall be viewed seriously and the Contractor shall be bound to pay the Owner Liquidated Damages as stated herein. The Owner may, without prejudice to any method of recovery, deduct the amount for such damages from any amounts due or which may become due to the Contractor. In the event any extension of time is granted by the Owner, in writing, for the Reliability Run Test according to the provision of 21.8 above, the Liquidated Damages shall be applicable for any further delay beyond such extended period.
- 22.1.5 If the Contractor fails to achieve Reliability Run Test of the Unit/s within the time period specified within Guaranteed Completion Date due to reasons attributable to the Contractor, the Owner shall levy Liquidated Damages and not as a penalty, equivalent to 0.5% (Zero point five percent) of Unit Price (excluding taxes and duties) per week (7 days) of delay or part thereof of each Unit subject to the maximum 10% of the Unit Price (excluding taxes and duties).
- 22.1.6 The provision of Liquidated Damages as stipulated above or wherever stipulated is to be viewed in strict sense as any delay in executing the Works as stipulated will result in considerable cost overrun for the Owner, and as such these Articles will be a deterrent to the Contractor from delays being caused. Accordingly, the Liquidated Damages would be levied by the Owner and become applicable once the delay on the part of Contractor has been established.
- 22.1.7 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.

22.1.8 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.

22.2 Liquidated Damages for Poor Performance

22.2.1 The Contractor shall furnish Performance Guaranteed Values in accordance with Sub-Article 21.9.1. These guarantees shall be met by the Contractor.

22.2.2 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 Specification.	Unit Gross Heat rate – INR 4253877.97 per kcal / kWh or part thereof of increase in heat rate from guaranteed value.
2.	Total auxiliary power consumption of all auxiliaries at TMCR condition (%)	INR 22155.61 per kW (or part thereof) of increase in guaranteed value.
3.	Unit Gross electrical power output at Generator terminals (MW)	INR 22155.61 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	INR 638081.70 for each one tonne/hr.

Sr. No.	Variation Factor	Liquidated Damages for shortfall in performance
	BMCR condition (tph)	or part thereof decrease in steam generating capacity.
5.	Unburnt Carbon in fly ash by weight (%)	<p>INR 4431122.89 for every 1% (or part thereof) increase of unburnt Carbon in fly ash beyond the guaranteed value.</p> <p>For Ex. Guaranteed value is 1.5%. Actual value is 1.9%. LD value shall be = $(1.9-1.5) \times 200$ lacs = Rs 80 lacs</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.

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

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

22.2.5 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.

22.2.6 The Liquidated Damages indicated above are in addition to the Liquidated Damages as stipulated in Article 22.1. The Liquidated Damages indicated above shall be levied for each Unit separately.

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

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

22.2.7. If the performance shortfall is such that the shortfall exceeds Rejection Criteria as given in Article 23.2, then the Owner will be entitled at the Owner's own discretion to reject the Item, Unit and/or the entire Plant and Equipment as the case may be, terminate the Contract and recover from the Contractor any loss the Owner has suffered.

22.3 Set-off; Payment of Liquidated Damages

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

23. REJECTION OF EQUIPMENTS

23.1 If Contractor fails to demonstrate to the Owner, the Performance Guaranteed Values, subject to the tolerance(s)/limits agreed hereinbelow, and as is recorded during the first PG test carried out as per Annexure A Clause No. 6.00.00 of the Technical Specification/specifications, the Contractor shall be given a further period of 30 days subsequent to the first PG test to make corrections and conduct any retest. In the event of failure of the Contractor to demonstrate the performance parameters even during such retests, the particular Works under the Scope of Work will stand rejected. In case the said

Works could not be rectified, the said Works will have to be reworked at site, within reasonable time, at no extra cost basis to the Owner.

23.2 Rejection Criteria of the Power Plant:

The Owner may reject complete or any part of the Scope of 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%

23.3 Payment after Rejection

If the Owner exercises the option to reject the Works 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.

24. FORCE MAJEURE

24.1 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.

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

(i) certain political events:

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

(b) radioactive contamination or ionizing radiation; and

(c) strikes, lockouts or other generalized labor action occurring in India (excluding such events which are site specific and attributable to the 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) lightning, 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 Works;
- (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 Works; and
- (iv) the ability of a Party to pay any monies due pursuant to the Contract.

24.2 Procedure for Force Majeure

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

of the Force Majeure as soon as possible, but in no event later than seven (7) Business Days after the occurrence of each of (A) and (B) above.

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

24.3 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 24.2 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 24.4 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 24.2(a), the affected Party shall be excused for such failure or delay pursuant to Article 24.4 from the date of commencement of the relevant Force Majeure.

24.4 Excused Performance

So long as the affected Party has at all times since the occurrence of Force Majeure complied with the obligations of Article 24.2(b) and continues to so comply, then the affected Party shall not be liable for any failure or delay in performing its obligations under or pursuant to the Contract, and any performance deadline that the affected Party is obligated to meet under the Contract, including the Guaranteed Completion Date shall be extended, one (1) day for a disruption / delay of one (1) day; provided that:

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

- (c) It is the duty of the claiming Party to demonstrate through reasonable 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.

24.5 Termination for Force Majeure.

Notwithstanding anything contained in this Article 24 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 24.5 shall be handled in accordance with the procedures set forth in Article 25.6 for a termination of the Contract.

25 EVENTS OF DEFAULT, TERMINATION AND SUSPENSION

25.1 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 Contract and such abandonment on an aggregate basis exceeds sixty (60) Days.

25.2 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.

25.3 Remedies for Breach

- (a) Subject to Articles 25.1, upon the occurrence and during the continuation of any Contractor Event of Default, Owner may give written notice to Contractor specifying such Contractor Event of Default; and Owner shall have the right, at Owner's election, to terminate the Contract and/or, subject to Article 26, 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 26, 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 25.2) 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 25.2, shall give the assuming party all of Owner's rights to cure under such Article 25.2 and shall perform all obligations herein for the benefit of the assuming party as if for Owner. Without the prejudice to Article 25.2, despite the existence of a Owner Event of Default, Contractor shall expeditiously continue with its performance of the Scope of Works until such time as it is allowed to exercise its remedies under this paragraph.

- (c) If Owner elects to terminate the Contract pursuant to a Contractor Event of Default, Contractor shall provide Owner and Lender, at Contractor's expense, with the right to continue to use any and all patented and/or proprietary information (subject to reasonable proprietary restrictions, including, without limitations, confidentiality agreements and agreements which limit the use of the information to the completion of the Power Plant) reasonably necessary to complete and/or operate the Power Plant; provided that such information (i) shall be used only for purposes of completing and/or operating the Power Plant and not for any other purpose, and (ii) shall not be distributed to any Persons other than those who need to know such information in order to complete and/or operate the Power Plant. Owner shall be required to mitigate reasonably the cost for completion of such Works but may make such expenditures as in Owner's reasonable judgment will best accomplish the timely completion of the Power Plant; provided, Owner shall not be required or expected to mitigate any such costs by breaching, terminating, repudiating or renegotiating any agreement entered into between Contractor and any Sub Contractor (including, without limitation, any Sub Contractor that is an Affiliate of Owner). Contractor shall be entitled to receive any further payments under the Contract only as provided in Article 25.3(f).
- (d) If Owner elects to terminate the Contract pursuant to a Contractor Event of Default, the Owner shall, without prejudice to any other right he may have under the Contract, shall be free to use the equipment of the Contractor for the purpose of completion of Work (without being responsible for any wear and tear to the equipment), which the Supplier shall allow without any hindrance and (ii) if the termination be due to

reason(s) mentioned in Article 25.1(d), be entitled to have the RRT and/or PGT performed by any reliable third party of its choice, recover the costs thereof from the Contractor, bind the Contractor by the results achieved thereby and consider the same for the purpose of levy of Delay Liquidated Damages and Performance Liquidated Damages, as applicable, pursuant to Article 23.2.

(e) If Owner elects to terminate the Contract upon a Contractor Event of Default, Contractor shall, at Owner's request and at Contractor's expense, perform the following services, in addition to those required under Article 25.3(c) and (d), relating to the Works so affected:

(i) deliver to Owner all information as may be requested by Owner that is reasonably necessary for the completion of the Works and/or, to the extent such information was to be provided as part of the Works, reasonably necessary to the operation of the Power Plant, and

(ii) supply any proprietary components requested by Owner and reasonably necessary for the completion and operation of the Power Plant.

(iii) compensate the Owner for all financial losses suffered ; other than consequential damages, limited to the Contract Price, subject to Article 25.3(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 Works delivered to Owner prior to termination to the extent not already paid for by Owner.

(v) all payments due towards Works which is ready but not delivered. The payment on such Works will be released on delivery.

(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. 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 Supplies. The Owner shall be entitled to recover any excess amount expended, over and above the balance amount, on the execution of Supplies. Such excess amount shall be over and above the Liquidated Damages as per terms of the Contract. The Contractor shall make all the payments due to the Owner within thirty (30) days after Owner gives Contractor notice of the amounts due from the Contractor.

- (g) If Owner terminates the Contract pursuant to a Contractor Event of Default, then as soon as practicable after Owner has received all substituted equipment and materials that were intended to be delivered under the Contract as part of the Works, Owner shall determine the total reasonable and necessary expense incurred and accrued in completing the Works, including all amounts charged by any substitute provider of material to finish the Works and additional reasonable and necessary overhead incurred and accrued by Owner to effect such takeover and to complete the Scope of Supplies. If the total reasonable and necessary expenses incurred by Owner in completing the Supplies 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 27.3.
- (h) If Contractor terminates the Contract pursuant to a Owner Event of Default, Owner shall pay to Contractor as a final payment an amount equal to the sum of (i) amount payable for any Works finished with price specified in the Contract and (ii) expenses incurred in relation to the production materials ordered for the Project, delivered to the Owner or the Owner has the obligation to receive; (iii) cost for the Contractor to demobilize from the site the temporary facilities and send them back home; (iv) cost for demobilization of personnel employed solely for the Project at the date of termination, provided however, that the title of the equipment and Supplies will be passed on to the Owner. The Contractor shall raise a substantiated invoice (subject to satisfaction of the Owner, who may choose to have the same certified by the Lenders Engineer and whose certification subject to and in accordance with the contract shall be final of any such Equipment, as "Termination Payment under Owner's Default".

- (i) With respect to any Owner Event of Default or Contractor Event of Default arising out of a late payment, besides the due amount, the remedy for such Event of Default shall be the interest on the overdue amount accruing at the stipulated Rate from and after the day the payment became overdue until the day it is paid.

25.4 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 25.7, Contractor may terminate the Contract in whole or in part at any time by written notice thereof to Owner. Upon such notice, the Contractor shall, unless the notice mentions otherwise: (i) immediately discontinue the Works on the date and to the extent specified in such notice; (ii) place no further orders or subcontracts for materials; (iii) promptly make every reasonable effort to procure cancellation upon terms reasonably satisfactory to Owner of all orders, subcontracts and rental agreements to the extent they relate to the performance of the Scope of Works that is discontinued; and (iv) thereafter execute only that portion of the Scope of Works as may be necessary to preserve and protect Scope of Works already in progress and to protect Works at the Site or in transit thereto.
- (b) Payments for such termination under this Article 25.4 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 Work finished with price specified in the Contract and (ii) expenses incurred in relation to the Works performed for the Project; (iii) cost for the Contractor to demobilize from the site the temporary facilities and send them back home; (iv) cost for demobilization of personnel employed solely for the Project at the date of termination, provided however, that the title of the Works will be passed on to the Owner.

25.5 Termination for Owner's Convenience

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

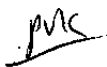
the extent specified in such notice; (ii) place no further orders or subcontracts for part of materials; (iii) promptly make every reasonable effort to procure cancellation upon terms reasonably satisfactory to Owner of such orders, subcontracts and rental agreements to the extent they relate to the 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 25.4 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 Work finished with price specified in the Contract and (ii) expenses incurred in relation to the Works performed for the Project; (iii) cost for the Contractor to demobilize from the site the temporary facilities and send them back home; (iv) cost for demobilization of personnel employed solely for the Project at the date of termination, provided however, that the title of the Works will be passed on to the Owner.

25.6 Termination upon Prolonged Force Majeure

- (a) If, and only if, the Contract is terminated as per provisions of Article 25.5 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 performed for the Project; (iii) cost for the Contractor to demobilize from the site the temporary facilities and send them back home; (iv) cost for demobilization of personnel employed solely for the Project at the date of termination, provided however, that the title of the Works 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.

25.7 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 25.7, Guaranteed Completion Date for performance by Contractor shall be extended by one Day for each Day of the Suspension Period the Parties acknowledge that the time required for subsequent completion of the Works may exceed the number of days of suspension or delay due to Contractor's scheduling constraints and the time required for demobilization and remobilization of the Works effort.
- (c) Compensation to the Contractor. In the event that suspension is solely attributable to the Owner, any necessary and demonstrable costs incurred by the Contractor as a result of such suspension of the Works shall be paid by the Owner, provided the costs are sustained to the satisfaction of the Owner Engineer subject to and in accordance with the contract.
- (d) Suspension arising out of Contractor / Other Contractor defaults. The Owner shall not be liable and responsible for any suspension or delay arising out of default due to the Contractor, its Sub Contractors and other Contractors. No compensation shall be paid to the Contractor due to Suspension under this Article.
- (e) Suspension arising out of Owner defaults. If the Owner fails to pay to the Contractor any undisputed payment and such failure continues for 60 (sixty) days after written notice thereof has been given to the Owner by the Contractor, then the Contractor may suspend any Works or part thereof. After the payment is made, the Contractor shall resume the Works.
- (f) Special Suspension Provisions. If a suspension is more than ninety (90) Days in duration, Owner will pay Contractor pro rata for the portion of the Works completed when the suspension was notified. In the event that production / fabrication has proceeded to the point that Contractor and Owner deems it cannot reasonably reschedule completion or the request for suspension is received less than ninety (90) Days prior to the date by which the Works is ready for delivery, the Works shall be completed, invoiced and the

Works, or the portions thereof completed, placed in storage at Owner's expense. In the event Contractor is otherwise unable to deliver the Works when ready due to the action or inaction of Owner, Contractor shall so notify Owner and such inability to deliver shall also be subject to the above provisions.

- (g) Termination. If the suspension continues for an aggregate period exceeding 120 Days, due to reasons solely attributable to Owner, the Contract shall be terminated. Any termination under this Article 25.7 shall be handled in accordance with the procedures set forth in Article 25.4 for a termination of the Contract.

26. DISPUTE RESOLUTION

26.1 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.

26.2 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 26.2, 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.

26.3 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 26.4 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.

26.4 Arbitration

- (a) Any Dispute that has not been resolved within twenty (20) Days of the delivery of a notice in accordance with Article 26.2, or that is not subject to resolution pursuant to Article 26.3 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 26.2, 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 26.2. Within twenty (20) Days after any demand for arbitration under this Article 26.4, 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 26.4. 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 26.4. 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.

26.5 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.

26.6 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.

27. LIMITATION OF LIABILITY

27.1 No Consequential Damages

Except for Liquidated Damages, the proceeds of insurance, any interest paid on delayed payments, disputed amounts under Article 26 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 the variation in currency exchange rate, 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.

27.2 Limitation on Liquidated Damages

The total liability of Contractor for the payment of Liquidated Damages shall be pursuant to Article 22.2 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.

27.3 Maximum Liability

Notwithstanding any other provisions contained in the Contract, the aggregate liability of Contractor to the Owner with respect to any and all claims arising out of the performance or non-performance of obligations in connection with the Works or the rendition of other services in connection therewith, whether based on Contract, warranty, tort (including negligence), strict liability or otherwise, liability to third parties for property damage to property other than the Works and liability for personal injury, shall not exceed the total Contract Price.

This Article shall survive the termination of the Contract.

27.4 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 (excluding taxes and duties), provided that this limitation shall not apply to any obligation of the Contractor to repair or replace defective Works or to indemnify the Owner with respect to patent infringement.

28. GENERAL PROVISIONS

28.1 Waiver

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

28.2 Independent Contractor

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

Further, the Contract shall not be interpreted or construed to create an association, joint venture, or partnership between the Parties or to impose any partnership obligation or liability upon either Party. Neither Party shall have any right, or authority to enter into any

agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party, unless expressly agreed otherwise.

28.3 Survival

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

28.4 Language

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

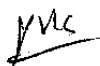
28.5 Severability

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

28.6 Entire Contract

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

28.7 Amendments



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

28.8 Third Parties

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

28.9 Headings

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

28.10 Site

All the Items of the Works shall be consigned to:

Site-In-Charge

WPCPL

Nariyara Village

Janjgir-Champa District

Chhattisgarh State, India

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 Articles 26, 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 26 each Party shall not be entitled to seek (i) a decree compelling specific performance with respect to, and/or (ii) restraint by injunction of 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:

Construction Contract



102



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 Lianrong

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 construction work from the Contractor shall remain with the Owner only and the Contractor has no right to claim any interest/share therein.

28.18 Convenience of Public

All operations necessary for the execution of the Works and for the construction of any temporary Works shall so far as compliance with the requirements of the Contract permits be carried on so as not to interfere unnecessarily or improperly with the public convenience or the access to use and occupation of public or private roads and foot paths or to properties whether in the possession of the Owner or of any other person and the

Contractor shall save harmless and indemnify the Owner in respect of all claims, demands, proceedings, Damages, costs, charges and expenses whatsoever arising out of or in relation to any such matter.

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

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

28.21 Right to Delete and/or Relax Specification Articles

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

28.22 Contractor to Supply Samples

The Contractor shall carry out tests of materials or finished Work as per the technical specification may require and shall supply free of cost samples necessary for this purpose. The cost incurred in this respect shall be borne by the Contractor.

28.23 Works to be Open to Inspect, the Contractor to be Present

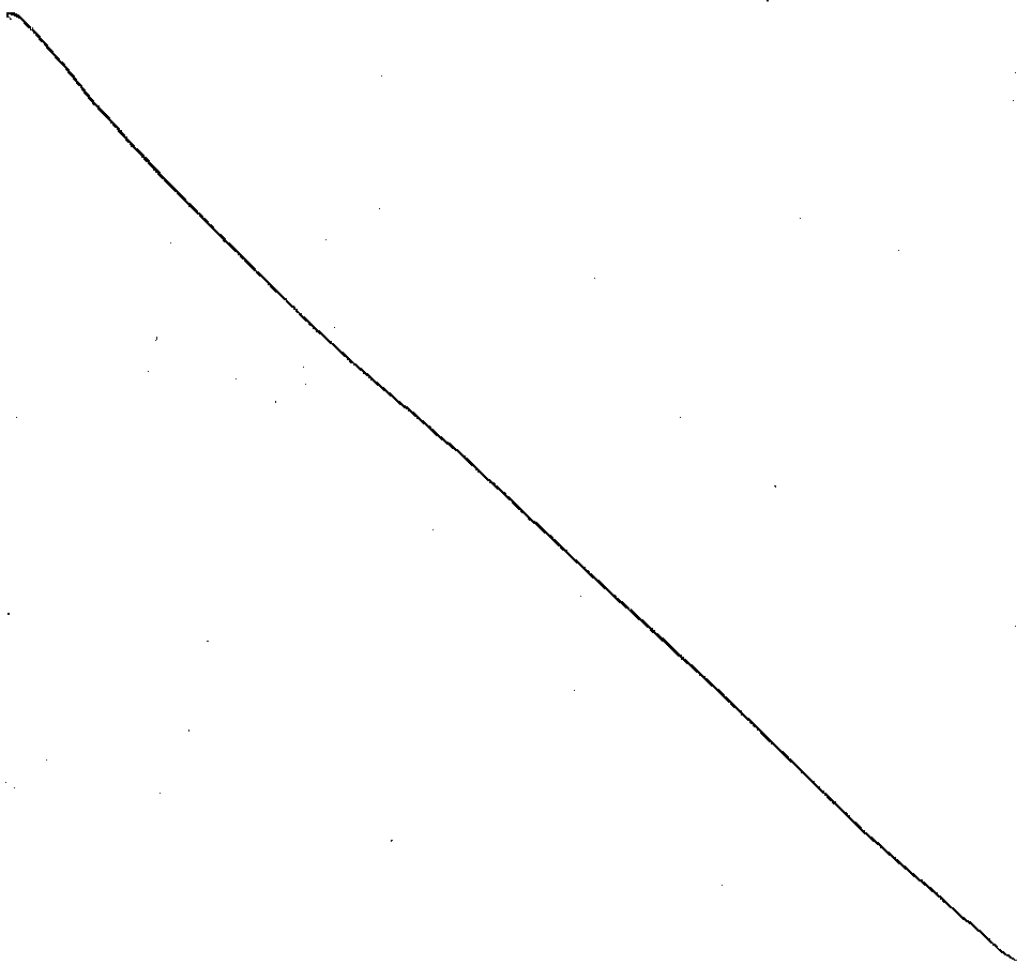
All Works under or in course of execution or executed in pursuance of the Contract shall at all times be open to inspection and supervision of the Engineer and its subordinates and the Contractor shall at all time during usual working hours and at all other times at which reasonable notice of the intention of the Engineer or its subordinates to visit the Works shall have been given to the Contractor, either itself by present to receive orders and instructions

or have a responsible agent duly accredited in writing, present for that purpose. Orders given to the Contractor's duly authorized agent shall be considered to have the same force and effect as if they had been given to the Contractor itself.

28.24 Temporary Works


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

puc



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

**WARDHA POWER COMPANY PRIVATE
LIMITED**

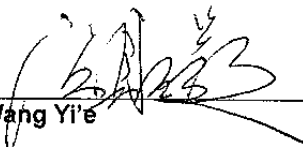


S.Kishore

Director

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

**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)

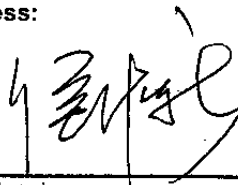


Anil Kumar Kutty

Director

Witness:

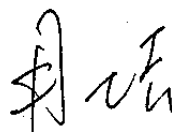
1)



Hou Zuoxin

Chairman (SEPCO I)

2)



Yin Shiji

Dy. General Manager



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

MONTH	Cumulative Percentages of the Contract Price
0	0.00%
1	0.00%
2	0.00%
3	8.00%
4	8.00%
5	8.00%
6	10.00%
7	10.00%
8	10.00%
9	10.00%
10	11.67%
11	13.33%
12	15.00%
13	16.67%
14	18.33%
15	21.67%
16	21.67%
17	22.92%
18	22.92%
19	28.33%
20	29.58%
21	29.58%
22	33.33%
23	36.25%
24	37.92%
25	44.17%
26	49.17%
27	53.33%
28	55.00%
29	57.50%
30	59.17%

MS



Annexure 1
Letter of Award
(Total 11 pages)

PVK

[Signature]

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

The items as following are exclusive of the scope.

1. Landscaping including green belts.
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3. Demolishing/removal of debris for any existing structure/foundation.

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3. PAYMENT TERMS

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

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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.

Preliminary soil investigation shall be done in the Main Power Block (including chimney area) area by WPCPL at the cost of SEPCO, under the supervision of the Engineers deputed by SEPCO. The SEPCO engineers will be away from the site and, with the guidance of SEPCO engineers, WPCPL engineers shall supervise the work being carried out by the agency appointed by WPCPL. It shall be completed within 2 months from NTP date. The agency appointed by WPCPL shall be the agency chosen by SEPCO and the terms thereof shall be decided mutually with the agency. The payment made by WPCPL will be reimbursed by SEPCO, by deduction on the contract value. If the test data for the preliminary soil investigation can not be provided within 2 months from Zero Date, the Completion Schedule shall be extended by the same period of the delay in providing such data.

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Sr. No.	Variation Factor	Liquidated Damages for shortfall in performance
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The PG tests shall be witnessed & the results shall be approved by WPCPL's Engineers.

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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.

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Time is the essence of this LoA

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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 Construction 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 in Singapore.

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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.

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

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

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- 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.

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

Date: _____

Guarantee No.: _____

Dear Sir,

To:

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

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

1. We hereby undertake and bind ourselves irrevocably and unconditionally to pay to you the sum in aggregate not exceeding US Dollar _____ (Say US _____ Dollars) representing the Advance Payment made by you to the "Party" as aforesaid, without delay or demur, merely on the first written demand signed by your duly Authorised Signatory stating that the amount claimed is due by way of loss or damage caused to or would be caused to you by reason of default or defaults on the part of the "Party" in discharging any of its obligation under the said "Contract". Your written demand shall be accompanied by a certificate issued by the

AVK



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 -----

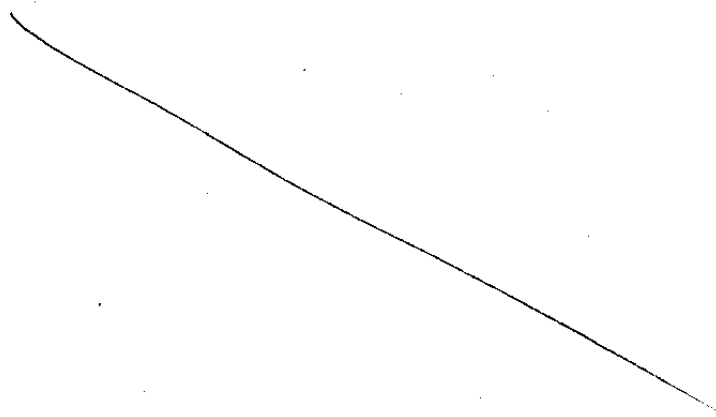
For and on behalf of

Bank: _____

Address: _____, No.

(AUTHORISED SIGNATORY OF BANK)

rule



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.
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.

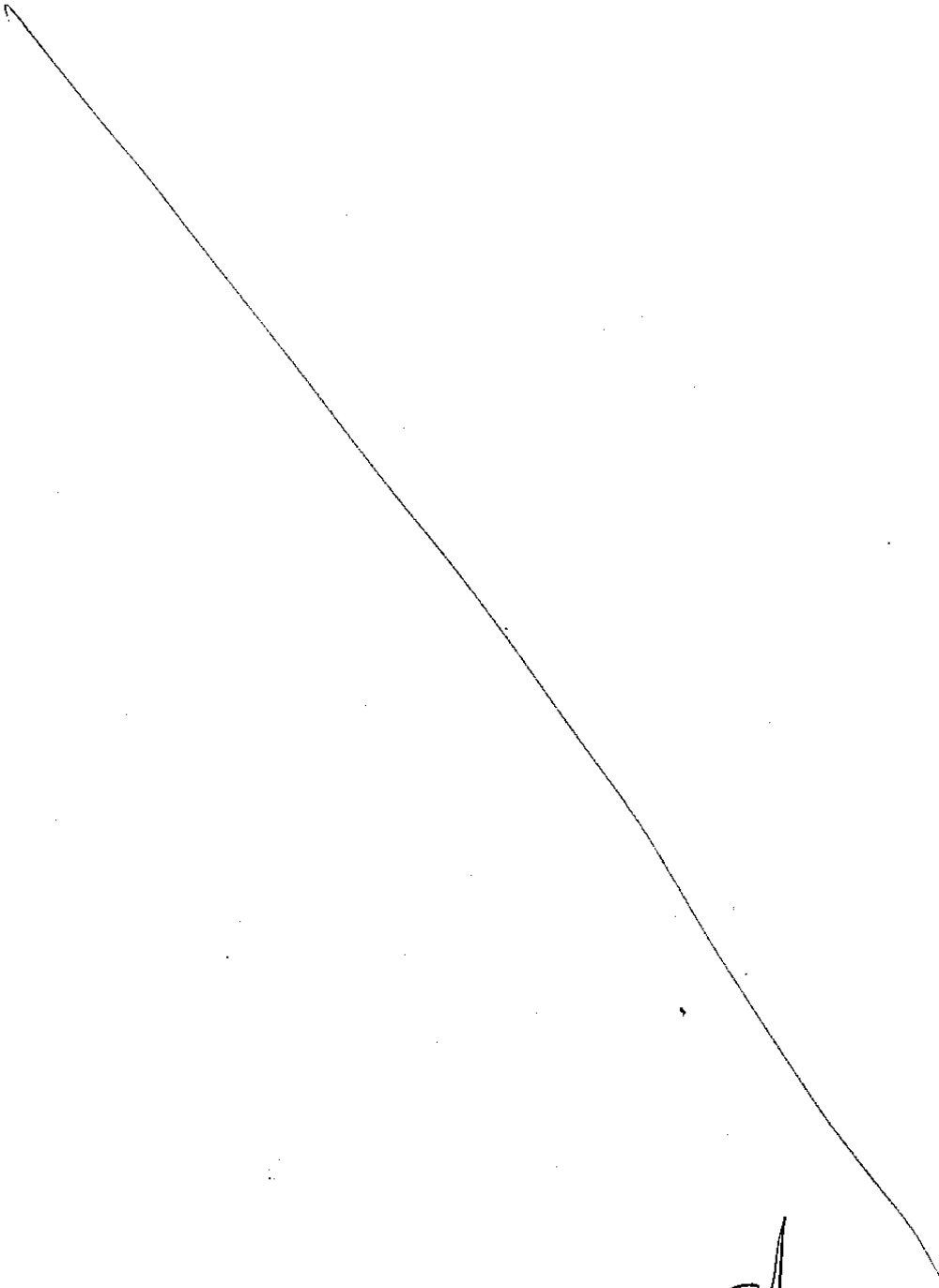


MONTH	Cumulative Percentages of the Contract Price
31	63.33%
32	67.50%
33	67.50%
34	70.42%
35	74.58%
36	77.50%
37	77.50%
38	79.17%
39	82.50%
40	84.17%
41	84.17%
42	85.83%
43	89.17%
44	90.83%
45	90.83%
46	92.50%
47	95.83%
48	95.83%
49	95.83%
50	97.50%
51	98.33%
52	98.33%
53	98.33%
54	98.33%
55	99.17%
56	99.17%
57	99.17%
58	99.17%
59	100.00%

AMS

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Annexure 1
Letter of Award
(Total 11 pages)



PVK

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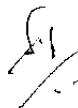
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- 10) DCPL E-mail No. K712/NRM-1/V7/192 dated 28.08.08 on extension of Bid submission date to 08th Sept 2008.
- 11) DCPL E-mail No. K712/NRM-1/V7/193 dated 30.08.08 on contract documents and Notes on taxes.
- 12) Comment/clarification issued vide DCPL-K7V12/NRM-1/V7/197 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.

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

Date: _____

Guarantee No.: _____

Dear Sir,

To:

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

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

1. We hereby undertake and bind ourselves irrevocably and unconditionally to pay to you the sum in aggregate not exceeding US Dollar _____ (Say US _____ Dollars) representing the Advance Payment made by you to the "Party" as aforesaid, without delay or demur, merely on the first written demand signed by your duly Authorised Signatory stating that the amount claimed is due by way of loss or damage caused to or would be caused to you by reason of default or defaults on the part of the "Party" in discharging any of its obligation under the said "Contract". Your written demand shall be accompanied by a certificate issued by the

AVIC

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)

pure

[Handwritten signature]

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.
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.



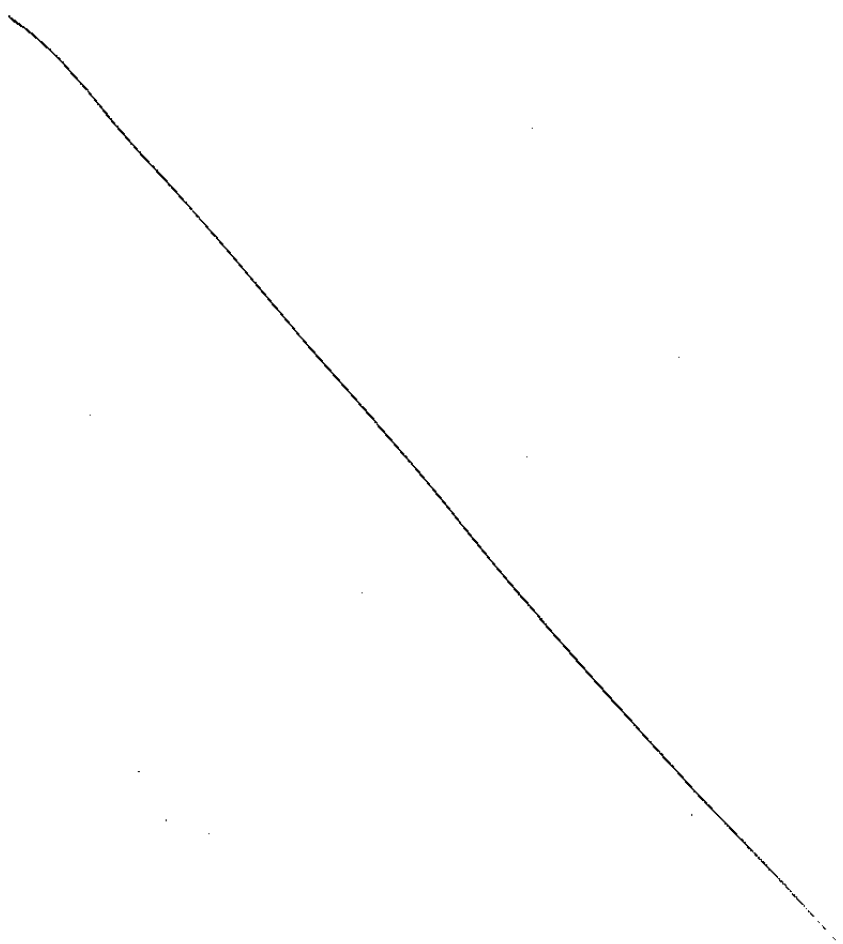
7. This Guarantee shall not be affected by any change in your constitution / management / or of Party / or the Bank by absorption with any other body, corporation or otherwise and this Guarantee will be available for enforcement by such body or corporation.
- 8 We, _____, _____ Branch, also undertake not to revoke this guarantee during its currency and until the discharge Certificate is issued by you in writing through your Bank.

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

(AUTHORISED SIGNATORY OF BANK)



pvll



DATED THE 16th DAY OF MAY 2009

**FIRST AMENDMENT TO THE CONSTRUCTION
CONTRACT**

AMONG

WARDHA POWER COMPANY LIMITED

AND

**SEPCO ELECTRIC POWER CONSTRUCTION CORPORATION
(SEPCO)**



ఆంధ్రప్రదేశ్ ఆంధ్ర ప్రదేశ్ ANDHRA PRADESH

S.No. 1509 Date 15/05/2009 Value 100/-

Purchaser K. Nagaraja Mani

Signature K. Nagaraja Mani

For Whom Masaba Power Company Ltd

R 466044

K. NAGARAJA MANI

S.L. No 46/9C, R.No.02/2008

Shop No 50/A, Kushal Towers
Khairatabad, Hyderabad.

This FIRST AMENDMENT AGREEMENT ("Amendment Agreement") is made as of this 16th day of May, 2009 by and amongst:

1. **Wardha Power Company Limited (formerly Wardha Power company private 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 "WPCPL" or "Owner", which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its successors in title and permitted assigns);

And

2. **SEPCO ELECTRIC POWER CONSTRUCTION CORPORATION (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 "SEPCO" or "Contractor", which expression shall unless repugnant to the context otherwise, include its successors and permitted assigns);

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

WHEREAS:

- (A) The Parties have, on April 1, 2009, executed Construction contract ("CC"), for recording their mutual agreement and understanding in relation to the terms and conditions under which the contractor shall undertake construction works as civil, architectural, structural works but not limited to project management services and other services for the Owner
- (B) Pursuant to SEPCO's representation to WPCPL that design criteria for certain systems and associated scope of works discussions have been undertaken between the parties Pursuant to such discussions in this regard, the Parties have agreed that while the basic contract would remain, as it is, in toto, as executed on April 1, 2009, two modifications with respect to contract price and associated reflection in the associated ABG submission could be, as set out in these presents.
- (C) Accordingly, in order to reflect this understanding between the Parties, the following two amendments to the CC are necessary to be carried out.
- (D) In pursuance of the above, the Parties have agreed to amend the CC as more particularly set out hereunder.

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

1. Amendments

The Parties hereby agree that the following amendments to the CC shall be effective immediately on and from the date of execution of this Amendment Agreement:

1.1 Decrease in contract price to the extent of INR 260,300,000 (Indian Rupees two Hundred and Sixty million three hundred thousand only). Hence, the existing clause 8.1.1 is hereby deleted and substituted with the following:

8.1.1 The Owner agrees to pay to the Contractor in the manner set forth in the Contract and the Contractor shall accept as full and complete compensation for Scope of Works under the Contract, the lump-sum, (the "Contract Price") INR (Indian Rupees) 28,544,700,000/- (say Indian Rupees twenty eight billion five hundred forty four million and seven hundred thousand only) inclusive of all applicable taxes and duties as on Feb 21, 2009 except entry tax, octroi, duties.

2. Miscellaneous

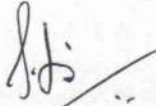
2.1 Save and to the extent amended by Clause 1 of this Amendment Agreement, the CC shall continue to remain in full force and effect in accordance with its terms.

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

[Rest of the page has been intentionally left blank]

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

For WARDHA POWER COMPANY
LIMITED



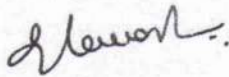
Mr. S. Kishore, Director
duly authorized representative for and On
behalf of WARDHA POWER
COMPANY LIMITED

For SEPCO ELECTRIC POWER
CONSTRUCTION CORPORATION



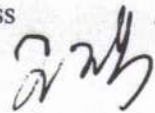
Mr. Wang Chengcai, Deputy project
Manager and duly authorized
representative for and On behalf of
SEPCO ELECTRIC POWER
CONSTRUCTION CORPORATION

Witness



Mr. B.N. Prakash

Witness



Ms. Wang Lin

DATED THE 19th DAY OF JANUARY 2010

**SECOND AMENDMENT TO THE CONSTRUCTION
CONTRACT**

AMONG

WARDHA POWER COMPANY LIMITED

AND

**SEPCO ELECTRIC POWER CONSTRUCTION CORPORATION
(SEPCO)**



ఆంధ్రప్రదేశ్ ఆంధ్ర ప్రదేశ్ ANDHRA PRADESH

Sl. No: 2057 Date: 19/01/10 Rs: 100/-
Sold To: J. Krishna s/o J. Ramachandra R/O Hyd.
For Whom: WARDHA POWER COMPANY LIMITED, Hyd

AE 084252
K. RAMADEVI,
Stamp Vendor, Ph No: 040-23233509
Licence No: 2/98, RL No: 93/2010.
H. No: 6-1-543, Near Fly Gate,
Khairatabad, Hyderabad-500 004.

This SECOND AMENDMENT AGREEMENT ("Amendment Agreement") is made as of this 19th day of January, 2010 by and amongst:

1. **Wardha Power Company Limited (formerly Wardha Power company private 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 "WPCPL" or "Owner", which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its successors in title and permitted assigns);

And

2. **SEPCO ELECTRIC POWER CONSTRUCTION CORPORATION (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 "SEPCO" or "Contractor", which expression shall unless repugnant to the context otherwise, include its successors and permitted assigns);

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

WHEREAS:

- (A) The Parties have, executed Construction Contract ("CC") on April 1, 2009 and first amendment to Construction Contract on May 16, 2009,, for recording their mutual agreement and understanding in relation to the terms and conditions under which the contractor shall undertake construction works as civil, architectural, structural works but not limited to project management services and other services for the Owner
- (B) Pursuant to SEPCO's representation to WPCPL that design criteria for certain systems and associated scope of works discussions have been undertaken between the parties Pursuant to such discussions in this regard, the Parties have agreed that while the basic contract would remain, as it is, in toto, as executed on April 1, 2009, two modifications with respect to contract price and associated reflection in the associated ABG submission could be, as set out in these presents.
- (C) Accordingly, in order to reflect this understanding between the Parties, the following two amendments to the CC are necessary to be carried out and would substitute Article 1 of the first amendment in entirety
- (D) In pursuance of the above, the Parties have agreed to amend the CC as more particularly set out hereunder.

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

1. Amendments

The Parties hereby agree that the following amendments to the CC shall be effective immediately on and from the date of execution of this Amendment Agreement. The first amendment shall be substituted with this Amendment Agreement ("Second Amendment")

- 1.1 Decrease in contract price mentioned in the CC dated April 1, 2009 to the extent of INR 963,110,000 (Indian Rupees nine hundred and Sixty three million one hundred and ten thousand only). Hence, the existing clause 8.1.1 is hereby deleted and substituted with the following:

8.1.1 The Owner agrees to pay to the Contractor in the manner set forth in the Contract and the Contractor shall accept as full and complete compensation for Scope of Works under the Contract, the lump-sum, (the "Contract Price") INR (Indian Rupees) 27,841,890,000/- (say Indian Rupees twenty seven billion eight hundred and forty one million eight hundred and ninety thousand only) inclusive of all applicable taxes and duties as on Feb 21, 2009 except entry tax, octroi, duties.

- 1.2 the existing clause 8.6.1 is hereby deleted and substituted with the following:

8.6.1 The Owner shall make progressive payment as and when they are due as per the agreed payment schedule. Subject to any

deductions/adjustments from the Contract Price as per the Contract, the Contractor shall be entitled to receive the Contract Price from the Owner in the following manner.

The payment for civil and structural Works shall be released as follows.

8.6.1.1(a) Payment of INR 2,283,576,000 against submission of ABG of equal amount at the end of third month from Zero Date.

(b) Payment of INR 570,894,000 against submission of ABG of equal amount at the end of sixth month from Zero Date.

8.6.1.2 10% of the Contract Price less 70,281,000 on completion of all ABCD row main column foundations (prorated for each Unit)

1.3 the existing clause 8.7.5 is hereby deleted and substituted with the following:

8.7.5 The ABGs shall be furnished after the third month from the Zero Date for INR 2,283,576,000, for INR 570,894,000 at the end of sixth month from the Zero Date.

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.

2. Miscellaneous

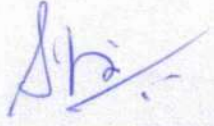
2.1 Save and to the extent amended by Clause 1 of this Amendment Agreement, the CC shall continue to remain in full force and effect in accordance with its terms.

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

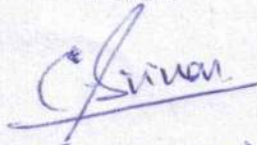
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IN WITNESS HEREOF THE PARTIES HAVE EXECUTED THIS
AMENDMENT AGREEMENT ON THE DAY AND YEAR FIRST
HEREINABOVE WRITTEN

For WARDHA POWER COMPANY LIMITED 	For SEPCO ELECTRIC POWER CONSTRUCTION CORPORATION
S. Kishore, Director duly authorized representative for and On behalf of WARDHA POWER COMPANY LIMITED	Mr. Wang Chengcai, Deputy project Manager and duly authorized representative for and On behalf of SEPCO ELECTRIC POWER CONSTRUCTION CORPORATION

Witness



(C-SRINIVAS)

Shri Late Sri C. Bapiraju.

8-2-293/82/A/431/A

Road No. 22,

Jubilee Hills.

Hyderabad-500 033

Witness

DATED THE 9TH DAY OF JUNE, 2011

**THIRD AMENDMENT TO THE
CONSTRUCTION CONTRACT**

Between

KSK MAHANADI POWER COMPANY LIMITED

And

SEPCO ELECTRIC POWER CONSTRUCTION CORPORATION



ఆంధ్రప్రదేశ్ ఆంధ్ర ప్రదేశ్ ANDHRA PRADESH

Sl.No. 16,691 Date: 09/06/2011

SOLD TO: R. Rama Krishna S/o R. Bhima Rao,
R/o SRT - 775, Sanathnagar, Hyd.

FOR WHOM: M/s K S K Mahanadi Power Company Ltd.,
Reg.No. U40300AP2009PLC064062, Ph.No. 040-23559922

[Signature]

AH 705092

V. SRIKANTH

LICENCED STAMP VENDOR
LIC. No. 15-10-018/2000, REN. No. 15-10-089/2009
PLOT No. 49, SURVEY No. 10,
BESIDE SWATHI SCHOOL, MADHAPUR,
SERILINGAMPALLY, R.R. DIST.
PHONE No: 9493014949

This **THIRD AMENDMENT TO THE CONSTRUCTION CONTRACT** ("Amendment Agreement") is made as of this 9th day of June, 2011 by and between :

1. **KSK MAHANADI POWER COMPANY LIMITED**, a company incorporated under the Indian Companies Act, 1956 having its registered office at 8-2-293/82/A/431/A, Road No. 22, Jubilee Hills, Hyderabad - 500 033 (hereinafter referred to as "KMPCL" or "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.150, Jinger 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".

[Signature]

[Signature]

WHEREAS:

- (A) SEPCO and Wardha Power Company Limited (WPCL) had executed a Construction Contract **bearing number SEPCO,CHINA/SK/1160201/256** ("CC") on April 1, 2009, first amendment to the Construction Contract on 16th May, 2009 ("**First Amendment**") and Second Amendment to the Construction Contract on 19th January, 2010 ("**Second Amendment**") for providing such works for the latter's 6x600 MW coal-based power plant being established in Nariyara village, Chhattisgarh State, ("Project");
- (B) Thereafter, pursuant to a Scheme of Arrangement, approved by the Hon'ble High Court of Andhra Pradesh, India, in Company Petitions No. 4 and No.5 of 2010 vide orders dated 26.2.2010 made effective on 31.3.2010, the Project including, inter alia, all assets, liabilities and all rights, entitlements, registrations and benefits of all contracts and agreements of every kind and description, has been demerged from WPCL on a going concern basis and transferred to and vested in KMPCL and accordingly the CC vested in KMPCL vide Tripartite Amendment to Construction Contract dated 14.5.2010 (hereafter referred '**Tripartite Amendment Agreement**') and being honoured and implemented by both Parties;
- (C) Subsequent to the Tripartite Amendment Agreement, SEPCO has requested KMPCL to favourably consider the various developments until date in the project execution and certain change of Scope of Works under the contracts resulting in request for additional consideration to be paid for SEPCO to complete the Scope of works contemplated under this agreement in entirety.
- (D) Further SEPCO has requested that given that certain works originally envisaged to be executed by SEPCO under CC are now planned to be executed under a separate contract, an amendment is warranted to adjust the contract price.
- (E) KMPCL has agreed, that as a goodwill gesture and to account for all these change requests with respect to the contract by SEPCO until the date of execution of this amendment, to amend the Scope of Work and the Contract Price as hereinafter set out,;
- (F) Accordingly, in order to reflect this understanding between the Parties, and the adequacy of consideration being confirmed irrevocably by SEPCO, the Parties have agreed to amend the CC, as amended by the First Amendment, Second Amendment and Tripartite Amendment Agreements, 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 CC, as amended by the First Amendment, Second Amendment and Tripartite Amendment Agreements, shall be effective immediately on and from the date of execution of this Amendment Agreement, the First Amendment, Second Amendment shall be substituted with this Amendment Agreement("Third Amendment") :



1.1 Article 2.1 of the CC, as amended by the First Amendment, Second Amendment and Tripartite Amendment Agreements, shall stand amended as under:

2.1 The Contractor's obligations under the Contract shall be to undertake the Works and complete the same in the manner and within the time stipulated under the Contract. The Contractor shall sequence the Works in accordance with Project Schedule approved by the Owner to meet the requirements of erection at Site and to facilitate achieving completion of successful Reliability Run Test / Taking over of the Units by the respective Guaranteed Completion Date and satisfactory completion of Performance Guaranteed Value Tests thereon and the Owner's Final Taking Over of the Units.

The following items are excluded from the Scope of Work :

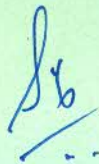
Landscaping including green belt
Breaking / Cleaning of any existing concrete / paving
Demolishing / removal of debris for any existing structure / foundation
Grading / Leveling of green belt area, rock blasting in certain green belt areas as specified by the Owner.

1.2 Article 8.1.1 of the CC, as amended by the First Amendment, Second Amendment and Tripartite Amendment Agreements, shall stand amended as under:

8.1.1 The Owner agrees to pay to the Contractor in the manner set forth in the Contract and the Contractor shall accept as full and complete compensation for Scope of Works under the Contract, the lump-sum, (the "Contract Price") INR (Indian Rupees) 26,364,915,275/- (Say Indian Rupees Twenty Six Billion Three Hundred Sixty Four Million Nine Hundred Fifteen Thousand Two Hundred and Seventy Five only) inclusive of all applicable taxes and duties as on Feb 21, 2009 except entry tax / octroi duties.

1.3 Article 8.6.1 of the CC, as amended by the First Amendment, Second Amendment and Tripartite Amendment Agreements, shall stand amended as under:

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



The payment for civil and structural Works shall be released as follows:

1	Advance payment of the Contract Price against submission of ABG of equal amount at the end of third month from Zero Date.	2,283,576,000
2	Advance payment of the Contract Price against submission of ABG of equal amount at the end of sixth month from Zero Date	570,894,000
3	Contract Price on completion of all ABCD row main column foundations (prorated for each Unit)	2,713,908,000
4	Contract Price on completion of Chimney including inside flues(prorated for each chimney)	
	1) Contract Price on completion of Chimney upto ground level	896,047,250
	2) Contract Price on completion of Chimney shell upto +75 m level	629,380,584
	3) Contract Price on completion of Chimney shell upto +150 m level	629,380,584
4	4) Contract Price on completion of Chimney including inside flues	629,380,584
5	Contract Price on completion of Turbine pedestals (prorated for each Unit)	2,515,648,141
6	Contract Price on completion of all UAT & GT and Station transformer foundations (prorated for each Unit)	2,515,648,141
7	Contract Price on completion of side concrete wall of Track hoppers (prorated for each track hopper)	1,257,824,070
8	Contract Price on completion of Track hoppers (prorated for each track hopper)	1,257,824,070
9	Contract Price on completion of Crusher house buildings (prorated for each crusher house building)	1,257,824,070
10	The Contract Price on completion of Boiler foundation (prorated for each Unit)	2,784,189,000
11	Contract Price on completion of operating floor slab of AB bay (prorated for each Unit)	1,257,824,070
12	Contract Price on completion of control rooms (prorated for each room)	1,257,824,070
13	Contract Price against completion of cooling towers (prorated for each Unit)	2,515,648,141
14	Contract Price against successful completion of PG test (prorated for each Unit)	1,392,094,500
	Total	26,364,915,275

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

S. G.

de

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 Unit wise on completion of the respective 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


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 completion of the respective 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.

2. Miscellaneous

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

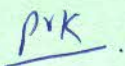
2.2 The Parties agree that all of the provisions of the CC, as amended by the Tripartite Amendment Agreements, shall apply *mutatis mutandis* to this Amendment Agreement, as if set out specifically herein and incorporated into this Amendment Agreement:

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

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

Witness

1. PRANAV KOMERWAR

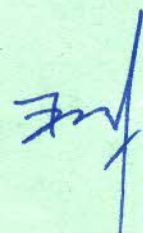


2. PASALA SRINIVASARAO

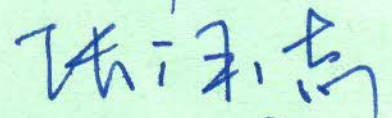


Witness

1.

 Wang chongcar

2.


(Zhang Dezhong)

DATED THE 30th DAY OF DECEMBER 2011

**FOURTH AMENDMENT TO THE
CONSTRUCTION CONTRACT**

Between

KSK MAHANADI POWER COMPANY LIMITED

And

**SEPCO ELECTRIC POWER CONSTRUCTION
CORPORATION**



ఆంధ్రప్రదేశ్ ఆంధ్ర ప్రదేశ్ ANDHRA PRADESH

Sl.No. 351536 Date: 01-12-2011
SOLD TO: B. Praveen S/o Late. B. Ashok R/o Hyd
FOR WHOM: M/s K S K Mahanadi Power Company Limited. Hyd.

V. Srikanth AS 476996
V. SRIKANTH
LICENCED STAMP VENDOR
LIC. No. 15-10-018/2000, REN. No. 15-10-009/2009
PLOT No. 49, SURVEY No. 10,
BESIDE SWATHI SCHOOL, MADHAPUR,
SERILINGAMPALLY, R.R. DIST.
PHONE No: 9493014949

This **FOURTH AMENDMENT TO THE CONSTRUCTION CONTRACT** ("Amendment Agreement") is made as of this 30th day of December, 2011 by and between:

1. **KSK MAHANADI POWER COMPANY LIMITED**, a company incorporated under the Indian Companies Act, 1956 having its registered office at 8-2-293/82/A/431/A, Road No. 22, Jubilee Hills, Hyderabad - 500 033 (hereinafter referred to as "KMPCL" or "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

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registered office at No.150, Jinger 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 Construction Contract ("CC") on April 1, 2009, first amendment to the Construction Contract on 16th May, 2009 ("**First Amendment**") and Second Amendment to the Construction Contract on 19th January, 2010 ("**Second Amendment**") and Third Amendment to the Construction Contract on 9th June, 2011 ("**Third Amendment**") for providing such works for the latter's 6x600 MW coal-based power plant being established in Nariyara village, Chhattisgarh State, ("Project");
- (B) And pursuant to a Scheme of Arrangement, approved by the Hon'ble High Court of Andhra Pradesh, India, in Company Petitions No. 4 and No.5 of 2010 vide orders dated 26.2.2010 made effective on 31.3.2010, the Project including, inter alia, all assets, liabilities and all rights, entitlements, registrations and benefits of all contracts and agreements of every kind and description, has been demerged from WPCL on a going concern basis and transferred to and vested in KMPCL and accordingly the CC vested in KMPCL vide Tripartite Amendment to Construction Contract dated 14.5.2010 (hereafter referred '**Tripartite Amendment Agreement**') and being honoured and implemented by both Parties;
- (C) Parties have subsequently held discussions in relation to change of Scope of Works under the CC, as amended by the First Amendment, Second Amendment, Tripartite Amendment Agreement and Third Amendment, and mutually agreed to amend the Scope of Work and the Contract Price as hereinafter set out, while the basic contract would remain;
- (D) Accordingly, in order to reflect this understanding between the Parties, the Parties have agreed to amend the CC, as amended by the First Amendment, Second Amendment, Tripartite Amendment Agreement and Third Amendment, 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 CC, as amended by the First Amendment, Second Amendment, Tripartite Amendment Agreement and Third Amendment, shall be effective immediately on and from the date of execution of this Amendment Agreement, the First Amendment, Second Amendment, Third Amendment shall be substituted with this Amendment Agreement ("Fourth Amendment") :
 - 1.1 Article 2.1 of the CC, as amended by the First Amendment, Second Amendment, Tripartite Amendment Agreement and Third Amendment, shall stand amended as under:
 - 2.1 The Contractor's obligations under the Contract shall be to undertake the Works and complete the same in the manner and within the time stipulated



under the Contract. The Contractor shall sequence the Works in accordance with Project Schedule approved by the Owner to meet the requirements of erection at Site and to facilitate achieving completion of successful Reliability Run Test / Taking over of the Units by the respective Guaranteed Completion Date and satisfactory completion of Performance Guaranteed Value Tests thereon and the Owner's Final Taking Over of the Units.

The following items are excluded from the Scope of Work:

Landscaping including green belt
 Breaking / Cleaning of any existing concrete / paving
 Demolishing / removal of debris for any existing structure / foundation
 Grading / Leveling of green belt area, rock blasting in certain green belt areas as specified by the Owner.

- 1.2 Article 8.1.1 of the CC, as amended by the First Amendment, Second Amendment, Tripartite Amendment Agreement and Third Amendment, shall stand amended as under:

8.1.1 The Owner agrees to pay to the Contractor in the manner set forth in the Contract and the Contractor shall accept as full and complete compensation for Scope of Works under the Contract, the lump-sum, (the "Contract Price") INR (Indian Rupees) 23,866,035,275/- (Say Indian Rupees Twenty Three Billion Eight Sixty Six Million Thirty Five Thousand Two Hundred and Seventy Five only) inclusive of all applicable taxes and duties as on Feb 21, 2009 except entry tax / octroi duties.

- 1.3 Article 8.6.1 of the CC, as amended by the First Amendment, Second Amendment Tripartite Amendment Agreement and Third Amendment, shall stand amended as under:

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

1	Advance payment of the Contract Price against submission of ABG of equal amount at the end of third month from Zero Date.	2,283,576,000
2	Advance payment of the Contract Price against submission of ABG of equal amount at the end of sixth month from Zero Date	570,894,000
3	Contract Price on completion of all ABCD row main column foundations (prorated for each Unit)	2,713,908,000
4	Contract Price on completion of Chimney including inside flues(prorated for each chimney) 1) Contract Price on completion of Chimney upto ground level 2) Contract Price on completion of Chimney shell upto +75 m level 3) Contract Price on completion of Chimney shell upto +150 m level 4) Contract Price on completion of Chimney including inside flues	896,047,250 511,508,536 511,508,536 511,508,536
5	Contract Price on completion of Turbine pedestals (prorated for each Unit)	2,044,510,955
6	Contract Price on completion of all UAT & GT and Station transformer foundations (prorated for each Unit)	2,515,648,141

7	Contract Price on completion of side concrete wall of Track hoppers (prorated for each track hopper)	1,022,255,477
8	Contract Price on completion of Track hoppers (prorated for each track hopper)	1,257,824,070
9	Contract Price on completion of Crusher house buildings (prorated for each crusher house building)	1,022,255,477
10	The Contract Price on completion of Boiler foundation (prorated for each Unit)	2,784,189,000
11	Contract Price on completion of operating floor slab of AB bay (prorated for each Unit)	1,022,255,477
12	Contract Price on completion of control rooms (prorated for each room)	1,022,255,477
13	Contract Price against completion of cooling towers (prorated for each Unit)	2,044,510,955
14	Contract Price against successful completion of PG test (prorated for each Unit)	1,131,379,388
	Total	23,866,035,275

Owner shall release any advance payment against ABGs within 7 business days from receipt of ABGs by Owner. All the other payment under the Contract will be released on milestone basis against submission of invoices and certification of progress with protocols duly certified by Owner or its representative by telegraphic transfer /any other electronic mode within 21 (twenty-one) days of the payment becoming due, the charges for such remittances to be borne by Owner in India. Where certain earlier ad-hoc advance payments or payments for completed units have been already made against designated milestones, the same shall be adjusted against the balance amounts due as under these amendments and claimed on the balance units on pro rata basis.

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 Unit wise on completion of the respective 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

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 completion of the respective 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.

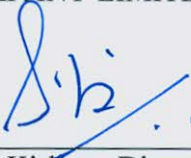
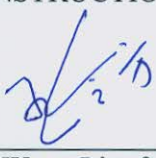
2. Miscellaneous

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




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

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

For KSK MAHANADI POWER COMPANY LIMITED 	For SEPCO ELECTRIC POWER CONSTRUCTION CORPORATION 
Mr.S.Kishore, Director duly authorized representative for and On behalf of KSK MAHANADI POWER COMPANY LIMITED	Mr. Wang Lingfang, President duly authorized representative for and On behalf of SEPCO ELECTRIC POWER CONSTRUCTION CORPORATION

Witness




(SRINIVASA RAO.P)

Witness



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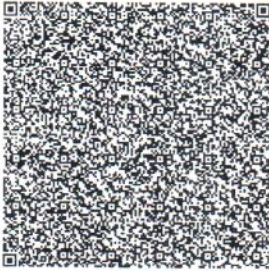
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INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

e-Stamp

Certificate No.	: IN-DL321215023026900
Certificate Issued Date	: 30-Mar-2016 12:45 PM
Account Reference	: IMPACC (IV)/ dl815803/ DELHI/ DL-DLH
Unique Doc. Reference	: SUBIN-DL815803630765103755600
Purchased by	: KSK MAHANADI POWER COMPANY LIMITED
Description of Document	: Article 5 General Agreement
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: KSK MAHANADI POWER COMPANY LIMITED
Second Party	: Not Applicable
Stamp Duty Paid By	: KSK MAHANADI POWER COMPANY LIMITED
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



Please write or type below this line.

This stamp Paper forms an integral part of Fifth Amendment to the construction 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

**FIFTH AMENDMENT TO THE
CONSTRUCTION CONTRACT**

Between

KSK MAHANADI POWER COMPANY LIMITED

And

**SEPCO ELECTRIC POWER CONSTRUCTION
CORPORATION**



This **FIFTH AMENDMENT TO THE CONSTRUCTION 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 Construction Contract ("CC") on April 1, 2009, first amendment to



the Construction Contract on 16th May, 2009 ("**First Amendment**") and Second Amendment to the Construction Contract on 19th January, 2010 ("**Second Amendment**") and Third Amendment to the Construction Contract on 9th June, 2011 ("**Third Amendment**") and Fourth Amendment to the Construction Contract on 30th December, 2011 ("**Fourth Amendment**") for providing such works for the latter's 6x600 MW coal-based power plant being established in Nariyara village, Chhattisgarh State, ("Project");

- (B) And pursuant to a Scheme of Arrangement, approved by the Hon'ble High Court of Andhra Pradesh, India, in Company Petitions No. 4 and No.5 of 2010 vide orders dated 26.2.2010 made effective on 31.3.2010, the Project including, inter alia, all assets, liabilities and all rights, entitlements, registrations and benefits of all contracts and agreements of every kind and description, has been demerged from WPCL on a going concern basis and transferred to and vested in KMPCL and accordingly the CC vested in KMPCL vide Tripartite Amendment to Construction Contract dated 14.5.2010 (hereafter referred '**Tripartite Amendment Agreement**') and being honoured and implemented by both Parties;
- (C) Parties have subsequently held discussions in relation to change of Scope of Works under the CC, as amended by the First Amendment, Second Amendment, Tripartite Amendment Agreement, Third Amendment and Fourth Amendment, and mutually agreed to amend the Scope of Work and the Contract Price as hereinafter set out, while the basic contract would remain;
- (D) Accordingly, in order to reflect this understanding between the Parties, the Parties have agreed to amend the CC, 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 CC shall be effective immediately on and from the date of execution of this Amendment Agreement, the First Amendment, Second Amendment, Third Amendment and Fourth Amendment shall be substituted with respect to clause as modified under this Amendment Agreement("Fifth Amendment") :



1.1 Article 8.1.1 of the CC, as amended by the First Amendment, Second Amendment, Tripartite Amendment Agreement, Third Amendment and Fourth Amendment, shall stand amended as under:

8.1.1 The Owner agrees to pay to the Contractor in the manner set forth in the Contract and the Contractor shall accept as full and complete compensation for Scope of Works under the Contract, the lump-sum, (the "Contract Price") INR (Indian Rupees) 28,805,000,000/- (Say Indian Rupees Twenty Eight Billion Eight Hundred and Five Million only) inclusive of all applicable taxes and duties as on Feb 21, 2009 except entry tax / octroi duties.

1.2 Article 8.6.1 of the CC, as amended by the First Amendment, Second Amendment Tripartite Amendment Agreement and Third Amendment and Fourth Amendment, shall stand amended to the extent of balance payments as provided under Annexure 1.

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

1.3 The existing clause 5.13.2 of CC is hereby deleted and substituted with the following revised dates:

Unit	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.



1.4 The existing clause 22.1.5 of CC is hereby deleted and substituted with the following:

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

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

- For EPC Unit #2 & #5 - USD 8,286,817 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 8,286,817 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.

1.6 The existing clause 8.7.5 is hereby deleted and substituted with the following:

The Owner shall retain Contractor furnished ABGs for an aggregate value of USD 9,823,554. 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 works carried out hereinafter and progress payments received thereto

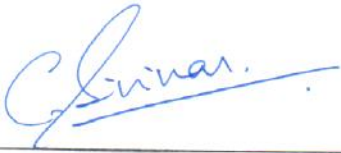



2. Miscellaneous

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

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

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. <u>C. SRINIVAS</u> duly authorized representative for and On behalf of KSK MAHANADI POWER COMPANY LIMITED	Mr. <u>Wu chuannan</u> duly authorized representative for and On behalf of SEPCO ELECTRIC POWER CONSTRUCTION CORPORATION


Witness


Witness

For KSK Mahanadi Power Company Limited

Authorised Signatory





Annexure - 1

	For Commissioning upto 4 Units (INR, Cr.)	For Commissioning last 2 units (INR, Cr.)	Total (INR, Cr.)
Mar-16	133.9		133.9
Apr-16	26.1		26.1
May-16	18		18.0
Jun-16	18		18.0
Jul-16	18		18.0
Aug-16	18		18.0
Sep-16	18		18.0
Oct-16	10	8.00	18.0
Nov-16	0	18.00	18.0
Dec-16	0	18.00	18.0
Jan-17	0	18.00	18.0
Feb-17	0	18.00	18.0
Mar-17	0	18.00	18.0
Apr-17	0	18.00	18.0
May-17	0	18.00	18.0
Jun-17	0	18.00	18.0
Jul-17	0	18.00	18.0
Aug-17	0	18.00	18.0
Sep-17	0	18.00	18.0
Oct-17	0	18.00	18.0
Nov-17	0	18.00	18.0
Dec-17	0	18.00	18.0
	260.0	260.0	520

For KSK Mahanadi Power Company Limited

[Signature]
Authorised Signatory

[Signature]

