



**ONGC TRIPURA POWER COMPANY LIMITED**

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**CONTRACT  
FOR  
SUPPLY AND IMPLEMENTATION OF ONLINE MONITORING SYSTEM  
FOR BUS REACTOR**

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**2 X 363.3 MW  
GAS BASED COMBINED CYCLE POWER PLANT,  
PALATANA, UDAIPUR, TRIPURA**

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Plant: 2X363.3 MW GAS BASED COMBINED CYCLE POWER PLANT

**CONTRACT FOR SUPPLY AND IMPLEMENTATION OF ONLINE  
MONITORING SYSTEM FOR BUS REACTOR  
AT PALATANA POWER PLANT**

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**CONTRACT FOR SUPPLY AND IMPLEMENTATION OF COMPLETE ONLINE  
MONITORING SYSTEM FOR BUS REACTOR  
AT PALATANA POWER PLANT**

This contract for supply and implementing online monitoring system for bus reactor at Palatana Power Plant ("**Contract**") is signed on [•] day of [•], by and between:

**ONGC Tripura Power Company Limited**, a public limited company incorporated under the Indian Companies Act, 1956 and having its registered office at ONGC Tripura Power Company Limited, Udaipur-Kakraban Road, Palatana P.O., District Gomati, Tripura- 799105 (hereinafter referred as "**OTPC**" or "**Owner**" which expression shall include its successors and permitted assigns);

AND

[•], a company incorporated under the laws of [•], having its registered office at [•] (hereinafter referred to as the "**Contractor**" which expression shall include its successors and permitted assigns).

**[Note: Details of the successful bidder to be inserted.]**

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

WHEREAS:

1. The Owner is implementing Online Monitoring System for Bus Reactor along with all associated systems at 2 x 363.3 MW combined cycle power plant at Palatana, which is about 60 (sixty) km from capital city Agartala in the State of Tripura (the "**Project**").
2. The Owner, based on a transparent bidding process, has selected the Contractor as the successful bidder for implementing Online Monitoring System for Bus Reactor and associated systems.
3. The Contractor represents that it has the necessary specialized knowledge, expertise and infrastructure for implementing the system and to perform its obligations under this Contract.
4. The Owner desires to engage the Contractor to set up and implement the Online Monitoring System for Bus Reactor and associated systems in accordance with the terms and conditions specified in this Contract.
5. The Contractor is willing and has agreed to provide and implement the required Online Monitoring System for Bus Reactor along with all associated systems for the Contract Price in accordance with the terms and conditions specified in this Contract.
6. The Owner and the Contractor desire to enter into this Contract pursuant to which the Contractor shall supply, install and commission the system and the Owner shall engage the contractor to supply, install and commission the system, pursuant to the terms and conditions herein set forth.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS HEREIN SET FORTH, THE PARTIES AGREE AS FOLLOWS:

1.0           **DEFINITION AND INTERPRETATION**

When used in the Contract, the following terms shall have the meanings specified in this Clause 1.0:

1.1           **"Abandonment"** means the substantial cessation of the performance of the obligations under this Contract for a continuous period of 1 (one) day i.e. 24 (twenty-four) continuous hours and which cessation is not excused under this Contract.

1.2           **"Acceptable Bank"** means a bank listed in Annexure 5 (List of Acceptable Banks).

1.3           **"Affiliate"** means, with respect to a Person, any entity which directly or indirectly:

(i) owns or Controls such Person;

(ii) is owned or Controlled by such Person; or

(iii) is under common ownership or Control with such Person.

1.4           **"Applicable Law"** means the substantive or procedural laws of India, whether now or hereafter in effect, including all legislations, acts, rules, regulations, notifications, laws, statutes, awards, orders, decrees, judgments, injunctions, ordinances, codes, requirements, Permits, licenses, Directives, approvals, instructions, standards of any Government Agency, having the force of law.

1.5           **"Arbitral Award"** shall have the meaning ascribed to it in Clause 34.4.4.

1.6           **"Arbitration Act"** shall have the meaning ascribed to it in Clause 34.4.1.

1.7           **"Bankruptcy Event"** means commencement, whether voluntarily or involuntarily, of any proceedings relating to the rescheduling of obligations, bankruptcy, re-organization, insolvency or judicial liquidation or any other similar proceedings.

1.8           **"Change in Law Request Date"** shall have the meaning ascribed to it in Clause 35.2.

1.9           **"Claim"** shall have the meaning ascribed to it in Clause 30.1.

1.10          **"Coercive Practice"** means impairing or harming, or threatening to impair or harm, directly or indirectly, any Person or property to influence any Person's participation or action in relation to negotiation or performance of this Contract.

1.11          **"Commissioning Spares"** shall have the meaning ascribed to it in Clause 5.2.1.

1.12          **"Completion of Supply of Materials"** shall have the meaning ascribed to it in Clause 17.1.

1.13          **"Confidential Information"** shall have the meaning ascribed to it in Clause 38.1.

- 1.14 **"Consumables"** shall have the meaning ascribed to it in Clause 5.4.1.
- 1.15 **"Contract Price"** shall have the meaning ascribed to it in Clause 7.1.1.
- 1.16 **"Control"** means, with respect to any Person, (i) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person whether through the ownership of voting securities, by agreement or otherwise or the power to elect more than one-half of the directors of such Person; or (ii) the possession, directly or indirectly, of a voting interest of more than 50% (fifty percent); or (iii) the power to veto decisions of such Person, whether through ownership of voting securities, by contract, or otherwise.
- 1.17 **"Corrupt Practice"** means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any Person connected with the negotiation, signing or performance of this Contract (for avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of the Owner who is or has been associated or dealt in any manner, directly or indirectly with the negotiation, signing or performance of this Contract or has dealt with matters concerning the Contract or arising there from, before or after the execution thereof, at any time prior to the expiry of 1 (one) year from the Effective Date such official resigns or retires from or otherwise ceases to be in the service of the Owner, shall be deemed to constitute influencing the actions of a Person connected with the negotiation, signing or performance of this Contract); or (ii) engaging in any manner whatsoever, whether during the negotiation of the Contract or after the execution of the Contract, as the case may be, any Person in respect of any matter relating to the Project or the Contract, who at any time has been or is a legal, financial or technical adviser of the Owner in relation to any matter concerning the Project.
- 1.18 **"Cost of Completion"** shall have the meaning ascribed to it in Clause 32.6.1.
- 1.19 **"Directive"** means any directive issued by a Government Agency.
- 1.20 **"Direct Tax"** shall have the meaning ascribed to it in Clause 9.1.
- 1.21 **"Effective Date"** means the date of Letter of Award.
- 1.22 **"Facility"** or **"Facilities"** means the Equipment and Materials to be supplied and installed, along with all associated Services including design, fabrication, manufacture, supply, transportation, painting, erection, testing and commissioning to be carried out by the Contractor under the Contract.
- 1.23 **"Final Acceptance of Facility"** shall have the meaning ascribed to it in Clause 42.2.
- 1.24 **"Force Majeure"** shall have meaning ascribed to it in Clause 25.1.
- 1.25 **"Fraudulent Practice"** means any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation.

- 1.26 **"Good Engineering & Manufacturing Practices"** means the exercise of that degree of skill, diligence, prudence, foresight, and engineering & manufacturing practice taking into account Indian conditions, generally followed internationally by highly qualified, prudent professionals in similar industry including in the procurement, manufacturing, inspection, testing, packing etc in relation thereto; which in any such case should have been expected to accomplish the desired result at the lowest cost, consistent with licensing and regulatory considerations, environmental considerations, reliability, safety and expedition. Good Engineering & Manufacturing Practices is not intended to be limited to the optimum practice, method or act, to the exclusion of all others, but rather to be a spectrum of possible practices, methods or acts employed by owners and contractors.
- 1.27 **"Government Agency"** means any local, State Government in India or the Government of India or any national authority, inspectorate, ministry, 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 commission under the direct or indirect control of such local or State Government or the Government of India or any political subdivision thereof or any court, tribunal, judicial body, quasi judicial authority or statutory Person (whether autonomous or not) of the Republic of India which has jurisdiction over the Parties to, or the subject matter of, this Contract or any of the Project Agreements, and this definition includes, for the avoidance of doubt, any authority that may affect the Owner's or the Contractor's ability to perform any or all of its or their obligations under this Contract or any authority that gives consents or permits (including Permits) within India.
- 1.28 **"Governmental Authorizations"** means all approvals, authorizations, permits, licenses, consents, clearances, etc., received or required to be received from Government Agency for the Plant.
- 1.29 **"Hazardous Material"** means (i) "hazardous materials", "hazardous substances", "toxic substances" or "contaminants" as those terms are defined under any Environmental Law, or any other Applicable Laws, (ii) petroleum and petroleum products, including crude oil and any fractions thereof, (iii) any other hazardous, radioactive, toxic or noxious substance, material, pollutant or solid, liquid or gaseous waste, and (iv) any substance that, whether by its nature or its use, is subject to regulation under any Applicable Law or with respect to which any applicable Environmental Law or any Government Agency requires environmental investigation, monitoring or remediation.
- 1.30 **"Indirect Taxes"** shall have the meaning ascribed to it in Clause 9.2.
- 1.31 **"INR" or "Rs" or "Indian Rupees"** means the legal currency of the Republic of India.
- 1.32 **"Latent Defects"** means defects inherently lying within the material or arising out of design deficiency which do not manifest themselves during Warranty Period.
- 1.33 **"Lenders"** means any and all lenders and institutions providing credit, including interim and long-term financing (including any leveraged lease or any other refinancing thereof) in respect of the development, design, engineering,

construction, and operation of the Plant, and their respective successors and assigns, including any trustee, agent or designee acting on their behalf.

- 1.34 **"Letter of Award" or "LOA"** means the letter dated [●] issued by the Owner in favour of the Contractor.
- 1.35 **"Loading Point"** means the factory/warehouse or the point of delivery of the Materials by the Contractor or by any of its Subcontractors or its suppliers.
- 1.36 **"Losses"** means any and all liabilities, losses, damages, claims, costs, obligations, charges and expenses (including reasonable attorneys' fees) of whatsoever kind or nature and it does not include indirect and consequential losses.
- 1.37 **"Maintenance Tools & Tackles"** shall have the meaning ascribed to it in Clause 5.5.1.
- 1.38 **"Mandatory Spares"** shall have the meaning ascribed to it in Clause 5.3.1.
- 1.39 **"Materials"** shall have the meaning ascribed to it in Clause 4.2.
- 1.40 **"Obstructive Practice"** means and includes (i) deliberately destroying, falsifying, altering, or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede an Owner's investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or (ii) acts intended to materially impede the exercise of the Owner's inspection and verification rights provided for under this Contract.
- 1.41 **"Operating Year"** means the consecutive 12 (twelve) month period starting from 00:00 hrs of the date of the Final Acceptance of Facility.
- 1.42 **"Owner's Event of Default"** shall have the meaning ascribed to it in Clause 32.2.1.
- 1.43 **"Owner Indemnified Parties"** shall have the meaning ascribed to it in Clause 18.1.1.
- 1.44 **"Performance Bank Guarantee"** shall have the meaning ascribed to it in Clause 12.1.
- 1.45 **"Person"** means, unless specified otherwise, a natural person, corporation, society, partnership, joint venture, unincorporated association or other entity.
- 1.46 **"Plant"** means 2 x 363.3 MW gas based combined cycle power plant set-up at Palatana, Tripura including associated Facilities.
- 1.47 **"Project"** shall have the meaning ascribed to it in Recital 1.
- 1.48 **"Quality Assurance Program"** means the quality assurance program provided by the Contractor and approved by the Owner in accordance with the provisions of Clause 16.0.



- 1.49 **"Services"** shall have the meaning ascribed to it in Clause 4.0
- 1.50 **"Site"** means the land/and or other places on, into or through which the work is to be executed under the Contract or any adjacent land, path or street through which work is to be executed under the Contract or any adjacent land, path or street which may be allotted or used for the purpose of carrying out the Contract.
- 1.51 **"Subcontract"** means any contract entered into by the Contractor or its subcontractor with a third party for carrying out any of the responsibilities or obligations of the Contractor under this Contract.
- 1.52 **"Subcontractor"** means any Person carrying out any of the responsibilities or obligations of the Contractor under this Contract under or pursuant to a Subcontract.
- 1.53 **"Subsidiary"** shall have the meaning ascribed to it in Section 4 of the Companies Act, 1956.
- 1.54 **"Contractor's Event of Default"** shall have the meaning ascribed to it in Clause 32.1.1.
- 1.55 **"Contractor Indemnified Parties"** shall have the meaning ascribed to it in Clause 18.2.1.
- 1.56 **"Taking-Over of Material"** shall have the meaning ascribed to it in Clause 17.2.
- 1.57 **"Technical Specifications"** means the specifications for Implementing Online Monitoring System for Bus Reactor attached as Annexure-2.
- 1.58 **"Term"** shall have the meaning ascribed to it in Clause 3.1.1.
- 1.59 **"Termination Date"** means the date upon which termination pursuant to Clause 32.5.1 takes effect.
- 1.60 **"Time for Completion"** shall have the meaning ascribed to it in Clause 10.2.
- 1.61 **"Warranty"** shall have the meaning ascribed to it in Clause 27.1.
- 1.62 **"Warranty Period"** shall have the meaning ascribed to it in Clause 27.2.
- 1.63 **"Willful Misconduct"** means, with respect to any Party or Person an intentional or reckless, disregard by such Party or Person, of Applicable Law, any common duty of care, any provision of this Contract, any other document prepared pursuant to this Contract or of Prudent Utility Practice, and relating to the performance by such Party of its obligations there under, but shall not include any error of judgment or mistake made in good faith.
- 1.64 **Rules of Interpretation**

In the interpretation of this Contract, unless the context otherwise requires:

- 1.64.1 the singular includes the plural and vice versa and in particular (but without limiting the generality of the foregoing) any word or expression defined in the singular has the corresponding meaning used in the plural and vice versa;
- 1.64.2 a reference to any gender includes the other genders;
- 1.64.3 a reference to a Clause, Article, Annexure or Recital is a reference to a Clause, Article, Annexure or Recital in this Contract;
- 1.64.4 the Annexures to this Contract form part of this Contract and will be of full force and effect as though they were expressly set out in the body of this Contract. The provisions of this Contract and the Annexures hereto shall be interpreted harmoniously and only if the provisions of this Contract cannot be interpreted harmoniously with the Annexures or vice-versa on account of inconsistencies or ambiguities then the provisions of this Contract shall prevail over the Annexures;
- 1.64.5 in case of any discrepancy between words and figures, the words shall prevail over the figures;
- 1.64.6 a reference to a statute shall be construed as including all statutory provisions consolidating, amending, modifying, supplementing or replacing the statute referred to;
- 1.64.7 a reference to "writing" includes printing, typing, lithography and other means of reproducing words in a visible form;
- 1.64.8 any date of any period set forth in this Contract shall be such date or period as may be adjusted pursuant to the terms and conditions of this Contract;
- 1.64.9 titles or captions of Clauses or Articles contained in this Contract are inserted as a matter of convenience only, and in no way define, limit, extend, describe or otherwise affect the interpretation, meaning or intent of this Contract or the interpretation, meaning or intent of any term or provision contained herein;
- 1.64.10 the rule of construction, if any, that a contract should be interpreted against the Party responsible for the drafting and preparation thereof, shall not apply; and
- 1.64.11 reference to any agreement, deed, document, instrument, or the like shall mean a reference to the same as may have been duly amended, modified or replaced. For the avoidance of doubt, it is clarified that a document shall be construed as amended, modified or replaced only if such amendment, modification or replacement is executed in compliance with the provisions of such document(s).

2.0 **EFFECTIVE DATE OF CONTRACT**

- 2.1 This Contract shall become effective on the date of the Letter of Award and the obligations of the Contractor to supply Materials and implement the system shall also commence from such date ("**Effective Date**").

3.0 **TERM AND AUTHORIZATION TO PROCEED**

- 3.1 **Term**

3.1.1 This Contract shall become effective on the Effective Date and unless terminated earlier in accordance with the provisions of this Contract, this Contract shall remain valid, in full force and in effect till completion of Warranty Period ("**Term**").

3.2 **Authorization to Proceed**

3.2.1 Letter of Award shall be considered as authorization to proceed. Contractor shall commence performance of its obligations from the date of Letter of Award and shall continue to perform its obligations as provided in this Contract during the Term.

4.0 **SCOPE OF WORK**

4.1 The Contract is for supply of Materials, equipment, installation of the entire system and training of Owner staff by the Contractor in accordance with the terms and conditions of this Contract.

4.2 The Contractor shall supply Complete Online Monitoring System for Bus Reactor and associated mechanical, electrical and instrumentation materials including Commissioning Spares, Mandatory Spares, Maintenance Tools & Tackles, and Consumables etc required till Taking-over of Facility by Owner in accordance with the terms and conditions specified in this Contract and as set out in detail in the Technical Specifications.

4.3 The Contractor's obligations include design, engineering, procurement, manufacturing, testing, inspection, packaging, Insurance, supply, delivery, Installation, commissioning of the complete system in accordance with the terms and conditions of this Contract ("**Work**"). Providing training to the OTPC staff to use the system efficiently, effectively and in entirety is also in the scope of contractor.

4.4 The Contractor shall provide all the services required for successful implementation of Online Monitoring System for Bus Reactor and associated systems, including transportation of materials to site, unloading, storage, handling at site, insurance, installation, testing, commissioning, and putting the complete online monitoring system for Bus Reactor and associated system into successful operation, as set out in further detail in the Technical Specifications.

4.5 All the services required for successful completion of Work is in the scope of Contractor. The services shall be provided in such a manner so that hook-up of the Facility with existing equipments and systems shall require minimum time. Any modification required in the existing equipments and systems for hooking it with Facility, without adversely affecting the performance of existing equipments and systems, shall be included in services. Contractor shall be responsible for any loss or damage to the existing equipments and systems while performing services.

4.6 The Contractor agrees that the scope of service also includes all temporary work, ancillary work, enabling work etc including dewatering of surface and subsurface water, construction of approach road required for performing services.

4.7 Materials shall be supplied complete in every respect with all mountings, fittings, fixtures and standard accessories normally provided with such materials and/or needed for erection, completion and safe operation of the Materials as required by

applicable code though they may not have been specifically specified in Technical Specifications unless included in the list of exclusions.

- 4.8 The Contractor expressly agrees that the scope of Work shall also include all such supply and services which may not have been specifically mentioned in this Contract or the Technical Specifications but which may be necessary for the successful fulfillment of Contractor's obligation under this Contract as per Good Engineering & Construction Practices and such services shall be performed by the Contractor without any additional cost to the Owner.
- 4.9 As part of the scope of its obligations under this Contract, the contractor shall procure and pay for, in its own name as an independent contractor and not as an agent of the Owner, all materials, equipment, manufacturing, fabrication etc. necessary in connection with the supply of Materials in accordance with this Contract. All such Materials shall be new, fit for purpose and free from any improper workmanship or defects and properly warranted or guaranteed to the extent required by Clause 27.0 (Warranty and Warranty Period) and comply with all Applicable Laws.
- 4.10 The Contractor shall, at all times during the Term, supply the Materials as per approved drawings & documents, Technical Specifications, applicable Indian / International Codes and Applicable Laws and Good Engineering and Manufacturing Practices.
- 4.11 Except as otherwise expressly provided in this Contract, the Contractor agrees and acknowledges that it shall perform all its obligations and responsibilities under this Contract at its own risk, cost and expense.

5.0 **SPARES, CONSUMABLES AND MAINTENANCE TOOLS & TACKLES**

5.1 All the spares for the equipment under the Contract shall strictly conform to the technical specification and documents and shall be identical to the corresponding main equipment / components supplied under the Contract and shall be fully interchangeable.

5.2 **Commissioning Spares**

5.2.1 The Contractor shall supply along with the Materials, commissioning spares considering allowances as per experience of the Contractor to cover wastage / breakage during transportation, storage, handling, construction, erection, testing and commissioning ("**Commissioning Spares**"). The Contractor shall be fully responsible for ensuring availability of adequate quantities of Commissioning Spares at the Site. If Commissioning Spares supplied are found to be inadequate, the Contractor shall supply additional Commissioning Spares promptly at his own cost.

5.3 **Mandatory Spares**

5.3.1 The Contractor shall supply spares as per list specified in Annexure-10 ("**Mandatory Spares**").

5.3.2 The quality plan and the inspection requirement finalized for the main equipment shall also be applicable to the Mandatory Spares.

5.3.3 The Contractor guarantees the long term availability of spares to the Owner for the full life of the equipment covered under the Contract. The Contractor guarantees that before discontinuation of production of spare parts of the equipment covered under the Contract, he shall give the Owner at least six (6) months advance notice so that the Owner may order their requirement of spares. The same provision shall also apply to Subcontractors.

5.3.4 In case of discontinuation of manufacturing of any spares by the Contractor or Subcontractors, the Contractor shall provide to the Owner, at least six months in advance, complete manufacturing drawings, material specifications and technical information of such spares. Contractor shall also provide the Owner complete information about replacement of such spares with other equivalent makes commercially available in the market.

5.4 **Consumables**

5.4.1 All the consumables such as oils, lubricants, chemicals etc., required till commissioning of the system shall be supplied by the Contractor ("**Consumables**").

5.4.2 Contractor shall also furnish consumption rates of Consumables along with estimated annual requirements and ordering specification to enable the Owner to procure these in time for operation & maintenance of system

5.5 **Maintenance Tools & Tackles**

5.5.1 Contractor shall supply all the special tools & tackles, appliances and lifting devices for the effective maintenance of the equipment and components covered under this Contract ("**Maintenance Tools & Tackles**"). Price for Maintenance Tools & Tackles is included in Contract Price. Maintenance Tools & Tackles shall be dispatched simultaneously with equipments and components.

5.5.2 Maintenance Tools & Tackles shall not be used for installation of equipments & components.

6.0 **STAFFING AND AUTHORITY**

6.1 **Contractor's Staff**

6.1.1 The Site shall be staffed adequately to perform the Work in accordance with Good Engineering & Construction Practices and the provisions of this Contract, including but not limited to, in a prudent, efficient, reliable and safe manner.

6.1.2 The minimum staff to be deployed at Site, both in supervisory as well as workmen categories, shall not be less than what is specified in the Staffing Plan. However, in order to fully meet the Contractor's obligation and perform the Work as defined in this Contract, if any additional manpower, beyond those specified in Staffing Plan, is required to be deployed by Contractor at Site, same shall be deployed by Contractor without any delay and without any additional cost to the Owner.

6.1.3 All personnel engaged in the performance of the Work shall be qualified to perform, licensed to the extent required by Applicable Law and sufficiently trained &

experienced in the duties to which they are assigned and shall satisfy the standards of performance provided in this Contract. Contractor shall demonstrate that the personnel provided under this Contract are properly trained, competent to perform the work assigned and are aware of the HES Policy.

- 6.1.4 Contractor shall provide experienced manpower employed by them preferably on their direct role. Resident Construction Manager, 1 (one) electrical engineer and 1 (one) control & instrumentation engineer shall necessarily be employees on the direct role of the Contractor. CV of Resident Construction Manager, electrical engineers and control & instrumentation engineers shall be submitted to Owner for their review and concurrence at least fifteen (15) days prior to their deployment at site. Owner shall reserve the right to accept or reject proposed Resident Construction Manager, electrical engineers and control & instrumentation engineers. Resident Construction Manager, electrical engineer and control & instrumentation engineer shall be deployed at site only after approval of their CV by Owner. Resident Construction Manager, electrical engineer and control & instrumentation engineer shall have at least fifteen (15), seven (7) and seven (7) years of experience respectively in supervising similar work out of which Resident Construction Manager shall have three (3) years of experience as Resident Construction Manager for similar work.
- 6.1.5 Contractor shall provide experienced and qualified operation and maintenance personnel required till completion of Pre-commissioning Tests, Commissioning Tests, Initial Operation and Trial Operation and during Guarantee Tests.
- 6.1.6 The Contractor shall be responsible for maintaining strict discipline and good order amongst its personnel and those of its Subcontractors at all times.
- 6.1.7 Contractor shall bear the entire responsibility, liability and risk relating to coverage of Contractor Staff under Applicable Law including but not limited to Workmen's Compensation Act, 1923, Industrial Disputes Act, 1947, Maternity Benefits Act, 1961, Employees' Provident Funds and Miscellaneous Provisions Act, 1952, Contract Labour (Regulation and Abolition) Act, 1970, Employees State Insurance Act, 1948, Factories Act, 1948 and any other relevant act/regulations as will be applicable during the Term.
- 6.1.8 Contractor shall also be solely responsible for the payment of all benefits to the Contractor Staff under Applicable Law, such as provident fund, bonus, retrenchment compensation, leave, etc., and shall keep the Owner indemnified in this regard against any claims. The Owner shall be entitled to, if it is noticed that Contractor is in default, make such payment, solely at its discretion and recover such amounts as deemed fit from any sum due and payable to Contractor by the Owner.
- 6.1.9 Contractor shall be responsible for making any overtime payment for providing services under this Contract and Owner shall not bear any liability whatsoever in this regard.
- 6.1.10 It shall be responsibility of Contractor to take care of the boarding, lodging, travel arrangements, immigration clearance and visas for all Contractor Staff engaged in providing services.
- 6.1.11 Contractor shall arrange local transportation facility for all Contractor Staff.

6.1.12 The hours of work at the Site shall be decided by the Owner and the Contractor shall adhere to it. Working hours in each shift shall normally be eight (8) hours per day - Monday through Saturday.

6.1.13 No personnel involved in the provision of Work under this Contract shall be deemed employees of the Owner. Neither Party shall be deemed to be a successor to the other Party under any union, labor, or collective bargaining agreement, or any other similar agreement, to which such Party is or may in the future be a party.

6.1.14 The Contractor shall ensure that required Contractor Staff is always available at the Site. If in the opinion of Owner, number of Contractor Staff deployed at site to perform services is not adequate to meet the time schedule for completion of services, he may direct Contractor to mobilize additional manpower within reasonable time. In the event of failure of Contractor to mobilize additional manpower as directed by Owner, Owner may mobilize additional manpower at risk and cost of Contractor. Such manpower mobilized by Owner shall be treated as Contractor Staff.

## 6.2 **Authority of Resident Construction Manager**

6.2.1 The Resident Construction Manager appointed by Contractor shall be authorized and empowered to act for and on behalf of the Contractor on all matters concerning this Contract and its obligations hereunder. In all such matter, the Contractor shall be bound by the written communication, direction, request and decision given or made by the Resident Construction Manager. The Resident Construction Manager will direct and manage Contractor's resources and shall have full responsibility for performing the services.

6.2.2 The Resident Construction Manager will report to the Owner's designated officer in matters relating to performance of the services.

## 6.3 **Owner's Staff**

6.3.1 Owner shall appoint a project manager (such Person the "**Project Manager**") who shall be assisted by the other Owner's Staff. The Owner may, from time to time, appoint any other Person as the Project Manager in place of the Person previously so appointed, and shall provide not less than 7 (seven) days notice of the name of such other Person to the Resident Construction Manager.

6.3.2 Contractor shall report to the Project Manager.

6.3.3 Project Manager or Persons authorized by him shall co-ordinate with Contractor and supervise performance of services.

6.3.4 The Project Manager may, at any time, assign duties and/or delegate to any Person, any of the powers and duties vested in it, upon notice to the Contractor. The Project Manager may also revoke such assignment or delegation and give notice of the same to the Contractor.

## 6.4 **General Personnel Requirement**



- 6.4.1 Contractor shall employ Contractor Staff including labour in sufficient numbers to ensure workmanship of the degree specified in this Contract and to the satisfaction of the Owner. The Contractor shall employ labour in sufficient numbers to maintain the required rate of progress and workmanship of the degree specified in the Contract and to the satisfaction of the Owner.
- 6.4.2 The Contractor is expected to employ only such Persons, for the performance of services, who have requisite experience of particular work.
- 6.4.3 The Contractor shall employ only qualified and medically fit Persons who are not below 18 (eighteen) years of age.
- 6.4.4 No female staff or labour shall be employed for night shifts or after darkness.
- 6.4.5 Contractor's Staff shall wear identification badges at all times while on work at Site.
- 6.4.6 Contractor shall employ local people under unskilled workmen category.
- 6.4.7 Local people shall be given preference by Contractor in employment of staff and skilled workmen wherever local people with requisite skills are available.
- 6.4.8 Contractor shall comply with labour rules, regulations and statutes as specified in Clause 22.0 (Applicable Labour Laws).
- 6.4.9 All Contractor Staff shall be considered employees of Contractor only and Owner shall have no relation whatsoever with the Contractor Staff.
- 6.4.10 The Contractor Staff shall work exclusively at the Site and they shall not be transferred / deputed to any other site of the Contractor, without prior written consent of the Owner.
- 6.4.11 For smooth functioning, the Contractor shall ensure that requisite number of the Contractor Staff shall be fluent in the local language of India spoken at the Site.

6.5 **Discipline of Workmen**

- 6.5.1 The Contractor shall adhere to the disciplinary rules, regulations and procedures set by the Owner in respect of Contractor Staff at Site. The Owner shall be at liberty to object to the presence of any Contractor Staff at the Site if, in the opinion of the Owner, such Person's conduct is inappropriate or such Person is incompetent or negligent or otherwise undesirable or if there is malfeasance in the conduct of such Person's duties or responsibilities to be performed at Plant or if, in the opinion of the Owner, the presence of such Person poses a threat towards safety & security of the Plant or Services or creates an environment detrimental to the interest of the Owner. In such a case the Owner may give written notice to the Contractor identifying the Person(s) concerned and describing the complaint in detail. Upon receipt of such complaint, the Contractor shall immediately remove the relevant Person(s) from the performance of the services and replace him with appropriate personnel.

7.0 **CONTRACT PRICE AND PRICE BASIS**



**7.1 Contract Price**

7.1.1 The Owner shall, in consideration for the supply, installation, commissioning obligations of the Contractor under this Contract, pay to the Contractor, the contract price comprising of the amounts specified in Part A of Annexure 1 (Contract Price), subject to the terms of this Clause 7.0 and Clause 8.0 (Payment Terms) below ("**Contract Price**").

7.1.2 The Contract Price is full compensation to Contractor for implementation of complete online monitoring system for Bus Reactor and satisfactory performance of all its obligations under this Contract in compliance with all terms and conditions of this Contract. The Contract Price as payable hereunder shall cover all costs, expenses, overheads, etc., to be incurred by the Contractor and profit margin for the performance of all its obligations under this Contract including but not limited to costs and expenses of supplying Materials. No additional claim or payment would be admissible in this regard. Contract Price shall be regulated and paid in the manner described in this Clause 7.0 and Clause 8.0 (Payment Terms and Performance Bank Guarantee) below.

**7.2 Price Basis**

7.2.1 Contract Price, unit prices, pricing for change, and all other prices and rates set forth in the Contract shall remain fixed and firm and shall not be subject to any change whatsoever during the Term.

7.2.2 Contract Price includes all costs, expenses, overheads, etc., to be incurred by the Contractor and profit margin for the supply of materials and performance of all the Works and Services and obligations under this Contract including but not limited to the following and no additional claim or payment would be admissible therefore:

7.2.2.1 Cost of providing construction materials, tools & plants, scaffoldings;

7.2.2.2 Cost of dismantling, transportation, insurance, unloading, handling, storage, installation, testing, commissioning, and housekeeping;

7.2.2.3 Salaries and wages, including benefits, general and administrative overheads, and all miscellaneous expenses for the Contractor Staff;

7.2.2.4 Out-of-pocket costs paid or reimbursed for travel and subsistence during said periods of travel of the Contractor Staff;

7.2.2.5 Cost of evaluation, selection, employment, relocation, and training of Contractor's Staff;

7.2.2.6 All office and administrative expenses (including stationery, telephone, fax, printer, scanner, photocopier, etc.);

7.2.2.7 Cost of uniform, personal safety equipment, etc. for Contractor's Staff;

7.2.2.8 Premium of insurance policies and deductible amounts for all insurance policies provided by the Contractor, as per Clause 11.0 (Insurance);

- 7.2.2.9 All costs and expenses associated with records management, including but not limited to preparation of materials, equipments, reproduction and storage expenses;
- 7.2.2.10 Cost of transporting the systems, equipments, construction materials, tools & plants, etc to the Site;
- 7.2.2.11 Cost of legal, payroll and accounting services with respect to the Contractor Staff, and accounting and legal matters related to the administration of this Contract;
- 7.2.2.12 Any and all other costs and expenses for performing services, not specifically set forth herein but incurred by the Contractor for fulfillment of its overall obligation covered under this Contract;
- 7.2.3 Contract Price shall be inclusive of all applicable Indirect Taxes, as specified in Part B of Annexure 1 (Contract Price). Tax payable on income or profession of the Contractor, its employees and its Subcontractor shall be the sole responsibility of the Contractor, its employees and its Subcontractor and the Owner shall have no obligation regarding the same.
- 7.2.4 All payments to be made to the Contractor under this Contract shall be made net of any withholding or deduction, if applicable under any Applicable Law in force at the relevant time, including Income Tax Act, 1961. In case of such deduction made by the Owner from the amount payable to the Contractor, the Owner shall provide the Contractor with appropriate tax deduction certificates.
- 7.2.5 For the avoidance of doubt, it is clarified that the Contract Price includes any and all direct, indirect and ancillary charges, cess, costs and expenses of whatsoever nature, taxes on the Contractor, applicable indirect taxes on supplies under this Contract, all profit, license, royalty and fees, accessories, Consumables, Commissioning Spares, Mandatory Spares, Maintenance Tools & Tackles, and intellectual property licenses to be provided under this Contract, packaging and loading of the Materials, delivery at the Loading Point, unloading at site, insurance, installation, commissioning and training of OTPC staff.
- 7.2.6 Failure by Contractor to fully assess the scope of the implementation of the Complete Online monitoring system for Bus Reactor, as specified in this Contract shall not be considered as a basis for variations to the Contract Price or any part thereof such as pricing of individual items (unit prices) and time and material rates for changes.
- 7.2.7 The Contract Price shall include mobilization, demobilization and site establishment charge which shall not be subject to adjustment based upon any additions or deletions to the Contract Price.
- 7.2.8 The Contract Price (including the break-up) specified under Annexure 1 (Contract Price), shall apply regardless of when the Services are performed, during day or night or a holiday.
- 7.2.9 Contract Price shall include all costs associated with and relating to, performing Services in accordance with all Applicable Laws as well as Owner's HES Policy and security regulations.

7.2.10 Failure by Contractor to assess fully the scope of Services, as required and described in this Contract shall not be accepted as a basis for variations to the Contract Price or any part thereof such as pricing of individual items and time and material rates for changes.

7.2.11 Contract Price shall be inclusive of all applicable Indirect Taxes as specified in Annexure 1 (Contract Price). Taxes and duties applicable on any imported services relevant to Contractor's scope of Services are also included in Contract Price. Tax payable on income or profession of the Contractor shall be the sole responsibility of the Contractor and the Owner shall have no obligation regarding the same.

7.2.12 All payments to be made to the Contractor under this Contract shall be made net of any withholding or deduction as may be required under any Applicable Law in force at the relevant time including Income Tax Act, 1961. In case of such deduction made by the Owner from the amount payable to the Contractor, the Owner shall provide the Contractor with appropriate tax deduction certificates.

8.0 **PAYMENT TERMS**

8.1 The payment to the Contractor for the supply of the Materials, installation and commissioning of the entire system and the performance of its obligations under this Contract shall be made by the Owner as per the guidelines and conditions specified herein. All payments made during the Contract shall be on-account payment only. The final payment shall be made on Final Acceptance of the Facility and on fulfillment by the Contractor of all its liabilities under the Contract including those in respect of warranties etc. Payments to be made hereunder are subject to any adjustment/deductions as per the provisions of this Contract.

8.2 The Contract Price will be paid in Indian Rupees only.

8.3 **Payment Term:**

8.3.1 Ten percent (10%) of the Contract Price shall be released as initial advance within thirty (30) days of receipt of Invoice by Owner on fulfillment of the following conditions:

8.3.1.1 Unconditional and unequivocal acceptance of Letter of Award;

8.3.1.2 Submission of Performance Bank Guarantee as provided in Clause 12.0;

8.3.1.3 Submission of detailed PERT Network as specified in Clause 10.3;

8.3.1.4 Submission of an unconditional Bank Guarantee covering the advance amount which shall be initially kept valid till ninety (90) days after the Time for Completion. Format of Bank Guarantee (ABG) is attached as Annexure-4.

8.3.2 Sixty percent (60%) of the Contract Price shall be released as per billing break-up (BBU) approved by Owner on pro-rata basis against progressive receipt of Materials in good condition at Site within thirty (30) days of receipt of following documents by Owner in 1 (one) original + 2 (two) copies:

8.3.2.1 Invoice;

- 8.3.2.2 Copy of Consignment Note / Lorry Receipt having material receipt endorsed by Owner;
- 8.3.2.3 Copy of Way Bill / Road Permit used for transportation of Materials; and
- 8.3.2.4 Material Receipt Certificate issued by Owner;
- 8.3.3 Twenty percent (20%) of the Contract Price shall be released on pro-rata basis as per billing break-up (BBU) approved by Owner against progressive completion of Services duly certified by Project Manager within thirty (30) days of receipt of following documents by Owner in 1 (one) original + 2 (two) copies:
  - 8.3.3.1 Work completion & measurement certificate duly certified by Project Manager;
  - 8.3.3.2 Protocols required to be filled-in after completion of work as per approved Field Quality Plan duly signed by quality control engineer of Owner;
  - 8.3.3.3 Running Account Bill (to be submitted on monthly basis) duly certified by Project Manager; and
  - 8.3.3.4 Documentary evidence of payment of taxes, duties & levies.
- 8.3.4 Ten percent (10%) of the Contract Price shall be released by the Owner after Final Acceptance of Facility evidenced by final acceptance certificate issued by Owner and submission of as-built drawings, documents, test reports & certificates and Operation & Maintenance Manuals within 30 days of submission of Invoice and supporting documents.
- 8.4 **Mode of Payment**
  - 8.4.1 Payment shall be made either by cheque or in such other manner as the Parties may mutually agree in writing. All bank charges shall be to the account of Contractor.
  - 8.4.2 Applicable income tax/withholding tax/TDS shall be deducted while making payment and necessary certificate as per Applicable Law shall be issued in due course of time.
  - 8.4.3 If the Owner disputes any item of an invoice, the Owner shall make payment for the undisputed portion of such invoice when such payment becomes due under this Contract. The Owner shall make the balance payment within 30 (thirty) days after resolution of the dispute in accordance with Clause 34.0 (Settlement of Disputes).
- 9.0 **TAXES, DUTIES & LEVIES**
  - 9.1 The Contractor shall bear and pay all personal, property and corporate taxes (including withholding tax, if applicable), duties, levies and its related charges assessed on the Contractor (including surcharge on income tax), its Subcontractors (or their contractors) or their employees by a Government Agency in connection with the supply of Materials and performance of its obligations under this Contract ("**Direct Tax**"). For the avoidance of any doubt, it is clarified that all Direct Taxes by whatever name called, arising on the income of the Contractor, its Subcontractors (or their contractors) or their employees, shall be borne by the Contractor. The Contractor shall provide the requisite information/documents to the Owner

(including its permanent account number), so as to enable the Owner in complying with its obligations as per Applicable Law.

9.2 The Contract Price is inclusive of all indirect taxes, duties and levies as applicable on the Effective Date, the description and rates of which and the corresponding amounts included in the Contract Price are specified in Part B of Annexure 1 (Contract Price) ("**Indirect Taxes**"). Only such Indirect Taxes shall be paid/reimbursed by Owner to Contractor as part of the Contract Price against documentary evidence of payment by Contractor thereof.

9.3 The Contractor acknowledges and agrees that the description, rates and corresponding amounts of Indirect Tax included in the Contract Price, as specified in Part B of Annexure 1 (Contract Price), has been provided by the Contractor on the Effective Date. The Owner's liability to reimburse/pay the Contractor in respect of any Indirect Tax is restricted to the extent such Indirect Tax is indicated in Part B of Annexure 1 (Contract Price). In the event this information is subsequently found to be incomplete, incorrect or misleading, the Owner shall have no liability to reimburse/pay the Contractor the excess amounts with respect to any Indirect Tax, if such amounts are finally levied / imposed / recovered by any Government Agency on / from the Contractor.

9.4 Any statutory variation (upward or downward) in Indirect Taxes, as specified in Part B of Annexure 1 (Contract Price) within Time for Completion shall be to the account of the Owner. The Contractor shall submit documentary evidence of above variation along with his invoice.

9.5 Imposition of new Indirect Taxes by the Central or State government within the Time for Completion shall be to the Owner's account. However, any increase in the rates of Indirect Taxes or imposition of new Indirect Taxes, beyond the Time for Completion shall be to the Contractor's account and any benefit of statutory downward revision in Indirect Taxes beyond the Time for Completion shall be passed on by the contractor to the Owner.

9.6 In the event that the Owner is required to pay the income tax/withholding tax applicable on supply of Materials and the performance of obligations under this Contract whether outside India or within India, the Owner shall deduct such taxes from the gross value of the Contractor's invoice and remit the net amount taking into account such deductions. However, the Owner shall furnish a TDS certificate to this effect in favour of the Contractor so as to enable it to take the tax credit.

9.7 All taxes, duties and levies applicable outside India on the performance of obligation under this Contract whether outside India or within India shall be included in the Contract Price. The Owner shall have no liability whatsoever in this regard.

10.0 **TIME FOR COMPLETION**

10.1 The Contractor agrees to complete the implementation of Complete Online monitoring system for Bus Reactor in a timely manner in accordance with the terms of this Contract. The Contractor admits and acknowledges that time is the essence of this Contract for the supply of the Materials and installation of the system.

- 10.2 The time for Completion of Implementation of Online Monitoring System for Bus Reactor along with associated systems shall be 3 (Three) months from the Effective Date ("**Time for Completion**").
- 10.3 Contractor shall submit to Owner for his approval, within fifteen (15) days from the Effective Date, a detailed PERT Network, consisting of adequate number of activities covering various key phases of the implementation of the complete online monitoring system for Bus Reactor such as design, engineering, procurement, manufacturing, inspection, testing, packing, loading of materials at the Loading Point, Insurance, Unloading at site, Installation, Commissioning, training of OTPC staff and final handing over. The PERT Network shall be based on Time for Completion specified in Clause 10.2 above. Approved PERT Network shall form integral part of the Contract. As provided elsewhere in this Section, finalization of the PERT Network will be a precondition for release of any initial advance to the Contractor.
- 10.4 The Contractor shall promptly notify the Owner of any event or conditions which might delay the completion of intended system within Time for Completion and the steps being taken to remedy or mitigate such situation, including on its own initiative and at its own expense, increasing or supplementing the supervision, procurement and manufacturing to such an extent so as to restore the lost sequence or progress and provide assurance of compliance with the Time for Completion under this Contract. In the event the steps taken by the Contractor to remedy or mitigate such situation causes the Owner to incur additional costs, the Contractor shall reimburse such costs to the Owner. If the Contractor fails to take necessary steps to remedy or mitigate a delay, then the Owner may take such steps as it may deem necessary, in its sole discretion (including but not limited to engaging other contractor's to perform the obligations under this Contract and deduct the cost of the same from the Contract Price).
- 11.0 **LIQUIDATED DAMAGES AND INSURANCE**
- 11.1 **Liquidated Damages for Delay in Completion**
- 11.1.1 In case of failure of Contractor to complete the implementation of the online monitoring system for Bus Reactor within Time for Completion specified in Clause 10.2, the Contractor shall pay to the Owner liquidated damages as follows:
- For every 1 (one) week (or part thereof) delay in completion of system for reasons not attributable to the Owner, the Contractor shall pay to the Owner a sum equivalent to half percent (0.5%) of the Contract Price.
- 11.1.2 The total amount of liquidated damages payable by the Contractor on account of delay in completion of system under Clause 11.1 shall be limited to 10% (ten percent) of the Contract Price.
- 11.2 **Liquidated Damages for Shortfall in Guaranteed Performance during Warranty Period**
- 11.2.1 In case of failure of Contractor to achieve the guaranteed performance for the Online monitoring system for Bus Reactor during Warranty Period specified in Clause 43.2, the Contractor shall pay to the Owner liquidated damages as follows:

For every 0.1% (zero decimal one percent) (or part thereof) decrease in guaranteed availability of the Online monitoring system for Bus Reactor, 0.5% (zero decimal five percent) of Contract Price shall be paid as liquidated damage by the Contractor to the Owner on a *pro rata* basis.

- 11.2.2 The total amount of liquidated damages payable by the Contractor on account of shortfall in guaranteed performance under Clause 11.2 shall be limited to 10% (ten percent) of the Contract Price.
- 11.3 Payment or deduction of liquidated damages shall in no way relieve the Contractor from discharging its other obligations under this Contract.
- 11.4 Owner may recover the liquidated damages payable by the Contractor from any amounts due to it or which may subsequently become due to it under this Contract or any other contract.
- 11.5 For the avoidance of doubt it is clarified, that the Owner's right to receive liquidated damages in accordance with this Clause 11.0 is without prejudice to any other rights the Owner may have under Applicable Law or otherwise in connection with the breach of any other obligations hereunder by the Contractor.
- 11.6 The total amount of liquidated damages payable by the Contractor under Clause 11.1 and Clause 11.2 shall be limited to 15% (fifteen percent) of the Contract Price.

11.7 **INSURANCE**

- 11.7.1 Without prejudice to its obligations under this Contract or otherwise under Applicable Law, the Contractor, at its cost, shall arrange, secure and maintain all such insurance as may be required in connection with the performance of the Services and obligatory in terms of Applicable Law, to protect its interest and interest.
- 11.7.2 It shall be responsibility of the Contractor to maintain all necessary insurance coverage (including those for professional liability) to the extent both in time and amount to take care of all its liabilities either direct or indirect, in pursuance of the Contract.
- 11.7.3 All Insurer's right of subrogation against Owner for losses or claims arising out of the performance of the Contract shall be waived under such policies.
- 11.7.4 Neither failure to comply nor full compliance with the insurance provisions of this Contract shall limit or relieve the Contractor of its liabilities and obligations under this Contract.

12.0 **PERFORMANCE BANK GUARANTEE**

- 12.1 The Contractor shall, within 15 (fifteen) days of the Effective Date, provide to the Owner an unconditional and irrevocable performance bank guarantee of an amount equivalent to 10% (ten percent) of the Contract Price for implementation of Total Online monitoring system for Bus Reactor and due performance of its obligations under this Contract, with an initial validity of up to 90 (ninety) days beyond the



Warranty Period, a format of which is attached as Annexure 3 (Format of Performance Bank Guarantee) ("**Performance Bank Guarantee**").

- 12.2 If, at the time of discharge of Performance Bank Guarantee, the Warranty Period has been extended pursuant to Clause 27.5 or if a dispute has been referred for resolution pursuant to Clause 34.0 (Settlement of Disputes), the Contractor shall, on or before 21 (twenty one) days before the expiry of the Performance Bank Guarantee, issue an extension of the existing Performance Bank Guarantee or issue a separate security in the form of an unconditional and irrevocable bank guarantee for an amount proportionate to the Contract Price for such part, valid till the extended Warranty Period or until final resolution of the dispute and payment of any amount due as a result thereof, as the case may be.
- 12.3 The Performance Bank Guarantee to be submitted by Contractor shall be from an Acceptable Bank and in the form acceptable to the Owner and as prescribed under Annexure 3 (Format of Performance Bank Guarantee).
- 12.4 The Contractor acknowledges and agrees that the Performance Bank Guarantee shall be held by the Owner as security for the satisfactory completion of the obligations of the Contractor, in accordance with this Contract, including recovery of any amounts due to the Owner from the Contractor .The Owner shall have the unconditional option under the Performance Bank Guarantee to invoke and encash the same and shall be entitled to recover from such Performance Bank Guarantee, any amounts which may become due to the Owner from the Contractor.
- 12.5 In the event the credit rating of the Acceptable Bank which has provided the Performance Bank Guarantee falls below AA+ by Credit Rating and Information Services India Limited or below AA by ICRA Limited or below AA+ by Credit Analysis and Research Limited or below BBB Fitch Ratings, then the Contractor shall provide a fresh Performance Bank Guarantee from an Acceptable Bank which has a credit rating equal to or higher than the credit ratings mentioned in this Clause 12.5.

13.0 **ENGINEERING DOCUMENTS, MANUALS AND TESTS CERTIFICATES**

13.1 **Engineering Drawings & Documents**

- 13.1.1 The furnishing of engineering data by the Contractor shall be in accordance with the Technical Specifications. The review of these data by the Owner shall normally cover only general conformance of the data to the provisions of the Contract including Technical Specifications and interfaces, external connections and dimensions which might affect Plant layout. Such review by the Owner may not be a detailed review of all dimensions, quantities and details of the equipment, materials, any devices or items indicated or the accuracy of the information submitted. This review and or/approval by the Owner shall not be construed by the Contractor, as limiting any of his responsibilities and liabilities for mistakes and deviations from the requirements specified under the Contract including Technical Specifications.
- 13.1.2 Each drawing submitted by the Contractor shall be clearly marked with the name of the Owner, the Project title, the Contract No., the title of drawing, scale, date of drawing, the Contractor's drawing No., space for Owner' drawing No etc. In addition to the above information provided on drawings, each drawing shall carry a revision number, date of revision and brief details of revision carried out. If standard



catalogue pages are submitted, the applicable items shall be indicated therein. All titles, noting, markings and writings on the drawing shall be in English. All the dimensions shall be in metric units.

- 13.1.3 Within two (2) weeks from the Effective Date, the Contractor shall submit to Owner for his approval a list of all the drawings, documents, design calculations, material specifications, data-sheets etc proposed to be submitted by Contractor to the Owner for approval / reference identifying each by a serial number and descriptive title and giving the expected date of submission.
- 13.1.4 The Contractor shall satisfy the Owner about the validity of the design with reference to the requirements of Technical Specifications, engineering codes, Good Engineering & Manufacturing Practices and Applicable Laws.
- 13.1.5 Drawings submitted for approval / reference shall be signed by responsible representative of the Contractor and shall be of any of the following sizes in accordance with the Indian Standard: A0, A1, A2, A3 or A4.
- 13.1.6 The drawings and documents submitted by the Contractor shall be reviewed by the Owner as far as practicable within Two (2) weeks and shall be modified by the Contractor if any modifications and / or corrections are required by the Owner. The Contractor shall incorporate such modifications and/or corrections and submit the final drawings and documents for approval within two (2) weeks from the date of receipt of commented drawings and documents from the Owner. Any delays arising out of failure by the Contractor to submit the revised drawings and documents within the time for resubmission specified above shall be to the Contractor's account. While resubmitting the drawings and documents Contractor shall incorporate Owner's drawing and document number in the respective drawings and documents. The Owner's drawing and document number shall be used thereafter for all purpose of reference.
- 13.1.7 Three (3) hard copies and one (1) soft copy of the drawings and documents shall be submitted by the Contractor to the Owner for approval/reference. One copy of such drawings and documents shall be returned to the Contractor by the Owner marked 'Approved / Approved with comments as noted / Marked with comments / Retained for information'. The Contractor shall thereupon furnish to the Owner, the revised drawings and documents after incorporating all corrections for final approval.
- 13.1.8 Supply of equipments/materials shall be in strict accordance with approved drawings and documents and no deviation shall be permitted without the written approval of the Owner, if so required.
- 13.1.9 All manufacturing and fabrication work in connection with the equipment prior to the approval of the drawings (Approved / Approved with Comments as noted) shall be at the risk and cost of Contractor. Subject to approval by the Owner, the Contractor may make necessary changes in the drawings and documents which are necessary to make the equipment conform to the provisions and intent of the Contract including Technical Specifications. Approval of Contractor's drawings by the Owner shall not relieve the Contractor of any of his responsibilities and liabilities under the Contract.

- 13.1.10 Any expenses resulting from an error or omission in or from the delay in delivery of the drawings and documents mentioned in the Technical Specification shall be borne by the Contractor.
- 13.1.11 Drawings shall include all installation and detailed cabling drawings wherever applicable. All drawings shall be fully corrected to agree with actual 'as built' construction.
- 13.1.12 Upon completion of installation, the Contractor shall submit 'As built Drawings' and 'As built Documents' including As built datasheet in required No. of copies as specified in Technical Specifications.
- 13.1.13 If at any time before Final Acceptance of the system, changes are made necessitating revision of the approved drawings and documents, the Contractor shall make such revisions and obtain approval of Owner as specified in Clause No. 13.1.5 and 13.1.6.

**13.2 Manuals and Test Certificates**

- 13.2.1 The Contractor shall submit to the Owner for his review and approval, draft installation, operation & maintenance manuals for all the equipments covered under the Contract, within the time agreed upon between the Owner and the Contractor. The final installation, operations & maintenance manuals, complete in all respects shall be submitted by the Contractor within 10 days of the commissioning of the system. .
- 13.2.2 The Contractor shall furnish to the Owner spare parts catalogue.
- 13.2.3 The Contractor shall submit the following documents in line with Clause 13.1 and 13.2:
  - 13.2.3.1 Printed Pamphlets / Catalogues 6 hard copies + 1 soft copy
  - 13.2.3.2 Manuals (Preliminary) 6 hard copies + 1 soft copy
  - 13.2.3.3 Manuals (Final) 6 hard copies + 1 soft copy
  - 13.2.3.4 Manuals (Updated), if required 6 hard copies + 1 soft copy
  - 13.2.3.5 Any other relevant information 6 hard copies + 1 soft copy
  - 13.2.3.6 All Test Certificate in bound volumes 6 hard copies + 1 soft copy

**14.0 CONTRACTOR'S OBLIGATIONS**

**14.1 General**

- 14.1.1 In addition to other specific obligations set out elsewhere in this Contract, the Contractor shall have the obligations set out in this Clause 14.0.
- 14.1.2 It shall be the responsibility of the Contractor to supply Equipment/Materials which shall be new and in good condition. Contractor shall supply the Materials which shall

meet all the requirements provided under the Technical Specifications. Equipment selected shall be sufficient to meet the requirements of the system as mentioned in the Technical specifications.

14.1.3 The Contractor shall be fully responsible for preparing, packaging and loading the Materials on to the mode of transportation at the Loading Point, including for the payment of all packaging, loading and handling costs and expenses. Unloading of the materials at site, installation and commissioning of the system is also under the scope of contractor.

14.2 **Industrial Practice**

14.2.1 The Contractor shall be responsible for performing its obligations under this Contract, including for associated purchases and/or subcontracting with due care and diligence and in accordance with Good Engineering & Manufacturing Practices, using sound supervisory procedures, and in a professional and workmanlike manner, in accordance with Applicable Law and the Technical Specifications and within the Time for Completion. The Contractor shall supply all Materials as per the specifications provided under the Technical Specifications. The Contractor shall ensure that the Materials shall be fit for the purpose for which each of them is intended as per the provisions of this Contract.

14.3 **Means and Methods**

14.3.1 The Contractor shall, at all times, be responsible for the efficiency and adequacy of its planning, co-ordination with its Subcontractors, design, securing of approvals, means and methods of performance, materials and equipment, irrespective of whether the Contractor acts as a result of any advice or reviews of the Owner.

14.3.2 The Contractor shall, whenever required by the Owner, submit details of the arrangements and methods which the Contractor proposes to adopt for performance of its obligations under this Contract. No significant alteration to these arrangements and methods shall be made without the same being previously notified to the Owner.

14.4 **Compliance with Laws**

14.4.1 The Contractor shall at all times be in compliance with all Applicable Laws, in the performance of its obligations under this Contract. The Contractor shall also ensure such compliance by its Subcontractors.

14.4.2 The Contractor shall at its cost, in a timely manner so as not to delay the progress of its obligations hereunder and in any event before the time required by Applicable Law, obtain all applicable Permits required for the completion of its obligations under this Contract.

14.4.3 The Contractor shall not, under any circumstances, cause or permit, in connection with the obligations to be performed hereunder, the discharge, emission or release of any hazardous substance and/or waste, pollutant, contaminant or other substance in violation of any Applicable Laws.

14.5 **Packaging**

**14.5.1 General**

14.5.1.1 All Materials shall be protected and securely packed and loaded in a manner commensurate with the transportation stresses and hazards encountered in such supply in accordance with internationally accepted transportation principles. The Contractor shall ensure that the packing provides adequate protection to the Materials from the rigors of multiple handlings, loadings and unloading. If any of the Materials are damaged, lost, stolen, destroyed or otherwise impaired prior to the completion of loading at the Loading Point, the Contractor shall, at its own cost and expense, restore or replace such affected Materials. The provisions of this Clause are designed to facilitate preservation, safe arrival, and expeditious movement of the Materials to the Site and provide the general requirements for packaging of the Materials. The provisions of this Clause are neither a packing manual, nor a substitute for internationally recognized packing practices and the Contractor shall be fully responsible for the quality of packaging.

**14.5.2 Packing Procedure**

14.5.2.1 The Materials shall be packed in accordance with standard practices of the industry and of the mode(s) of transportation to be utilized or expected to be utilized for transportation and as specifically notified by the Owner from time to time.

14.5.2.2 The Contractor shall provide packing and packaging to protect the Materials while in storage for up to 6 (six) months.

14.5.2.3 The Contractor will use its knowledge of the Materials to provide supplementary packaging when customary and usual packaging may not provide sufficient protection. The packaging shall be in a manner such that the Materials are protected against mechanical damage (shocks, rupture, breakage, loss, etc.) and corrosion (rain, salty atmosphere, sand, wind, etc.).

14.5.2.4 Additional appropriate packing shall be considered when the Materials, or any component thereof is required to be stored outside.

14.5.2.5 The Materials shall be clean and free from metallic filings, machining debris and cleaning media such as blasting grit, if applicable.

14.5.2.6 Contractor shall adhere to the requirements of Applicable Law governing treatment to prevent infestation and mold in wood used in pallets, skids, crates, boxes or any other items used as packing material.

14.5.2.7 Contractor shall ensure adequate additional boxing or crating for consolidated small packaged and/or loose items.

14.5.2.8 Each item in each package shall be labelled or marked so that it can easily be identified by the packing list. 1 (one) copy each of the final detailed packing list shall be affixed in water tight containment on the outside of each package, container or crate secured under a metal sheet, and one copy shall be placed inside the package, container or crate. The Contractor shall also apply standard symbols indicating care and precaution to be used in handling and storing of each package. For out-of

gauge consignments, either heavy or over dimensional, the center of the package shall be marked and clearly indicate the lifting points.

14.5.2.9 All means, methods and techniques of packing utilized, shall be appropriate for the conditions and materials involved and in accordance with the current state of the art and keeping with delivery schedule.

14.5.3 **Protection Against Damage in Transit**

14.5.3.1 The Contractor shall prepare all Materials for delivery in such manner so as to ensure that the packing is adequate, is of minimum size and to protect such Materials from damage in transit. Further, the packing shall be such that the Materials shall withstand rough handling, storage in hot and humid climate prevailing at the Site and shall be in compliance with any size, weight or handling limitations that are applicable. The Contractor shall pack the Materials in such a manner so as to ensure that no damage is caused to the same while in transit or during storage.

14.5.4 **Hazardous Materials**

14.5.4.1 Hazardous Materials shall be packed only in certified containers or only with certified packaging material in accordance with Applicable Law, including BARC and DAE Rules. The Contractor shall clearly mark all packages containing Hazardous Materials with the appropriate symbols and placards.

14.5.4.2 The Contractor hereby fully indemnifies the Owner with respect to any liability arising on account of any escape of Hazardous Material.

14.6 **Corrupt/Fraudulent Practices**

14.6.1 The Contractor shall not, directly or indirectly, engage in any Corrupt Practice, Fraudulent Practice, Coercive Practice or Obstructive Practice during the negotiation of this Contract or at any time during the Term.

15.0 **TRANSFER OF TITLE**

15.1 **Title**

15.1.1 The title to the Materials manufactured in India and supplied directly by the Contractor shall be transferred to the Owner at the Loading Point upon completion of loading of the materials on to the mode of transportation.

15.1.2 The title to the materials manufactured in India and supplied directly by the Sub-contractor to the Owner, shall be transferred to the Owner during the transit by way of transfer of document of title to materials by the Contractor after loading of the materials at the Loading Point and delivery to the transporter for transportation.

15.1.3 The title to the materials manufactured outside India and supplied directly by the Contractor shall be transferred to the Owner at the Loading Point upon completion of loading of the materials on to the mode of transportation used for transporting it to India.

15.1.4 The title to the materials manufactured outside India and supplied directly by the Sub-contractor to the Owner, shall be transferred to the Owner during the transit by way of transfer of document of title to materials by the Contractor after completion of loading of the materials at the Loading Point on to the mode of transportation used for transporting it to India.

15.1.5 Ownership of Materials in excess of the requirement for successful completion of erection and commissioning of Facility shall revert to the Contractor after successful Completion of Supply of Materials and Taking-Over of Materials.

15.2 **Responsibilities of Contractor**

15.2.1 The Contractor shall continue to be responsible for the risk of loss or damage to the Materials up to the completion of loading of the Materials on to the mode of transportation and for the quality and performance of the Materials till the end of the Warranty Period.

16.0 **QUALITY ASSURANCE PROGRAM**

16.1 **Inspection**

16.1.1 To ensure the conformance of the Materials, whether manufactured by Contractor or by its Subcontractors, with the provisions of this Contract, Contractor shall adopt, as well as ensure adoption by its Subcontractor, suitable Quality Assurance Program. The Owner or its representative(s) shall have the right to inspect and/or to test the Materials to check their conformity with the provisions of this Contract.

16.1.2 The Quality Assurance Program, proposed for adoption by the Contractor, shall be submitted for review and approval of the Owner, within 20 (twenty) days of the Effective Date. It shall *inter alia* specify required inspections and tests to be carried out by Contractor as per Contract and applicable codes for all phases of manufacturing and supply, the procedures involved, the place where such inspections and tests shall be conducted, acceptance basis, acceptance criteria and the customer hold points (CHPs) beyond which manufacturing shall not proceed without specific clearance from Owner. The approved Quality Assurance Program shall form part of this Contract and shall be strictly adhered to.

16.1.3 In case of customer hold points / stage inspection, Contractor shall proceed from one stage to another only after the Materials have been inspected and tested by the Owner and / or their representative and permission has been given to proceed further. The procedure shall be adopted for any rectification / repairs suggested by Owner or their representative.

16.1.4 The Contractor shall give not less than 15 (fifteen) day's prior notice as to the time and place of any scheduled inspection. Contractor shall submit following documents along with inspection call notice:

16.1.4.1 All Non-destructive examination procedures, stress relief and weld repair procedure actually used during fabrication

16.1.4.2 Welder and welding operator qualification certificates

- 16.1.4.3 Welder identification list, welder' and welding operator' qualification procedure and welding identification symbols.
- 16.1.4.4 Material mill test reports on components as specified by the specification.
- 16.1.4.5 The inspection plan with verification, inspection plan check points, verification sketches, if used, and methods used to verify that the inspection and testing points in the inspection plan were performed satisfactorily.
- 16.1.4.6 Sketches and drawings used for indicating the method of traceability of the radiographs to the location on the equipment.
- 16.1.4.7 All Non-destructive examination result reports including radiography interpretation reports.
- 16.1.4.8 Stress relief time temperature charts.
- 16.1.4.9 Factory test results for testing required as per applicable codes and standard referred in the specifications.
- 16.1.5 In the event the Contractor fails to provide the Owner and/or their representative(s) at least 15 (fifteen) days prior notice of scheduled inspections, the Contractor shall pay for any costs incurred by the Owner and / or their representative in conducting the inspection which are greater than the costs which would have been incurred with proper notice. Provided, all costs of the Owner or their representative shall be borne by Owner if 15 (fifteen) day's prior notice is provided by the Contractor.
- 16.1.6 Contractor shall provide at his own cost all facilities including labour, materials, electricity, fuel, water, stores, apparatus, instruments etc reasonably required by Owner and/or their representative for effectively carrying out such inspection and tests of the Materials in accordance with the Contract and applicable codes.
- 16.1.7 Owner may ask Contractor to perform any such inspection and tests which are not specified in Contract and Quality Assurance Program. Contractor shall perform such inspection and tests and Owner shall pay to the Contractor reasonable cost incurred in carrying out such inspection and tests.
- 16.1.8 Inspection and acceptance of the Materials by the Owner and / or their representative shall not limit the liabilities and responsibilities of the Contractor in any manner and shall not prejudice the right of the Owner to reject the Materials if it is found to be defective during inspection after receipt at Site or if it fails to achieve guaranteed performance specified in the Contract.
- 16.1.9 Materials shall be dispatched only after inspection at Contractor's / Subcontractor's works is carried out and Materials are found to be acceptable. However, Owner reserves the right to waive-off inspection by Owner and / or their representative and allow dispatch of Materials to Site without inspection.
- 16.1.10 Contractor shall be responsible for monitoring each Subcontractor's compliance with the approved Quality Assurance Program. The Owner shall have right to conduct audits of the Contractor's Quality Assurance Program. Contractor shall cooperate with and extend all support to Owner in carrying out such audits.



16.2 **Material Tests**

- 16.2.1 The Contractor shall provide, at his own cost, test pieces as required by the Owner to enable him to determine the quality of material supplied under this Contract. If any test piece fails to comply with the requirements, the Owner may reject the whole material represented by the test piece.
- 16.2.2 Plates, sheets and bar stock materials meant for components of vessels shall be subjected to ultrasonic testing in accordance with codes specified or approved equal.
- 16.2.3 All high pressure pumps, valves and other high pressure casting shall be subjected to radiographic testing in accordance with codes specified or approved equal
- 16.2.4 All forgings shall be subjected to ultrasonic and magnetic particle testing in accordance with codes specified or approved equal
- 16.2.5 All ferrous and non-ferrous pipes and tubes of 65mm size and under shall be subject to eddy current testing in accordance with codes specified or approved equal
- 16.2.6 All U-bent tubes made of copper alloy shall be stress relieved.
- 16.2.7 All materials used in manufacturing of Materials covered by the Contract shall also be subjected to one or more of the following non-destructive tests (NDT) – visual, dye penetration, magnetic particles, ultrasonic or radiographic. Salvaging of material due to unacceptable defect is to be attempted by the Contractor only after getting specific concurrence from the Owner and according to the approved procedures.
- 16.2.8 Unless otherwise specified, NDT tests shall be witnessed by the Owner.

16.3 **Welding**

- 16.3.1 All welding involved in the manufacturing of Materials shall be carried out in accordance with applicable codes or approved equal.
- 16.3.2 Welding Procedure and welder’s qualifications shall be approved by the Owner, where applicable. Welders shall be tested as detailed in codes specified for pipe welding, vessel welding and structural welding and appropriate to the corresponding weld position using test pieces of appropriate parent metal to be used on the job. The Owner shall have the right to have any welder retested at any time during this Contract.
- 16.3.3 Approved methods of radiographic, ultrasonic or other non-destructive testing shall be carried out for the welding of seams in pipes and vessels. Recommendations of codes specified shall be followed where applicable
- 16.3.4 Weld coupon plates shall be tested subsequent to heat treatment.
- 16.3.5 Copies of all welding procedures, preheating, post-heating and stress relieving records, NDT records and other test results shall be made available upon request to the Owner.



- 16.3.6 Fabrication/inspection procedures for vessels, heat exchangers, pipes, tubes, valves, etc. shall be in accordance with codes specified or any other approved equal.
- 16.3.7 If the Contractor has special requirements relating to the welding procedures for welds at the terminals of the equipment to be procured by the Owner under separate specifications, the requirements shall be submitted to the Owner well in time.
- 16.4 Price for all inspection and tests to be carried out till Final Acceptance of Facility and during Warranty Period are included in Contract Price.
- 16.5 Nothing in this Clause 14.0 shall, in any way, release the Contractor from any of its Warranty or other obligations under this Contract.
- 17.0 **COMPLETION OF SUPPLY AND FINAL ACCEPTANCE OF FACILITY**
- 17.1 After Completion of Trial Operation and after satisfying itself about satisfactory completion of supply of Materials, Owner shall issue a final acceptance certificate to the Contractor (the "**Completion of Supply of Materials**").
- 17.2 After Completion of Supply of Material, Owner shall take-over the Materials from Contractor. Upon taking over of the Materials, Owner shall become responsible for care, custody, operation and maintenance of Materials (the "**Taking-Over of Material**").
- 18.0 **INDEMNIFICATION**
- 18.1 **Indemnification by Contractor**
- 18.1.1 Contractor agrees to defend, indemnify and hold harmless the Owner, its Affiliates, and all of their directors, officers, employees, agents and representatives ("**Owner Indemnified Parties**"), from and against any and all Losses arising:
- 18.1.1.1 By reason of Contractor's actual or asserted failure to comply with any Applicable Law or any provision of this Contract. If the Contractor fails to comply with the requirements mentioned above and as a result fines, penalties or other assessments are imposed upon either the Contractor or the Owner by any Government Agency under any Applicable Law, then the Contractor shall be liable to pay all such fines, penalties or other assessments;
- 18.1.1.2 From actual or asserted violation or infringement of rights in any patent, copyright, proprietary information, trade secret or other property right caused or alleged to be caused by the use of materials, equipment, methods, processes, designs or information supplied by Contractor or its Subcontractors in performance of its obligations under this Contract. Should any Materials supplied by Contractor become, or appear likely to become, the subject of a claim of infringement of a patent, copyright or other property right, Contractor shall, at the Owner's option, either procure for the Owner the right to continue using such Materials or replace same with equivalent, non-infringing Materials, provided that any such replacement is of equal quality as the infringing Materials;

- 18.1.1.3 From injury to or death of any Person (including employees of the Owner, Contractor and Contractor's Subcontractors or any third party) or from damage to or loss of property (including the property of the Owner or a third party) arising directly or indirectly out of this Contract or out of any acts of omission or commissions of Contractor or its Subcontractors. Contractor's indemnity obligations hereunder include claims and damages arising from non-delegable duties of the Owner or arising from use by Contractor of facilities furnished to Contractor by the Owner; or
- 18.1.1.4 From present or future Environmental Claims directly or indirectly related to or arising out of the actual or alleged existence, generation, use, delivery, collection, treatment, storage, transportation, recovery, removal, discharge or disposal of Hazardous Material at the Plant and/or adjacent areas solely to the extent arising out of the gross negligence or Willful Misconduct of the Contractor, its Subcontractors in the performance of its obligations under this Contract.
- 18.1.2 Contractor's indemnity obligations shall apply regardless of whether the Owner Indemnified Party was concurrently negligent, whether actively or passively, excepting only where the Losses are caused solely by the negligence or Willful Misconduct of, or by defects in design furnished by the Owner Indemnified Party. Contractor's defense and indemnity obligations shall include the duty to reimburse any attorneys' fees and expenses incurred by the Owner Indemnified Party for legal action to enforce Contractor's indemnity obligations.
- 18.1.3 With respect to claims by employees of Contractor or its Subcontractors on the Owner Indemnified Party, the indemnity obligations created under this Clause 18.1 shall not be limited by the fact of, amount, or type of benefits or compensation payable by or for Contractor, its Subcontractors under any workers' compensation, disability benefits, or other employee benefits acts or regulations, and Contractor waives any limitation of liability or immunity arising from workers' compensation or such other acts or regulations.
- 18.1.4 The Owner shall be entitled to retain from payments otherwise due to Contractor such amounts as shall reasonably be considered necessary to satisfy any claims, suits or liens for damages that fall within Contractor's indemnity obligations under this Clause 18.1, until such claims, suits or liens have been settled and satisfactory evidence to that effect has been furnished to the Owner.
- 18.1.5 Contractor acknowledges that specific payment has been incorporated into the Contract price as legal consideration for Contractor's indemnity obligations as provided in this Contract.
- 18.2 **Indemnification by Owner**
- 18.2.1 Owner agrees to defend, indemnify and hold harmless the Contractor, its Affiliates, and all of their directors, officers, employees, agents and representatives ("**Contractor Indemnified Parties**") from and against any and all Losses arising out of or resulting from claims of third parties for any damage to or destruction of property of, or death of or bodily injury to, any Person due to any gross negligence or Willful Misconduct of the Owner in the course of performance of its obligations under this Contract; provided that the foregoing obligations shall not apply to the extent the Contractor Indemnified Parties are negligent or to the extent such Losses

are caused by the acts of omission or commissions of the Contractor Indemnified Parties.

**18.3 Defense of Claims**

18.3.1 The indemnifying Party shall be entitled, at its option, and expense and with counsel of its selection, to assume and control the defense of any claim, action, suit or proceeding in respect of, resulting from, relating to or arising out of any matter for which it is obligated to indemnify the other Party hereunder, provided it gives prompt notice of its intention to do so to the indemnified Party and reimburses the indemnified Party for the reasonable costs and expenses incurred by the indemnified Party in connection with the defense of such claim, action, suit or proceeding, prior to the assumption by the indemnifying Party of such defense.

18.3.2 Notwithstanding the provisions of Clause 18.3.1, unless and until the indemnifying Party acknowledges in writing its obligation to indemnify the indemnified Party and assumes control of the defense of a claim, suit, action or proceeding in accordance with Clause 18.3.1, the indemnified Party shall have the right, but not the obligation, to contest, defend and litigate, with counsel of its own selection, any claim, action, suit or proceeding by any third party alleged or asserted against such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and the reasonable costs and expenses thereof shall be subject to the indemnification obligations of the indemnifying Party hereunder.

18.3.3 Neither Party shall be entitled to settle or compromise any such claim, action, suit or proceeding without the prior written consent of the other Party; provided, however, that after agreeing in writing to indemnify the indemnified Party, the indemnifying Party may settle or compromise any claim without the approval of the indemnified Party. Except where such consent is unreasonably withheld, if an indemnified Party settles or compromises any claim, action, suit or proceeding in respect of which it would otherwise be entitled to be indemnified by the other indemnifying Party without the prior written consent of the other indemnifying Party, the other indemnifying Party shall be excused from any obligation to indemnify the indemnified Party making such settlement or compromise in respect of such settlement or compromise.

18.3.4 Following the acknowledgment of the indemnification and the assumption of the defense by the indemnifying Party, the indemnified Party shall have the right to employ its own counsel and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of such indemnified Party.

18.4 In the event that the indemnity provisions in this Contract are contrary to the laws of India, then the indemnity obligations applicable hereunder shall be construed to be to the fullest extent allowed by Applicable Law.

18.5 Provision of this Clause 18.0 shall survive termination or expiry of this Contract.

**19.0 LIMITATION OF LIABILITY**

- 19.1 Both Owner and Contractor understand and agree that there shall be absolutely no personal liability on the part of any of the members, shareholders, officers, employees, directors, agents, authorized representatives or Affiliates of the Owner or Contractor for the payment of any amounts due hereunder, or performance of any obligations hereunder.
- 19.2 With the exception of those provision of this Contract providing for the payment of liquidated damages, neither the Contractor nor the Owner shall be liable to the other as a result of any action or inaction under this Contract or otherwise for any special, indirect, incidental or consequential losses such as but not limited to loss of profit, loss of revenue, loss of power, loss of opportunity, loss of goodwill, loss of contracts or cost of capital. It is hereby agreed that this limitation of liability shall not apply in respect of claims for which either Party is indemnified under Clause 18.0 (Indemnification). Nothing in this Clause 19.0 shall reduce the Contractor's liability for liquidated damages in accordance with the provisions of this Contract.
- 19.3 The aggregate liability of the Contractor with respect to all claims arising out of or in connection with performance or non-performance of this Contract whether in contract, warranty, tort or otherwise shall not exceed the Contract Price, provided that this limitation shall not apply in case of negligence, Willful Misconduct or liabilities arising out of indemnity provisions in this Contract.
- 19.4 The provisions of this Contract constitute Contractor's and Owner's exclusive liability, respectively, to each other, and Contractor's and Owner's exclusive remedy, respectively, to each other, with respect to the obligations under this Contract.
- 20.0 **SUSPENSION**
- 20.1 Owner reserves the right, at its convenience, to suspend and reinstate performance of the whole or any part of this Contract without invalidating the provisions of this Contract. Orders for suspension or reinstatement of the performance of this Contract shall be issued to the Contractor in writing.
- 20.2 Upon receiving any such notice of suspension, Contractor shall promptly suspend further performance of this Contract to the extent specified, and during the period of such suspension shall take proper care of and protect all supplies Contractor has with it for performance of its obligations under this Contract. Upon the request of the Owner, the Contractor shall promptly deliver to the Owner copies of outstanding Subcontracts of Contractor and shall take such action with respect to such Subcontracts as may be directed by the Owner. Contractor shall use its best efforts to mitigate costs associated with suspension. Owner may, at any time, withdraw the suspension of performance of the Contract as to all or part of the suspended obligations by written notice to the Contractor specifying the effective date and scope of withdrawal, and Contractor shall resume diligent performance of its obligations for which the suspension is withdrawn on the specified effective date of withdrawal.
- 20.3 The Time for Completion shall be extended for a period equal to the duration of the suspension provided the suspension is not due to some default on the part of Contractor.

20.4 If such suspension continues for a continuous period of 180 (one hundred and eighty) days, at the end of such period, Contractor or Owner may, by a further 30 (thirty) days prior written notice, terminate the Contract and in such case Owner shall pay to the Contractor costs in accordance with Clause 32.6 of this Contract as if such termination was a termination under Clause 32.4 of this Contract.

21.0 **CHANGE IN CONTROL**

21.1 The current shareholding of the Contractor is provided in Annexure 6 (Current Shareholding of the Contractor). From the Effective Date no change in Control of the Contractor shall be permitted without the prior written consent of the Owner.

22.0 **PROGRESS REPORT AND APPLICABLE LABOR LAWS**

22.1 The Contractor shall submit formal written and quantitative reports to the Owner on the progress of the manufacturing and supply of Materials in a format approved by the Owner and in sufficient detail to permit the Owner to assess performance. Within 10 (ten) days of the submission of each such report and at such other times as the Owner may reasonably request, the Contractor and the Owner shall meet to discuss progress. Each monthly progress report shall be submitted no later than the 5<sup>th</sup> day of the month following that in respect of which it is made, but may report on actual progress only up to the 25<sup>th</sup> day of the month and anticipated progress thereafter. Monthly progress reports shall include the followings:

22.1.1 executive summary;

22.1.2 description of the design, engineering, procurement, manufacturing, inspection, testing and supply activities performed during the preceding month;

22.1.3 updated Project Schedule showing progress up to the end of the month (as percentages completion of the activities broken down into significant elements of the supply of Materials), current schedule of activities and targets for the next month;

22.1.4 design & engineering, procurement, raw material & components availability, manufacturing and inspection status for the previous month and current months showing planned vs. actual, monthly and cumulative.

22.1.5 updated billing schedule showing the billing and payment status and cash flow forecast;

22.1.6 areas of concern;

22.1.7 Corrective Action Plan;

22.1.8 such other information and supporting documentation as the Owner may reasonably request;

22.2 Contractor shall submit six (6) hard copies and one soft copy of the progress report.

22.3 All progress review meeting shall be held at Palatana or New Delhi as advised by Owner.

- 22.4 In the event performance of the Contract is not in compliance with the schedule established for such performance, Owner may, in writing, require the Contractor to submit its plan for schedule recovery, or specify in writing the steps to be taken to achieve compliance with such schedule, and/or exercise any other remedies under this Contract. Contractor shall thereupon take such steps as may be directed by Owner or otherwise necessary to improve its progress without additional cost to Owner.
- 22.5 **APPLICABLE LABOUR LAWS**
- 22.5.1 The Contractor shall comply with all the rules and regulations under the Applicable Law during the performance of the Services under this Contract.
- 22.5.2 The Contractor shall comply with all Applicable Laws with respect to employment of labour (issued by the Central Government or the State Government as the case may be).
- 22.5.3 The Contractor shall *inter alia* comply with the provision of the Payment of Wages Act, 1936, Minimum Wages Act, 1948, Employees Liability Act, 1938, Workmen's Compensation Act, 1923, Industrial Disputes Act, 1947, Maternity Benefits Act, 1961, Employees' Provident Funds and Miscellaneous Provisions Act, 1952, Contract Labour (Regulation and Abolition) Act, 1970, Inter State Migrant Labour Act, 1979 and Employees State Insurance Act, 1948 or any modification thereof or any other law relating thereto and rules made there under from time to time.
- 22.5.4 The Contractor shall obtain all Permits required under Applicable Law in connection with the Contractor Staff employed by it for performing the Services including but not limited to licenses required under Contract Labour (Regulation and Abolition) Act, 1970 and rules made there under; the registration under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and obtaining the Employee Provident Fund (EPF) Code. All registration and statutory inspection costs and expenses (including payment of fees), if any, in respect of the performance of the Services pursuant to this Contract shall be to the account of the Contractor.
- 22.5.5 The Contractor shall pay to the labour, employed by it, either directly or through Subcontractors, wages in accordance with the provisions of the Minimum Wages Act, 1948 and the Contract Labour (Regulation and Abolition) Act, 1970 as prevalent in Tripura.
- 22.5.6 The Contractor shall cover contract labourers to be engaged by them during the Term for the purpose of provident fund benefits as per rules under the Contract Labour (Regulation and Abolition) Act, 1970 and the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.
- 22.5.7 The Contractor shall submit to the Owner on the 10<sup>th</sup> (tenth) day of every month a return on the prescribed form for the payment of wages under the provisions of the Minimum Wages Act, 1948 and the Contract Labour (Regulation and Abolition) Act, 1970 as prevalent in Tripura. Failure of the Contractor to submit such a form shall be considered as breach of this Contract.
- 22.5.8 If Owner as "Principal Employer" is held liable to pay contribution, etc. under any Applicable Law or court decision in respect of any Contractor Staff, then Contractor

would reimburse the amount of contribution so paid by the Owner and in addition the Contractor shall keep the Owner fully indemnified in this regard.

22.5.9 In the event of the Contractor committing a default or breach of any of the provisions of the Applicable Law as mentioned in this Clause 22.5, as amended from time to time, or in furnishing any information or submitting or filling any form, register/slip under the provisions of such Applicable Law, the Owner shall be at liberty to take recourse to any action it may deem fit, under the circumstances, to protect its own interest. Further, all amounts as may become due for payment to the concerned authorities/agencies on account of such defaults or breach shall be settled by the Owner after recovering the same from the Contractor. The Owner shall be entitled to deduct such amounts from the Contract Price payable to the Contractor under this Contract

23.0 **SUBCONTRACTING & LIST OF COUNTRIES**

23.1 Contractor shall not subcontract any portion of the Contract.

23.2 Contractor shall ensure that supply of materials including repaired and replacement material are manufactured and shipped from the countries listed below in clause 23.4 ("**List of countries**")

23.3 Contractor shall also ensure that any Firmware Upgrades, Patches, Hot Fixes etc. shall have been developed and tested in the countries listed under clause 23.4.

23.4 List of Countries

23.4.1 United States of America

23.4.2 Europe

23.4.3 Australia

23.4.4 India

23.4.5 Singapore

23.4.6 Malaysia

23.4.7 Thailand

23.4.8 Japan

23.4.9 Mexico

23.4.10 South Korea

23.5 Contractor shall furnish Owner original documents showing manufacturing and shipment details of the material. Any material manufactured and shipped other than the countries mentioned under clause 23.4 shall not be accepted. Contractor shall submit original Manufacturer's Authorization Form (MAF) as per format attached as Annexure-8.



**24.0 LIEN**

24.1 To the full extent permitted by Applicable Law, Contractor hereby waives and releases any and all rights of unpaid seller's lien and similar rights for payment for goods, equipment, or materials furnished by the Contractor in performance of the obligations hereunder and granted by Applicable Law to Persons supplying materials, equipment, goods and other things, which Contractor may have against the goods supplied under this Contract to the Owner.

24.2 Contractor shall at all times promptly pay for all services, materials, equipment and labor used or furnished by Contractor in the performance of the obligations under this Contract and supply of the Materials and shall, to the fullest extent allowed by Applicable Law, at its expense keep all properties belonging to the Owner, including the Materials after the title has been transferred to the Owner, free and clear of any and all of the above mentioned liens and rights of lien arising out of goods, equipment or materials furnished by Contractor or its employees, contractors or Subcontractors in the performance of the obligations under this Contract. If Contractor fails to release and discharge any lien or threatened lien against the property of the Owner arising out of performance of the obligations under this Contract within seven (7) days after receipt of written notice from the Owner to remove such claim of lien, the Owner may, at its option, discharge or release the claim of lien or otherwise deal with the lien claimant, and Contractor shall pay the Owner any and all costs and expenses of the Owner in so doing, including reasonable attorneys' fees incurred by the Owner.

**25.0 FORCE MAJEURE**

25.1 Force majeure is herein defined as any cause which is beyond the reasonable control of the Contractor or the Owner, as the case may be, which the affected Party could not foresee or with a reasonable amount of due diligence could not have foreseen, which could not have been prevented or overcome by the affected Party through the exercise of reasonable skill or care, which does not result from the affected Party's negligence or the negligence of its agents, employees or Subcontractors (as the case may be), and which substantially affects the performance of the obligations under this Contract ("**Force Majeure**"), such as:

25.1.1 Natural phenomena, including but not limited to floods, droughts, earthquakes, pandemics, epidemics, cyclone, lightning, storm, plague;

25.1.2 Lawful strikes and lawful lockouts and other generalized labour action occurring within India (excluding such events which are attributable to Contractor);

25.1.3 Act of terrorism or sabotage, act of any Government Agency, including but not limited to war (whether declared or undeclared), invasion or armed conflict, revolution, riot, civil commotion, quarantines, embargoes, in each case occurring inside India or directly involving India;

25.1.4 Radioactive contamination or ionising radiation or chemical contamination originating from a source in India or resulting from another Force Majeure event;

25.1.5 Fire or explosion, except as may be attributable to the Contractor;



- 25.1.6 An act of God;
- 25.1.7 Any act, failure to act, restraint or regulation, of any Government Agency (excluding actions that constitute remedies or sanctions lawfully exercised as a result of breach by the affected Party of any Applicable Law which is not discriminatory in nature); or provided either Party shall within 7 (seven) days from the occurrence of any such cause notify the other Party in writing.
- 25.2 For avoidance of doubt, it is clarified that lack of funds shall not be construed as an event of Force Majeure.
- 25.3 Contractor shall not be entitled to, and hereby expressly waives recovery of, any damages suffered by reason of delays of any nature and extension of time shall constitute the sole remedy of the Contractor for delays under this Clause.
- 25.4 Neither Party shall be considered to have defaulted in the performance of any of its obligations under this Contract, when and to the extent such failure of performance shall be due to a Force Majeure event.
- 25.5 **Obligation to cure Force Majeure Diligently**
- 25.5.1 If either Party claims an event of Force Majeure, then the Party claiming the event shall:
- 25.5.1.1 Provide prompt notice and in any event within 7 (seven) days from the occurrence of such Force Majeure event, to the other Party of the occurrence of Force Majeure event, stating whether it claims relief under this Clause 25.0 by giving reasons of such event, expected duration of such event and probable impact of such event on the performance of its obligations hereunder;
- 25.5.1.2 Exercise all reasonable efforts to continue to perform its obligations hereunder;
- 25.5.1.3 Consult with the other Party, agree upon the action to be taken and expeditiously take action to correct or cure the event or condition excusing performance;
- 25.5.1.4 Exercise all reasonable efforts to mitigate or limit damages to the other Party to the extent such action will not adversely affect its own interests;
- 25.5.1.5 Furnish weekly reports with respect to its progress in overcoming the adverse affects of such event or circumstances; and
- 25.5.1.6 Provide prompt notice to the other Party of the cessation of the event or condition giving rise to its excuse from performance.
- 25.5.2 The affected Party shall not be obliged, when complying with its obligations under this Clause 25.5, to take any steps which would be beyond its reasonable control. The suspension of the obligations hereunder of the affected Party shall be of no greater scope and no longer duration than is reasonably necessitated by the Force Majeure event.
- 25.6 So long as the affected Party has at all times since the occurrence of the Force Majeure event complied with the obligations of Clause 25.5 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 this Contract during the existence of a Force Majeure event; provided, however, that no relief shall be granted to the affected Party pursuant to this Clause 25.6 to the extent that such failure or delay would have nevertheless been experienced by the affected Party had the Force Majeure event not occurred.

25.7 If the performance of this Contract is prevented, hindered or delayed for a continuous period of 180 (one hundred eighty) days from the beginning of a Force Majeure event or for an aggregate period of more than 270 (two hundred seventy) days during the Term, due to a Force Majeure event, then the Parties shall mutually decide further course of action. If mutual settlement cannot be arrived at within 30 (thirty) days, either Party shall have the right to terminate this Contract in accordance with Clause 32.3.2.

26.0 **REPRESENTATIONS AND WARRANTIES**

26.1 The Contractor represents and warrant that:

26.1.1 The Contractor is a company duly organized, validly existing and in good standing under the jurisdiction of its incorporation. The Contractor has full power, authority and legal right to execute and deliver and perform its obligations under this Contract. This Contract has been duly executed by its legal representative and constitutes a legal, valid and binding obligation of the Contractor, enforceable in accordance with its terms except to the extent that such enforcement may be limited by any Bankruptcy Event, agreement of creditors, insolvency, moratorium or similar laws affecting generally the enforcement of lenders rights;

26.1.2 The execution and delivery of, and performance by, the Contractor of its obligations under this Contract are not in violation of, or in conflict with, any provision of the Contractor's organizational or authorizing documents, and do not constitute a default under any contracts, agreements or other instruments to which the Contractor is a party or by which it is bound, and are not in violation of, or in conflict with, any term or provision of any law applicable to it;

26.1.3 The Contractor is not in default under any loan agreement, mortgage, deed of trust, indenture executed by it or any other agreement evidencing indebtedness to which it is a party or by which it or its property is bound or affected to the lenders;

26.1.4 There is no legal action, suit, proceeding, inquiry or investigation against the Contractor before or by any Government Agency or such other relevant authority as per laws applicable to it, of which the Contractor has received legal notice or of which it has otherwise become aware, that could adversely affect its ability to comply with its obligations under this Contract;

26.1.5 The Contractor has reviewed or examined and has the requisite knowledge and understanding with respect to the Site, the Technical Specifications, and all other factors and conditions affecting the performance of the Contractor's obligations under this Contract and accepts the same and agrees that the Site, the battery limits and such specifications, information, requirements, obligations, rules and procedures are satisfactory and will not prevent or impair or have any adverse effect on the performance by the Contractor of its obligations under this Contract;

- 26.1.6 It is fully experienced and properly qualified to supply the Materials and perform its obligations hereunder, and that it is properly equipped, organized and financed to fulfill its obligations and responsibilities under this Contract; and
- 26.1.7 It is properly licensed and qualified to do business in all governmental jurisdictions in which the Materials are to be delivered. Upon written request by Owner, Contractor shall furnish to them such evidence as Owner may require relating to the Contractor's ability to fully perform the obligations under this Contract.
- 26.2 The Owner represents and warrant that:
  - 26.2.1 The Owner is a company duly organized, validly existing under Applicable Laws. The Owner has full power, authority and legal right to execute and deliver and perform its obligations under this Contract. This Contract has been duly executed by its legal representative and constitutes a legal, valid and binding obligation of the Owner, enforceable in accordance with its terms except to the extent that such enforcement may be limited by any Bankruptcy Event, agreement of creditors, insolvency, moratorium or similar laws affecting generally the enforcement of Lender's rights;
  - 26.2.2 The execution and delivery of, and performance by the Owner of its obligations under this Contract are not in violation of, or in conflict with, any provision of the Owner's organizational or authorizing documents, and do not constitute a default under any contracts, agreements or other instruments to which the Owner is a party or by which it is bound, and are not in violation of, or in conflict with, any term or provision of any Applicable Law;
  - 26.2.3 The Owner is not in default under any Loan Agreement, mortgage, deed of trust, indenture executed in relation to any Loan Agreement or any other agreement evidencing indebtedness to which it is a party or by which it or its property is bound or affected to the Lenders;
  - 26.2.4 There is no legal action, suit, proceeding, inquiry or investigation against the Owner before or by any Government Agency of which the Owner has received legal notice and which adversely affects its ability to comply with its obligations under this Contract.
- 27.0 **WARRANTY AND WARRANTY PERIOD**
- 27.1 The Contractor hereby warrants to the Owner that the Materials supplied under this Contract shall (the "**Warranty**"):
  - 27.1.1 comply strictly with the terms of this Contract, all specifications, drawings and standards referred to in the Technical Specifications or this Contract or furnished by the Owner hereafter, in accordance with Good Engineering & Manufacturing Practices and Applicable Law;
  - 27.1.2 be first-class in every particular and free from defects and deficiencies in design, engineering, material and workmanship; and

- 27.1.3 shall be new, merchantable, of the most suitable grade and fit for their intended purposes.
- 27.1.4 shall not become obsolete or shall not be proclaimed as 'End of Life' by the Original Equipment Manufacturer (OEM) during Warranty Period.
- 27.1.5 shall not be proclaimed as 'End of Sale' by the OEM within 60 (sixty) months from the date of Final Acceptance of Material.
- 27.1.6 shall ensure availability of spares for a minimum of 15 (fifteen) years from the date of Final Acceptance of Material.
- 27.2 Contractor shall be liable for any defects in the Materials supplied and workmanship of the Services provided by it for a period of 60 (Sixty) months after the date of Completion of Supply of Materials and Taking-Over of Materials by the Owner (the "**Warranty Period**").
- 27.3 Without limitation of any other rights or remedies of the Owner, if any defect in the Materials supplied and Services provided under this Contract in violation of the foregoing warranties arises within the Warranty Period, Contractor shall, upon receipt of written notice of such defect, at no cost to the Owner, promptly furnish replacement Materials or parts thereof necessary to correct such defect or repair/modify the defective Materials, so as to meet the specifications.
- 27.4 If any replacement, repair or modification is of such a character which may affect the subsequent performance of the Facility or any part thereof in accordance with the Technical Specifications, Owner may within 30 (thirty) days after such replacement, repair or modification give to the Contractor notice requiring the Contractor to demonstrate the adequacy and efficacy of the replacement, repair or modification.
- 27.5 In the event Contractor shall have been notified of any defects in the Materials in violation of Contractor's foregoing warranties and its has failed to promptly and adequately correct such defects, Owner shall have the right to correct or to have such defects corrected for the account of Contractor, and Contractor shall promptly pay to the Owner the costs incurred in correcting such defects. In the event the Contractor replaces the defected Materials, then such replaced Materials, as the case may be, shall be warranted by the Contractor in accordance with the warranties set forth in Clause 27.1 for a period of 60 (sixty) months from the date of replacement of such Materials, as the case may be.
- 27.6 Contractor shall include, as a minimum, the foregoing warrantee requirements in any Subcontract that it executes.
- 27.7 The acceptance of the Materials, as the case may be, by the Owner shall in no way relieve the Contractor of its obligation under this Clause.
- 27.8 In respect of goods supplied by the Subcontractors to the Contractor where a longer warranty (more than 60 (sixty) months) is provided by Subcontractors, the Owner shall be entitled to the benefit of such longer warranty period.
- 27.9 At the end of Warranty Period set forth in clause 27.2 above, Contractor's liability ceases except for the Latent Defects. The Contractor's liability for Latent Defects

shall be limited to a period of ten (10) years from the date of Final Acceptance of Materials.

27.10 Contractor shall take back to back support / agreement from OEM to meet the Service Level Agreements (SLA) as defined in Technical Specification. Contractor shall furnish evidence of such support Contract with OEM with respect to this Contract.

27.11 Contractor shall furnish Warranty / support certificates from OEMs for all equipments, software etc.

27.12 The Contractor shall be responsible for payment of all costs, taxes (including all indirect taxes) and duties incurred in the course of performance of its obligations under this Clause 27.0.

28.0 **CONTRACTOR TO INFORM ITSELF FULLY**

28.1 Contractor shall be deemed to have carefully examined the Technical Specifications, the Site location and the Plant and fully acquainted itself with Site conditions and all other conditions relevant to the performance of this Contract. Contractor shall be deemed to have assumed the risk of such conditions and will, regardless of such conditions or negligence of the Owner, if any, fully complete the supply of Materials for the Contract Price without further recourse to the Owner. Information on the Site and local conditions at such Site, furnished by the Owner in specifications or otherwise is not guaranteed by the Owner and is furnished only for the convenience of the Contractor.

28.2 The Contractor acknowledges that the Technical Specifications provided by the Owner may not be complete in every detail. Contractor shall comply with their manifest intent and general purpose, taken as a whole, and shall not make use of any errors or omissions therein to the detriment of the Owner. In the event the Contractor, in the performance of its obligations hereunder, encounters or comes across any conflict, error, omission or discrepancy in the specifications of the Materials, or in Site conditions, the Contractor shall promptly notify Owner in writing and Owner shall issue written instructions to be followed in relation to such conflict, error, omission or discrepancy. If Contractor proceeds with the supply of Materials prior to receiving such instructions, then required corrections shall be at Contractor's expense.

29.0 **CHANGE / VARIATION ORDER**

29.1 The scope of supply of Materials shall be subject to change by additions, deletions or revisions thereto by Owner. Contractor shall be notified of such changes by providing additional and / or revised drawings, specifications, exhibits or other written notification.

29.2 Contractor shall inform Owner, within three (3) days of receipt of notification of change, about impact of notified change on Contract Price and / or Time for Completion. Within 10 days of notifying impact of change, Contractor shall submit to Owner:

- 29.2.1 price of performing change along with material take-off, detailed calculations of price for performing change and supporting documents, for cases requiring amendment of Contract Price; and
- 29.2.2 modified Time for Completion along with necessary justification, for cases requiring amendment of Time for Completion.
- 29.3 Contractor shall not perform changes in the scope of supply of Materials notified in accordance with Clause 29.1 until Owner has approved in writing the price for performing changes and any adjustment in the Time for Completion for performing change, except as set forth in Clause 29.4 and 29.5.
- 29.4 Notwithstanding Clause 29.3, Owner may expressly authorize Contractor in writing to perform the change prior to approval of price for change and / or modification of Time for Completion. Contractor shall not suspend supply of Materials during the review and negotiation of any change, except as may be directed by Owner pursuant to Clause 20.0 (Suspension of Services). In the event Owner and Contractor are unable to reach timely agreement regarding any change, Contractor shall comply with Clause 30.0 (Claims).
- 29.5 Contractor shall perform only such changes in the scope of supply of Materials which have been notified in writing. If any oral notice or instruction received from Owner involves change in the Contract Price, or Time for Completion, Contractor shall forthwith ask Owner to notify such instructions in writing. Any costs incurred by Contractor in performing such changes not notified in writing shall be to Contractor's account. Contractor waives any and all rights to claim compensation from Owner for performing such changes in scope of supply of Materials not notified in writing by Owner.
- 30.0 **CLAIM**
- 30.1 If, for any reason, Contractor considers that an event has occurred pursuant to which it has a right to claim compensation from Owner or an extension of Time for Completion, Contractor shall notify Owner in writing of the existence of such claim (the "**Claim**") within three (3) days of occurrence of such event and within ten (10) days of notifying Claim, Contractor shall submit to Owner details of Claim as per provisions of Clause 30.2. Contractor shall substantiate its Claim with payroll documents, paid invoices, receipts, records of performance and other documents satisfactory to Owner and subject to its verification. Owner shall not be liable for, and Contractor hereby waives, any claim or potential claim which have not been notified by Contractor in accordance with provisions of this Clause 30.1.
- 30.2 After examining Claim submitted by Contractor, Owner shall determine admissibility of the Claim and the extent, if any, to which the Contract Price and Time for Completion is to be changed and outcome shall be informed to Contractor. If Contractor disputes Owner's decision and notifies Owner within five (5) working days of receiving Owner's Decision, Contractor may seek to resolve the dispute in accordance with Clause 34.0 (Settlement of Disputes). If Contractor decides to proceed pursuant to Clause 34.0 (Settlement of Disputes), Contractor agrees to limit its claim to the amount claimed by it in accordance with Clause 30.1. In no event shall any supply be halted, whether or not the claim can be resolved to Contractor's

satisfaction, and Contractor shall be bound by the terms and conditions of this Contract to supply the Materials without delay till its successful completion.

30.3 The following shall not constitute changes and Contractor has no right to make any claim in relation thereto:

30.3.1 Instructions, interpretations, decisions or acts by Owner which are:

30.3.1.1 to achieve compliance with the Contract by Contractor; or

30.3.1.2 to correct errors, omissions, poor engineering, defective materials and workmanship or other failure of the Contractor to comply with the Contract;

30.3.2 Delay in the completing supply of Materials or any additional work caused by Contractor.

30.3.3 Any materials supplied by Contractor arising out of Owner's comments on Contractor's submittals to the extent that such comments are consistent with the Contract.

30.4 If Contractor fails to follow the requirements of Clause 30.1, it shall have waived any right to make any claim in respect of the events referred to in Clause 30.1. Contractor's sole remedy in respect of any claim will be as provided in Clause 30.2. No claim by Contractor in relation to events referred to in Clause 30.1 shall be allowed after final payment is made.

30.5 Owner shall not be bound to any adjustments in the Contract Price or scheduled time unless expressly agreed to by Owner in writing.

### 31.0 **BACKCHARGE**

31.1 A backcharge is a cost sustained by Owner and chargeable to Contractor for the Owner's performance of obligations that is the responsibility of Contractor.

31.2 Without limitation and by way of example only, backcharge may result from:

31.2.1 Obligations performed by the Owner, at Contractor's request, which are within Contractor's scope of supply of Materials under this Contract;

31.2.2 Costs sustained by the Owner as a result of Contractor's non-compliance with the provisions of this Contract or Contractor's act of omission or negligence; or

31.2.3 Costs incurred by the Owner to fix all defects, deficiencies or errors that may appear in the Materials during the Warranty Period.

31.3 Upon identification by the Owner of an actual or anticipated backcharge, the Owner will issue a backcharge notice to Contractor. This notice shall describe the backcharge work to be performed, the schedule period for performance, the cost to be charged by the Owner to Contractor for the backcharge and other terms.

31.4 A backcharge shall consist of:



- 31.4.1 Labor: at actual cost plus 25% (twenty five percent) to cover payroll additives;
- 31.4.2 Materials: at actual contractor and freight invoice cost delivered to jobsite;
- 31.4.3 Equipment: at actual third party rental cost or at Owner's equipment rental rates, whichever may be applicable;
- 31.4.4 Subcontracts: At actual cost;
- 31.4.5 All taxes, levies, duties and assessments attributable to the backcharge work; and
- 31.4.6 25% (twenty-five percent) shall be added to the foregoing for indirect costs, overhead, supervision and administration.
- 31.5 Within 24 (twenty-four) hours after receipt of the backcharge notice, Contractor shall fax back to the Owner a signed copy of the backcharge notice, indicating either acceptance of the backcharge or agreement to perform the described backcharge work within the indicated schedule period for performance, utilizing Contractor's supplied labor, material and equipment, as applicable.
- 31.6 Contractor will be required to sign the backcharge notice before commencement of the backcharge work by the Owner or others. In the event Contractor refuses to sign, Owner shall, at its option, proceed with the backcharge work and charge the backcharge cost to Contractor's account. 30 (thirty) days after commencement of the backcharge work or on completion of the backcharge work, whichever occurs earlier, Owner will invoice Contractor for the incurred backcharge cost and the Contractor shall forthwith pay the same.
- 32.0 **TERMINATION**
- 32.1 **Termination by Owner for Contractor's Event of Default**
- 32.1.1 Each of the following events, unless occurring solely as a result of breach by the Owner of its obligations under this Contract or a Force Majeure event, shall constitute an event of default and the Owner may terminate this Contract by giving 30 (thirty) days written notice of termination to the Contractor other than in case of Clauses 32.1.1.5 where the Owner may terminate this Contract by giving 7 (seven) days written notice ("**Contractor's Event of Default**"):
  - 32.1.1.1 Contractor refuses or neglects to comply with any reasonable order given to it in writing by the Owner in connection with the obligations of the Contractor under this Contract;
  - 32.1.1.2 Failure of the Contractor to perform its obligations under this Contract and supply Materials in a manner so as to achieve Completion of Supply of Materials as per the Time for Completion specified in Clause 10.2 and such failure continues after written notice is provided to the Contractor by the Owner and the Contractor has not cured such default within 30 (thirty) days from the date of such notice.
  - 32.1.1.3 Failure of the Contractor to comply with or fulfill its Warranty obligations under Clause 27.0 (Warranty and Warranty Period);

- 32.1.1.4 Abandonment of its obligations under the Contract by the Contractor;
  - 32.1.1.5 Contractor indulging in Corrupt Practices or Coercive Practices or Fraudulent Practices or Obstructive Practices during the signing of this Contract or during the Term in the opinion of the Owner;
  - 32.1.1.6 Any Bankruptcy Event or insolvency of the Contractor; provided, that in the case of involuntary bankruptcy proceedings, the Contractor shall have 60 (sixty) days cure period after the commencement of such proceedings to stay or lift such proceedings;
  - 32.1.1.7 Transfer or charge by the Contractor of any of its rights or obligations under this Contract without prior written consent of the Owner;
  - 32.1.1.8 Any change in the Control of the Contractor which is not in accordance with Clause 21.0 (Change in Control);
  - 32.1.1.9 Any act or omission by the Contractor such that the Owner is or is likely to be or become in breach of any of its obligations under this Contract or constitutes or is likely to give rise to a Owner's event of default as mentioned under Clause 32.2;
  - 32.1.1.10 Contractor ceases to carry on its business;
  - 32.1.1.11 Failure of the Contractor to comply with an Arbitral Award within 30 (thirty) days of the Arbitral Award or within such time as prescribed under such award, whichever is earlier;
  - 32.1.1.12 Contractor has incurred or is liable for liquidated damages in excess of the amount set out in Clause 11.6;
  - 32.1.1.13 A breach by the Contractor of any of the terms of the contracts for providing civil construction works and installation services dated on or about the date of this Contract;
  - 32.1.1.14 Failure by the Contractor to perform any obligation under this Contract with due diligence and expedition including any breach of Applicable Laws and such failure continues after written notice is provided to the Contractor by the Owner; provided, that the Contractor shall have up to 30 (thirty) days after such notice is given to cure such default or to diligently commence and continue in good faith to cure such default prior to any such termination (provided that in no event shall such cure period exceed 120 (one hundred and twenty) days including the 30 (thirty) days of notice period); or
  - 32.1.1.15 If any of the representations and warranties provided by the Contractor under Clause 26.1 or during the negotiation of this Contract is incorrect, false or misleading.
- 32.2 **Termination by Contractor for Owner's Event of Default**
- 32.2.1 Each of the following events, unless occurring as a result of a breach by the Contractor of its obligations under this Contract or a Force Majeure event, and subject to the conditions defined elsewhere in this Contract shall constitute an event

of default and the Contractor may terminate this Contract by giving 30 (thirty) days written notice of termination to the Owner ("**Owner's Event of Default**"):

- 32.2.1.1 Failure by the Owner to pay to the Contractor any undisputed amount due and payable under this Contract, which is not less than 25% (twenty five percent) of the Contract Price and that remains unpaid for a period of 90 (ninety) days or more from the due date for such payment;
- 32.2.1.2 Any willful and persistent material breach of this Contract by the Owner and such breach continues for 60 (sixty) days after written notice is provided to the Owner by the Contractor; provided, that the Owner shall have further 30 (thirty) days after such expiry of above period to cure such breach or to diligently commence and continue in good faith to cure such breach prior to any such termination; or
- 32.2.1.3 Any Bankruptcy Event or insolvency of the Owner; provided, that in the case of involuntary bankruptcy proceedings, the Owner shall have 60 (sixty) days cure period after the commencement of such proceedings to stay or lift such proceedings.

### 32.3 **Termination due to Force Majeure Events**

- 32.3.1 The Owner shall have a right to forthwith terminate this Contract if the performance of this Contract is prevented, hindered or delayed due to a Force Majeure event for a continuous period of 90 (ninety) days from the beginning of a Force Majeure event.
- 32.3.2 If the performance of this Contract is prevented, hindered or delayed due to a Force Majeure event for a continuous period of 180 (one hundred eighty) days from the beginning of a Force Majeure event or for an aggregate period of more than 270 (two hundred seventy) days during the Term of this Contract, and the Parties cannot mutually decide further course of action within 30 (thirty) days thereafter, either Party shall have the right to terminate this Contract by giving the other Party a 30 (thirty) days written notice of termination.

### 32.4 **Termination for Convenience by Owner**

- 32.4.1 Owner may terminate this Contract without assigning any reason by giving thirty (30) days written notice of termination to the Contractor.

### 32.5 **Termination Procedure**

- 32.5.1 Notice of termination shall be given to the other Party specifying the termination date with effect from which this Contract shall be terminated ("**Termination Date**") except for the obligations or duties that are stated to survive termination or are to be carried out after termination or owed by a Party at the time of or as a result of such termination. Termination notice shall also specify in reasonable detail the circumstances giving rise to termination of this Contract.

### 32.6 **Payment on Termination**

- 32.6.1 Owner shall not be liable to make any further payments to the Contractor until the costs of execution and all other expenses incurred by the Owner in completing the

scope of supply of Materials have been ascertained (the "**Cost of Completion**"). If the Cost of Completion when added to the total amounts already paid to Contractor as at the date of termination exceeds the total amount which would have been payable to the Contractor for supply of Materials, the Contractor shall upon demand, pay to the Owner the amount of such excess. Any such excess shall be deemed a debt due by the Contractor to the Owner and shall be recoverable accordingly. If there is no such excess the Contractor shall be entitled to be paid the difference (if any) between the Cost of Completion and the total of all payments received by the Contractor as on the date of termination.

32.6.2 In the event of termination for convenience by Owner as per Clause 32.4, the Contractor shall be paid compensation, equitable and reasonable, dictated by the circumstances prevalent at the time of termination.

32.6.3 Contractor shall not be entitled to any prospective profits or any damages.

### 32.7 **Obligation upon Termination**

32.7.1 Contractor shall discontinue supply of Materials from the Termination Date.

32.7.2 Contractor shall advise Owner of its outstanding Subcontracts pertaining to performance of the terminated supply of Materials and, upon request, furnish Owner with complete copies.

32.7.3 Contractor shall place no further Subcontracts except as may be necessary for completion of such portion of the scope for supply of Materials which is not terminated.

32.7.4 Contractor shall promptly make every reasonable effort to procure cancellation, upon terms satisfactory to Owner, of all Subcontracts to the extent they relate to the scope for supply of Materials terminated or, as directed by Owner, shall assign them to Owner, in form satisfactory to Owner, such of its Subcontracts as are designated by Owner or shall take such other action relative to such Subcontracts as may be directed by Owner.

### 33.0 **GOVERNING LAW AND JURISDICTION**

33.1 This Contract shall be governed by the laws of India.

33.2 The courts of New Delhi shall have exclusive jurisdiction in all matters arising under this Contract, including execution of arbitration awards.

33.3 The United Nations convention on contracts for the international sale of goods does not apply to this Contract.

### 34.0 **SETTLEMENT OF DISPUTES**

34.1 The Parties hereto agree that any dispute or difference arising out of or in connection with this Contract shall, to the extent possible, be settled promptly and amicably between the Parties. Parties further agree to provide each other with reasonable access during normal business hours to any and all non-privileged records, information and data pertaining to any such disputes.

34.2 All unsettled disputes or differences arising out of or in connection with this Contract which cannot be amicably resolved by the Parties shall in the first instance be decided by the Owner in accordance with provisions of Clause 34.3 below.

34.3 **Owner's Decision**

34.3.1 If any dispute or difference of any kind whatsoever shall arise between the Owner and the Contractor, arising out of this Contract whether during the performance of the obligations under this Contract or after its completion or whether before or after the termination, Abandonment or breach of this Contract, such dispute or difference cannot be amicably settled by the Parties in accordance with Clause 34.1, it shall, in the first place, be referred to and settled by the Managing Director of the Owner, who, within a period of 30 (thirty) days after being requested to do so, shall give written notice of its decision to the Contractor.

34.3.2 Save as hereinafter provided, such decision in respect of every matter so referred shall be final and binding upon the Parties until the Completion of Supply of Materials under this Contract and shall forthwith be given effect to by the Parties who shall comply with all such decisions, with all due diligence, whether it requires arbitration, as hereinafter provided or not.

34.3.3 If after the Owner has given written notice of its decision to the Contractor and no notice for arbitration has been communicated to it by the Contractor within 30 (thirty) days from the receipt of such notice, the said decision shall become final and binding on the Parties.

34.3.4 The Owner's decision (or the failure of the Owner to give decision within the time specified in Clause 34.3.1) and issuance of a written notice for arbitration pursuant to Clause 34.3.3 shall be a condition precedent to the right to request arbitration. It is the intent of this Contract that there shall be no delay in the performance of obligations and the decision of the Owner, as rendered, shall be promptly observed.

34.3.5 In the event of the Owner failing to notify its decision, as aforesaid, within 30 (thirty) days after being requested, or in the event of a Party being dissatisfied with any such decision, either Party may require that the matters in dispute be referred for arbitration as provided in Clause 34.4.

34.4 **Arbitration**

34.4.1 All disputes or differences in respect of which the decision, if any, of the Owner has not become final or binding as aforesaid, shall be settled by arbitration, under and in accordance with the provisions of the Indian Arbitration and Conciliation Act, 1996 (the "**Arbitration Act**") or any statutory modification, in the manner hereinafter provided. The Place, Venue and Seat of arbitration shall be New Delhi, India.

34.4.2 The arbitration shall be conducted in accordance with the Arbitration Act by 3 (three) arbitrators, 1 (one) each to be nominated by the Contractor and the Owner and the 3<sup>rd</sup> (third) to be nominated by the 2 (two) arbitrators nominated by the Parties at the commencement of arbitration proceedings. The 3<sup>rd</sup> (third) arbitrator so appointed shall act as the presiding arbitrator.

- 34.4.3 If one Party fails to appoint its arbitrator within 30 (thirty) days after the other Party has named its arbitrator, the Party which has named an arbitrator may request the President of the Institution of Engineers to appoint the second arbitrator on behalf of such Party. If the 2 (two) arbitrators appointed by both Parties do not succeed in appointing a 3<sup>rd</sup> (third) arbitrator within 30 (thirty) days after the latter of the 2 (two) arbitrators has been appointed, the 3<sup>rd</sup> (third) arbitrator shall, at the request of either party, be appointed by the Chairman of OTPC.
- 34.4.4 The decision of the majority of the arbitrators ("**Arbitral Award**") shall be final and binding upon the Parties. The expense of the arbitration shall be paid as may be determined by the arbitrators. The arbitrators may, from time to time, with the consent of both the Parties increase the time for making the award. In the event of any of the aforesaid arbitrators dying, neglecting, resigning or being unable to act for any reason, it will be lawful for the Party concerned to nominate another arbitrator in place of the outgoing arbitrator.
- 34.4.5 The arbitrators shall have full powers to review and/or revise any decision, opinion, directions, certification or valuation of the Owner in consonance with this Contract, and neither party shall be limited in the proceedings before such arbitrators to the evidence or arguments put before the Owner for the purpose of obtaining the said decision.
- 34.4.6 No decision given by the Owner in accordance with the foregoing provisions shall disqualify it from giving evidence before the arbitrators on any matter whatsoever relevant to the dispute or difference referred to the arbitrators as aforesaid.
- 34.5 During settlement of disputes including arbitration proceedings, both Parties shall be obliged to carry out their respective obligations under this Contract.
- 34.6 Parties agree that neither Party to this Contract shall be entitled for any interest on the amount of award.
- 34.7 The provisions of this Clause 34.0 shall survive termination of this Contract.
- 35.0 **CHANGE IN LAW**
- 35.1 If after the Effective Date there is a Change in Law which is expected to result in the increase or decrease in the Contract Price by an amount of Rs. 500,000 (Rupees Five Lakh Only) or more, then either Party may request the other for a revision of the Contract Price in accordance with Clause 35.2, to reflect any such increase or decrease in costs. Such additional or reduced costs shall not be separately paid or credited if the same has already been accounted for in the Contract Price.
- For the avoidance of doubt, it is clarified that any revision to the Contract Price would be restricted to direct transactions between the Parties.
- 35.2 In case of a Change in Law affecting the Contract Price, the Contractor or the Owner, as the case may be, shall provide notice to the other, of such request, setting forth the proposed amount of, and the relevant details and calculations relating to, such increase or decrease in the Contract Price. Promptly upon, and in any event within 7 (seven) days of, the Contractor or the Owner, as the case may be, receiving such request (such date of receipt the "**Change in Law Request**

**Date**"), the Parties shall discuss such proposed increase or decrease, in good faith and within 60 (sixty) days of the Change in Law Request Date, mutually agree upon a revised Contract Price.

36.0 **ASSIGNMENT**

36.1 Except as expressly provided in this Clause, neither Party may assign its rights or obligations hereunder directly or indirectly, whether by pledge, assignment, sale of assets or sale or merger (statutory or otherwise), without the prior written consent of the other Party.

36.2 Notwithstanding the foregoing, it is agreed that, without the consent of the Contractor:

36.2.1 The Owner may assign or create a security interest over its rights and interest under or pursuant to this Contract or any movable property of the Owner or any rights or assets of the Owner, in favour of any of the Lenders; or

36.2.2 The Owner may assign this Contract or its rights or obligations hereunder to any Subsidiary or Affiliate of the Owner.

36.3 The holder of any security interest in this Contract shall not be prevented or impeded by the Contractor from enforcing such security interest. The Contractor shall execute all consents to assignment and/or acknowledgements of any security interest as are requested by the Owner to give effect to the foregoing or to perfect any security interest, and shall provide such certificates and opinions of counsel addressed to the Owner and the Lenders as may be requested in connection with any financing of the Plant. The Contractor agrees that such consents and acknowledgements shall, *inter alia*, include:

36.3.1 an agreement by the Contractor to allow the holder of such security interest to cure defaults by the Owner;

36.3.2 an acknowledgement by the Contractor that the Owner is not in default under this Contract due to such assignment;

36.3.3 representations and warranties by the Contractor;

36.3.4 a prohibition against amending, assigning or terminating this Contract without the written consent of the holder of such security interest; and

36.3.5 a consent by the Contractor to allow the assignment of the Contract to the successors-in-interest of the holder of such security interest after foreclosure hereon.

36.4 The Contractor acknowledges and agrees that the Lenders and providers of insurance will review this Contract and may require changes there to as a condition for providing financing and/or insurance, and the Contractor agrees to consider any such requirements in good faith and otherwise to co-operate with the Lenders/insurers in executing such amendments to this Contract or providing such other letters of consent and comfort as may be reasonably requested by the Lenders/insurers.



37.0 **RELEASE OF INFORMATION**

37.1 The Contractor shall not communicate or use in advertising, publicity, sales releases or in any other medium, photographs or other reproduction of, or description of the Site or the Plant, dimensions, quantity, quality or other information, concerning this Contract, the Plant, the Site or the Project unless prior written permission has been obtained from the Owner.

38.0 **CONFIDENTIAL INFORMATION**

38.1 Subject to Clause 38.2, each Party shall keep all documents, data, photographs, technical information or other information provided directly or indirectly by the other Party in connection with this Contract ("**Confidential Information**") private and confidential for a period of 6 (six) years from the Effective Date and shall not, without the consent of the other Party, publish or divulge to any third party, any Confidential Information or any particulars thereof, whether such Confidential Information has been provided prior to, during or following termination of this Contract.

38.2 Each Party shall be entitled to disclose the Confidential Information without the prior written consent of the other Party, if such Confidential Information:

38.2.1 was furnished prior to this Contract without restriction;

38.2.2 is or becomes available within the public domain (other than by breach of the foregoing obligation of confidentiality);

38.2.3 is received by either Party from a third Party without restriction and not in breach of this Contract;

38.2.4 is independently developed by either Party;

38.2.5 is required to be provided to any contractors/subcontractor, subject to inclusion of terms similar to the provision of this Clause 38.0 in the agreement with such contractor/subcontractor;

38.2.6 is required to be provided to the Lenders;

38.2.7 if and to the extent required to be provided by the rules of a relevant and recognized stock exchange or securities commission;

38.2.8 if and to the extent required to be provided under 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, if practicable, before it is disclosed;

38.2.9 if and to the extent required to enforce any right or remedies under this Contract;

38.2.10 if required to be provided to any insurer under a policy of insurance related to this Contract;

38.2.11 if required to be provided to directors, employees and officers of such Party provided that the disclosing Party determines in good faith that the recipient has a legitimate need to see such Confidential Information; and the recipient has been made aware of and has agreed to be bound by the requirements of this Clause 38.0;

38.2.12 in case of the Owner, if required to be provided to any of its Affiliates; or

38.2.13 in case of the Owner, if required to be provided to such other parties to whom the Owner may be reasonably required to disclose such information.

### 38.3 **Confidentiality of Intellectual Property and Information**

38.3.1 Each Party shall:

38.3.1.1 make available to the other Party without charge such materials, documents and data as would normally be made available to the other Party in connection with the supply obligations hereunder (except any internal cost accounting or cost reporting data or any materials documents and data protected by legal privilege or which is subject to any duty of confidentiality to any third party) acquired or brought into existence in any manner whatsoever by each of them in connection with the Contract as the other may reasonably request for the purposes of exercising its rights or carrying out its duties or performing its obligations under this Contract; and

38.3.1.2 use all reasonable endeavors to make available such materials and documents and data acquired or brought into existence by third parties as the other Party may reasonably request for the purpose referred to in Clause 38.3.1.1 above and as would normally be made available by Persons acting in accordance with Good Engineering & Construction Practice.

38.3.2 Neither Party shall without the prior written authority of the other Party publish alone or in conjunction with any other Person any article or other material relating to any dispute arising under this Contract nor impart to any radio or television program or any other medium any information regarding any such dispute.

38.3.3 All documents, papers, computer discs, magnetic tapes or other records made or created wholly in relation to the performance by the Contractor of its obligations under this Contract containing Confidential Information shall be and remain the property of the Owner, and shall be handed over by the Contractor to the Owner during the Term on the Owner giving the Contractor 2 (two) days notice and in any event immediately on the termination or expiry of this Contract.

## 39.0 **INTELLECTUAL PROPERTY**

### 39.1 **Ownership and License of Intellectual Property**

39.1.1 If any intellectual property is developed by the Contractor and/or its employees, agents, Contractor, representatives or Subcontractors for the purpose of performing the obligations under this Contract during the Term, such intellectual property shall belong to the Owner.

39.1.2 The Owner shall, subject to any applicable third party restrictions, grant the Contractor during the Term a royalty-free, non-exclusive, personal and non-

transferable license to use the intellectual property which is owned by or licensed to the Owner by third parties only to the extent necessary to enable the Contractor to perform its obligations under this Contract. Such licenses shall not carry the right to grant sublicenses.

40.0 **PATENT RIGHTS AND ROYALTIES**

40.1 Royalties and fees for patents covering materials, articles, apparatus, devices, equipment or processes relating to the Materials shall be deemed to have been included in the Contract Price. Contractor shall satisfy all demands that may be made at any time for such royalties or fees and it alone shall be liable for any damages or claims for patent infringements and shall keep the Owner indemnified in that regard. Contractor shall, at its own cost and expense, defend all suits or proceedings that may be instituted for alleged infringement of any patent involved in the Materials, and, in case of an award of damages, Contractor shall pay for such award. In the event of any suit or other proceedings instituted against the Owner, the same shall be defended at the cost and expenses of Contractor who shall also satisfy/comply any decree, order or award made against Owner.

40.2 Contractor hereby represents to the Owner that, as of the Effective Date, Contractor has received no notification of any rightful patent infringement claim which would prejudice the Owner's right to use the Materials.

41.0 **FIELD QUALITY ASSURANCE AND INSPECTIONS**

41.1 To ensure the conformance of the Services, whether performed at the Site, by Contractor or by its Subcontractors, with the provisions of this Contract, Contractor shall adopt, as well as ensure adoption by its Subcontractor, suitable Field Quality Program. The Owner or its representative(s) shall have the right to inspect and/or to test the Services to check their conformity with the provisions of this Contract.

41.2 The Field Quality Program, proposed for adoption by the Contractor, shall be submitted for review and approval of the Owner, within 30 (thirty) days of the Effective Date. It shall *inter alia* specify required inspection and tests to be carried out by Contractor as per Contract and applicable codes for all phases of erection, testing and commissioning, the procedures involved, acceptance basis, acceptance criteria and customer hold points (CHPs) beyond which work shall not proceed, without the specific clearance of the Owner. The approved Field Quality Program shall form part of this Contract and shall be strictly adhered to.

41.3 In case of stage inspection, the Contractor shall proceed from one stage to another only after the component of the work is inspected and tested by the Owner or their representative(s) and permission given to proceed further. The procedure shall be adopted for any rectifications/repairs suggested by the Owner or their representative(s).

41.4 No part of the work shall be covered up without carrying out inspection and tests specified in the Field Quality Program. Contractor shall uncover such part of the work which have been covered up without carrying out inspection and tests specified in Field Quality Program and them up after carrying out inspection and tests specified in Field quality Program. Cost for such uncovering and covering up shall be borne by Contractor.

- 41.5 Contractor shall provide reasonable advance notice to Owner for witnessing inspection and tests specified in Field Quality Program.
- 41.6 Contractor shall provide at his own cost all facilities including labour, materials, electricity, fuel, water, stores, apparatus, instruments etc reasonably required by Owner and/or their representative for effectively carrying out such inspection and tests in accordance with the Contract and applicable codes.
- 41.7 Owner may ask Contractor to perform any such inspection and tests which are not specified in Contract and Field Quality Program. Contractor shall perform such inspection and tests and Owner shall pay to the Contractor reasonable cost incurred in carrying out such inspection and tests.
- 41.8 Contractor shall also be responsible for monitoring each Subcontractor's compliance with the Field Quality Program. The Owner shall have the right to conduct audits of the Contractor's Field Quality Program. Contractor shall cooperate with and extend all support to Owner in carrying out such audits.
- 41.9 Price for all inspection and tests to be carried out till Final Acceptance of Facility and during Warranty Period are included in Contract Price.
- 41.10 Inspection and acceptance of the Services by the Owner and / or their representative shall not limit the liabilities and responsibilities of the Contractor in any manner and shall not prejudice the right of the Owner to reject the Services if it is found to be defective subsequently or if Facility fails to achieve performance guarantee under the Contract. Nothing in this Clause 41.0 shall, in any way, release the Contractor from any of its Warranty or other obligations under this Contract.
- 42.0 **COMPLETION AND FINAL ACCEPTANCE OF FACILITY**
- 42.1 **Pre-commissioning Tests**
- 42.1.1 After successful completion of erection of Facility, Contractor shall notify the same to Owner and seek approval of Owner for proceeding with pre-commissioning tests specified in Technical Specifications (the "**Pre-commissioning Tests**"). Contractor shall proceed with Pre-commissioning Tests after receipt of approval from Owner.
- 42.1.2 Contractor shall submit to Owner for his approval, at least 7 (seven) days before scheduled start of Pre-commissioning Tests, procedures for Pre-commissioning Tests for each equipment and systems. Contractor shall proceed with Pre-commissioning Tests of all equipment & systems of the Facility as per approved procedure for Pre-commissioning Tests.
- 42.1.3 Owner shall inform Contractor about defects and deficiencies observed in equipments and systems during Pre-commissioning Tests. Contractor shall rectify such defects and deficiencies and re-perform Pre-commissioning Tests for defective equipments and systems.
- 42.1.4 After successful completion of Pre-commissioning Tests of each equipment and systems, test protocols shall be signed jointly by Owner and Contractor.

## 42.2 **Commissioning Tests**

42.2.1 After successful completion of Pre-commissioning Tests of the all the equipments and systems of the Facility and signing of test protocols, Contractor shall notify the same to Owner and seek approval of Owner for proceeding with commissioning tests. Contractor shall proceed with Commissioning Tests after receipt of approval from Owner.

42.2.2 Contractor shall submit to Owner for his approval, at least 7 (seven) days before scheduled start of Commissioning Tests, procedures for Commissioning Tests for each equipments and systems. Contractor shall proceed with Commissioning Tests of each equipments and systems of the Facility as per approved procedure for Commissioning Tests.

42.2.3 Owner shall inform Contractor about defects and deficiencies observed in equipments and systems during Commissioning Tests. Contractor shall rectify such defects and deficiencies and re-perform Commissioning Tests for defective equipments and systems.

42.2.4 After successful completion of Commissioning Tests of each equipment and systems of the Facility, test protocols shall be signed jointly by Owner and Contractor.

## 42.3 **Trial Operation**

42.3.1 After successful completion of Commissioning Tests of the Facility, Contractor shall notify the same to Owner and seek approval of Owner for proceeding with trial operation of the Facility specified in Technical Specification (the "**Trial Operation**"). Contractor shall proceed with Trial Operation after receipt of approval from Owner.

42.3.2 Minimum duration of Trial Operation shall be 3 (three) days during which Facility including all associated sub-systems and auxiliaries shall be run in integrated manner at rated full load / part load as made available by the Owner.

42.3.3 During Trial Operation, Facility shall necessarily be operated uninterruptedly for at least seventy two (72) hours at its rated full load.

42.3.4 In the event of interruptions to the Trial Operation, for which Contractor is responsible, Trial Operation shall be restarted.

42.3.5 As part of Trial Operation of the Facility, following shall be demonstrated by the Contractor:

42.3.5.1 Sustained capability of the Facility;

42.3.5.2 Reliability of the equipment and auxiliaries;

42.3.5.3 Adequacy of various auxiliaries, ancillaries and systems & controls;

42.3.5.4 Capability of each equipment of the Facility to correctly perform the functions for which it is specified; and

- 42.3.5.5 Safety requirements.
- 42.3.6 Owner shall inform Contractor about defects and deficiencies in Facilities observed during Trial Operation. Contractor shall rectify minor defects and deficiencies and re-perform necessary tests to demonstrate removal of defects and deficiencies. For defects and deficiencies in Facilities which may adversely affect the performance of the Facility, various tests to be performed by Contractor after removal of defects and deficiencies shall be jointly agreed between Owner and Contractor.
- 42.3.7 After successful completion of Trial Operation of the Facility and removal of major defects, test protocols for Trial Operation shall be jointly signed by Contractor and Owner.
- 42.4 After successful completion of Trial Operation of the Facility and signing of test protocols, Contractor shall notify the Owner about completion of Facility. After satisfying itself about satisfactory completion of Facility, within seven (7) days of receipt of notification from Contractor for successful completion of Facility, Owner shall issue a provisional acceptance certificate to the Contractor (the **"Final Acceptance of Facility"** or the **"Commissioning of Facility"**).
- 42.5 After Final Acceptance of Facility, Owner shall take-over the Facility from Contractor. Upon taking over of the Facility, Owner shall become responsible for care, custody, operation and maintenance of Facility (the **"Taking-Over of Facility"**).
- 43.0 **GUARANTEED PERFORMANCE**
- 43.1 The Contractor shall maintain the performance guarantees as set out in the Clause 43.2 during Warranty Period (the **"Performance Guarantee"**).
- 43.2 **Annual Online monitoring system for Bus Reactor Availability**
- 43.2.1 Annual Online monitoring system for Bus Reactor Availability (the **"Annual Online monitoring system for Bus Reactor Availability"**) shall be 99.5% (ninety-nine and half of one percent) minimum.
- 43.2.2 In case Annual Online monitoring system for Bus Reactor Availability is less than 99.5% (ninety-nine and half of one percent), liquidated damage shall be payable as specified in Clause 11.2
- 43.2.3 Annual Online monitoring system for Bus Reactor Availability shall be calculated as follows:
- 43.2.4  $A = [TSH - (TUD - TEPD)] * 100 / TSH$ ; wherein:
  - 43.2.4.1 A = Annual Online monitoring system for Bus Reactor Availability (in %);
  - 43.2.4.2 TSH = Total Service Hour (in hours)
  - 43.2.4.3 TUD = Total Unscheduled Downtime (in hours);
  - 43.2.4.4 TEPD = Total Excused Performance Downtime (in hours)

- 43.2.4.5 Total Service Hour in any Operating Year shall be total number of hours during the period under consideration e.g. 8760 (eight thousand seven hundred and sixty) hours for a normal year or 8784 (eight thousand seven hundred and eighty-four) hours for a leap year starting at 00:00 hrs of the first day of first month and 24:00 hrs of the last day of the last month of the relevant operating year;
- 43.2.4.6 Unscheduled System Downtime shall mean the time when Online monitoring system for Bus Reactor is not available fully for functional use and which is outside Scheduled Downtime;
- 43.2.4.7 Scheduled Downtime is the planned Online monitoring system for Bus Reactor maintenance downtime jointly agreed by the Owner and the Contractor in advance; and
- 43.2.4.8 Excused Performance Downtime is the time when Online monitoring system for Bus Reactor is not available fully for functional use for reasons which is excused in the Contract.
- 43.2.5 The Contractor shall ensure that no Scheduled Downtime occurs for a period greater than the Scheduled Downtime period agreed between the Owner and the Contractor. Any increase in the agreed Scheduled Downtime period shall be considered as Unscheduled System Downtime for calculating Annual Online monitoring system for Bus Reactor Availability

44.0 **AMENITIES TO BE PROVIDED BY OWNER AND CONTRACTOR**

- 44.1 Following amenities at Site shall be provided by Owner:
  - 44.1.1 Material storage area, as available at site, shall be provided to Contractor by Owner. However, securing the area in order to ensure safe and secure storage of materials brought to Site shall be done by Contractor.
- 44.2 Following amenities at Site shall be provided by Contractor:
  - 44.2.1 The Contractor shall provide all the construction equipment, tools, tackles, scaffoldings etc required for performing Services under the Contract. It shall submit a list of all such materials to the Owner before the commencement of construction at Site. These equipments, tools, tackle, scaffoldings etc shall not be removed from the Site without written permission of the Owner.
  - 44.2.2 The Contractor shall provide appropriate lighting and fencing for performing the Services round the clock in safe manner and protecting the Facility.
  - 44.2.3 The Contractor shall make his own arrangement for telephone, fax and internet facilities.
  - 44.2.4 The Contractor shall provide the necessary first-aid facilities for all Contractor Staff working at Site. Adequate number of Contractor Staff shall be trained in administering first-aid.
  - 44.2.5 The Contractor shall keep the entire area allotted to it clean and free from rubbish, debris, etc. during the Term. The Contractor shall employ adequate number of



special personnel to thoroughly clean its work area, at least once in a day. All rubbish and scrap material shall be stacked or disposed of in a place to be identified by the Owner. Materials and stores shall be so arranged as to permit easy cleaning of the area. In areas where equipment might drip oil and cause damage to the floor surface, a suitable protective cover of a flame resistant, oil proof sheet shall be provided by Contractor to protect the floor from such damage.

44.2.6 After Taking-Over of Facility by the Owner, the Contractor shall remove all rubbish and scrap material from the Site and leave the Site and the Facility clean and safe.

#### 45.0 **WAIVER**

##### 45.1 **No Waiver of Rights**

The failure of either Party to enforce at any time any of the provisions of this Contract or any rights in respect thereto or to exercise any option therein provided, shall in no way be construed to be a waiver of such provisions, rights or options or in any way to affect the validity of this Contract. The exercise by either Party of any of its rights herein shall not preclude or prejudice either Party from exercising the same or any other right it may have hereunder.

##### 45.2 **Payments Not to Affect Right of the Owner and Liability of Contractor**

No sum paid on account by the Owner shall affect or prejudice the rights of the Owner against the Contractor or relieve the Contractor of its obligations for the due performance of its obligations under this Contract, including supply of Materials or be interpreted as approval of the Materials delivered.

#### 46.0 **VALIDITY AND SURVIVAL OF PROVISIONS**

##### 46.1 **Validity of Provisions and Severability**

The provisions of this Contract are severable. In the event any provision or condition of this Contract shall be held to be invalid, void or otherwise unenforceable, such prohibition, invalidity or unenforceability shall not affect the validity or enforceability of any other provisions and conditions of this Contract. The Parties agree in such circumstances to negotiate an equitable amendment to the provisions of this Contract to give effect to the original intention of the Parties.

##### 46.2 **Survival of Provisions**

The provisions of this Contract which by their nature are intended to survive the termination or expiry of this Contract shall continue as valid and enforceable obligations of the Parties notwithstanding any such termination or expiry.

#### 47.0 **LANGUAGE AND MEASURES**

47.1 The governing language for the Contract shall be English. All documents pertaining to this Contract including specifications, schedules, notices, correspondences or any other document shall be written in English language. The metric system of measurement shall be used exclusively in this Contract.

48.0 **NOTICES**

48.1 All notices, reports, certificates or other communications to be given by one Party to the other under this Contract shall be in writing and by letter or facsimile transmission or electronic mail (save as in case of major issues relating to this Contract, such as notices of tests, arbitration, termination, etc.) and shall be deemed to be duly given when delivered (in the case of personal delivery), when dispatched (in the case of facsimile transmission or electronic mail, provided that the sender has received a receipt indicating proper transmission) or 3 (three) days after being dispatched by an internationally recognized courier (in the case of a letter) to such Party at its address or facsimile number or electronic mail address specified in Clauses 48.2 and 48.3 below, or at such other address or facsimile number as such Party may hereafter specify for such purpose to the other Party by notice in writing.

48.2 Address for Notice to Owner:

Attn: Managing Director  
ONGC Tripura Power Company Limited  
10<sup>th</sup> Floor, Core-4 and Central,  
Scope Minar, Laxmi Nagar,  
New Delhi – 110092  
Email: \_\_\_\_\_@otpcindia.in

48.3 Address for Notice to Contractor:

[ To be provided by Contractor ]  
Attn: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Fax: \_\_\_\_\_  
Email: \_\_\_\_\_

48.4 For the avoidance of doubt it is provided that in case of a facsimile transmission, a positive transmission report from the sender's machine will be conclusive evidence of receipt in the absence of evidence to the contrary.

49.0 **CONTRACTUAL RELATIONSHIP**

49.1 The Contractor shall act as an independent contractor performing this Contract. This Contract does not create any agency, partnership, joint ventures or joint relationship between the Parties. Subject to the compliance of this Contract, Contractor shall be solely responsible for the manner in which the Materials are supplied. All employees, representatives or Subcontractors engaged by the Contractor in performing this Contract shall be under the complete control of the Contractor and shall not be deemed to be employees of the Owner and nothing contained in this Contract or in any Subcontract awarded by the Contractor shall be construed to create any contractual relationship between any such employees or representative or Subcontractors and the Owner. Contractor shall be responsible for its acts, defaults or negligence and acts, defaults or negligence of its agencies, servant, employees, workmen or Subcontractors.

49.2 Nothing contained in this Contract or any Subcontract awarded by Contractor shall create any contractual relationship between any Subcontractor and Owner.

50.0 **COPIES OF CONTRACT AND COUNTERPARTS**

50.1 This Contract shall be signed in 2 (two) originals. The Contractor shall be provided with 1 (one) signed original and the other one will be retained by the Owner.

50.2 Subsequent to signing of this Contract, the Contractor, at its own cost, shall provide the Owner with at least 5 (five) photocopies of this Contract within 30 (thirty) days after the signing of this Contract.

51.0 **ENTIRE AGREEMENT**

51.1 This Contract constitutes the entire understanding between Parties hereto with respect to the subject matter hereof and supersedes all communication, negotiations and agreement (whether written or oral) of the Parties with respect hereto made prior to the date of this Contract.

51.2 There are no understandings or agreements between the Owner and the Contractor which are not fully expressed herein including the Annexures referred to in this Contract.

51.3 No modifications of this Contract shall be valid unless the same is agreed in writing between the Parties hereto and issued as an amendment in writing to this Contract.

**Annexure-1**

**CONTRACT PRICE**

**Part A**

[•]

**Part B**

[•]

**TECHNICAL SPECIFICATIONS**

**(To be attached)**

## Annexure-3

## FORMAT FOR PERFORMANCE BANK GUARANTEE

(To be stamped in accordance with Stamp Act)

Bank Guarantee No. \_\_\_\_\_

Date \_\_\_\_\_

To,  
**ONGC Tripura Power Company Limited**  
**10<sup>th</sup> Floor, Core-4 and Central,**  
**Scope Minar, Laxmi Nagar**  
**New Delhi – 110092**  
**Phone: +91-11-22404700**

Dear Sirs,

At the request and for the account of our client \_\_\_\_\_ having its registered office at \_\_\_\_\_ (hereinafter referred to as the "Contractor", which expression shall, unless inconsistent with the context or meaning thereof, include its successors and assigns), and in consideration of ONGC Tripura Power Company Ltd having its registered office in **ONGC Tripura Power Company Limited, Udaipur-Kakraban Road, Palatana P.O., District Gomti, Tripura-799116.** (India) (hereinafter referred to as the "Owner", which expression shall, unless inconsistent with the context or meaning thereof, include its successors and assigns) having awarded the contract for implementation of Complete Online Monitoring System for Bus Reactor at 2x363.3 MW Combined Cycle Power Plant at Palatana, Tripura, India under reference no. \_\_\_\_\_ dated \_\_\_\_\_ to the Contractor (as amended, supplemented or modified from time to time in accordance with the terms thereof, hereinafter referred to as the "Contract") and the Contractor having agreed to provide a contract performance guarantee to the Owner for the full and faithful performance of each of Contractor's payment and other obligations under the Contract in an amount equal to Rs \_\_\_\_\_ [Rupees \_\_\_\_\_] (as such, amount may change pursuant to terms of the Contract, hereinafter "Aggregate Maximum Amount"),

we, \_\_\_\_\_, having our head office at \_\_\_\_\_ (hereinafter referred to as the "**Bank**", which expression shall, unless inconsistent with the context or meaning thereof, include its successors and assigns) do hereby irrevocably and unconditionally guarantee and undertake to pay to the Owner, immediately on receipt of written demand, any and all monies which the Owner certifies that it is entitled to draw hereunder pursuant to the terms and conditions of the Contract to the extent of the Aggregate Maximum Amount for the claim (s) arising up to the End Date (as defined below) without any demur, reservation, contest, recourse or protest and without any reference to the Contractor. Any such demand made by the Owner on the Bank under this Guarantee shall be (a) conclusive evidence that the Owner is entitled to demand payment thereof from the Bank pursuant to the terms and conditions of the Contract and (b) binding on the Bank, in each case notwithstanding any difference between the Owner and the Contractor or any dispute pending before any court, tribunal, arbitrator or any other authority

Multiple drawings may be made under this Guarantee. The Aggregate Maximum Amount under this Guarantee shall be automatically reduced by the amount paid to the Owner against demands for payment under this Guarantee.

This Guarantee may be amended to extend the then current End Date upon the written request of the Contractor, but this Guarantee shall not otherwise be amended, and the Aggregate Maximum Amount shall not be reduced without the prior written consent of the Owner.

The Owner shall have the fullest liberty, without affecting in any way the liability of the Bank under this Guarantee, from time to time to extend the time for performance of the Contract by the Contractor. The Owner shall have the fullest liberty, without affecting the liability of the Bank under this Guarantee, to postpone from time to time the exercise of any powers vested in the Owner or of any right which the Owner might have against the Contractor, to exercise the same at any time in any manner, and either to enforce or to forbear to enforce any covenants in the Contract or any other course or remedy or security available to the Owner. The Bank shall not be released of its obligations under this Guarantee by any exercise by the Owner of its liberty with reference to the matters aforesaid or any of them or by reason of any other act of forbearance or other acts of omission or commission on the part of the Owner or any other indulgence shown by the Owner or by any other matter or thing whatsoever which under law would, but for this provision, have the effect of relieving the Bank from such obligations.

The Bank also agrees that the Owner, at its option, shall be entitled to enforce this Guarantee against the Bank as a principal debtor in the first instance without proceeding against the Contractor and notwithstanding any security or other guarantee the Owner may have in relation to the Contractor's liabilities.

The Bank's liability under this Guarantee is limited to the Aggregate Maximum Amount and it shall remain in force up to and including \_\_\_\_\_, 201\_ (such date as may be extended, the "End Date"). The End Date shall be extended from time to time for such period as may be desired by the Owner and accepted by the Contractor on whose behalf this Guarantee has been issued. The Bank hereby agrees to notify the Owner in writing by registered mail not less than 30 (thirty) days prior to any expiration or other cancellation of this Guarantee if for any reason this Guarantee will expire according to its terms or will otherwise be cancelled and the validity of this Guarantee has not been extended beyond the then current End Date. This Guarantee shall expire on the End Date whether returned to us or not, but, Owner may raise a claim occurred on or prior to End Date on Bank within 2 (two) months of End Date of this Guarantee and Bank will honour such claim(s), and no claims will be honoured thereafter.

Dated this \_\_\_ day of \_\_\_\_\_, 20\_\_\_ at \_\_\_\_\_

WITNESS

(Signature) \_\_\_\_\_

(Signature) \_\_\_\_\_

(Name) -----

(Name) -----

(Official Address)

(Designation with Bank stamp)

Attorney as per Power of Attorney  
No.  
Dated

*Note: Currency of this Bank Guarantee shall be INR (Indian Rupees). This Bank guarantee shall be provided under a cover letter from the bank which is duly signed by 2 (two) authorized officers of such bank.*



**FORMAT FOR ADVANCE BANK GURANTEE**  
(To be stamped in accordance with Stamp Act)

Bank Guarantee No. \_\_\_\_\_

Date \_\_\_\_\_

To,  
**ONGC Tripura Power Company Limited**  
**10<sup>th</sup> Floor, Core-4 and Central,**  
**Scope Minar, Laxmi Nagar**  
**New Delhi – 110092**  
**Phone: +91-11-22404700**

Dear Sirs,

At the request and for the account of our client ..... having its registered office ..... (hereinafter referred to as the "**Contractor**", which expression shall, unless inconsistent with the context or meaning thereof, include its successors and assigns), and in consideration of ONGC Tripura Power Company Ltd having its registered office at **ONGC Tripura Power Company Limited, Udaipur-Kakraban Road, Palatana P.O., District Gombi, Tripura-799116.** (India) (hereinafter referred to as the "**Owner**", which expression shall, unless inconsistent with the context or meaning thereof, include its successors and assigns) having awarded the contract for implementation of Complete Online Monitoring System for Bus Reactor at 2x363.3 MW Combined Cycle Power Plant at Palatana, Tripura, India under reference no. \_\_\_\_\_ dated \_\_\_\_\_, to the Contractor (as amended, supplemented or modified from time to time in accordance with the terms thereof, hereinafter referred to as the "**Contract**") and the Owner having agreed to make advance payments to the Contractor as provided therein in an amount not to exceed **Rs \_\_\_\_\_ (Rupees \_\_\_\_\_)** (as such amount may change pursuant to conditions of the Contract, hereinafter "**Aggregate Maximum Amount**"),

we, \_\_\_\_\_, having our head office at \_\_\_\_\_ (hereinafter referred to as the "**Bank**", which expression shall, unless inconsistent with the context or meaning thereof, include its successors and assigns) do hereby irrevocably and unconditionally guarantee and undertake to pay to the Owner, immediately on receipt of written demand, any and all monies which the Owner certifies that it is entitled to draw hereunder pursuant to the terms and conditions of the Contract to the extent of the Aggregate Maximum Amount for claim(s) arising up to the End Date (as defined below) without any demur, reservation, contest, recourse or protest and without any reference to the Contractor. Any such demand made by the Owner on the Bank under this Guarantee shall be (a) conclusive evidence that the Owner is entitled to demand payment thereof from the Bank pursuant to the terms and conditions of the Contract and (b) binding on the Bank, in each case notwithstanding any difference between the Owner and the Contractor or any dispute pending before any court, tribunal, arbitrator or any other authority.

This Guarantee may be amended to extend the then-current End Date upon the written request of the Contractor Owner with due consent of the, but this Guarantee shall not otherwise be amended, and the Aggregate Maximum Amount shall not be reduced without the prior written consent of the Owner.

The Owner shall have the fullest liberty, without affecting in any way the liability of the Bank under this Guarantee, from time to time to extend the time for performance of the Contract by the Contractor. The Owner shall have the fullest liberty, without affecting the liability of the Bank

under this Guarantee, to postpone from time to time the exercise of any powers vested in the Owner or of any right which the Owner might have against the Contractor, to exercise the same at any time in any manner, and either to enforce or to forbear to enforce any covenants in the Contract or any other course or remedy or security available to the Owner. The Bank shall not be released of its obligations under this Guarantee by any exercise by the Owner of its liberty with reference to the matters aforesaid or any of them or by reason of any other act of forbearance or other acts of omission or commission on the part of the Owner or any other indulgence shown by the Owner or by any other matter or thing whatsoever which under law would, but for this provision, have the effect of relieving the Bank from such obligations.

The Bank also agrees that the Owner, at its option, shall be entitled to enforce this Guarantee against the Bank as a principal debtor in the first instance without proceeding against the Contractor and notwithstanding any security or other guarantee the Owner may have in relation to the Contractor's liabilities.

The Bank's liability under this Guarantee is limited to the Aggregate Maximum Amount and it shall remain in force up to and including [\_\_\_\_\_, 20\_\_] (such date as may be extended, the "**End Date**"). The End Date shall be extended from time to time for such period (not exceeding one year), as may be desired by the Contractor on whose behalf this Guarantee has been issued. The Bank hereby agrees to notify the Owner in writing by registered mail not less than 30 (thirty) days prior to any expiration or other cancellation of this Guarantee if for any reason this Guarantee will expire according to its terms or will otherwise be cancelled and the validity of this Guarantee has not been extended beyond the then current End Date. This Guarantee shall expire on the End Date whether returned to us or not, but, Owner may raise a claim occurred on or prior to End Date on Bank within two months of End Date of this Guarantee and Bank will honour such claim(s), and no claims will be honoured thereafter.

Dated this \_\_\_ day of \_\_\_\_\_, 20\_\_ at \_\_\_\_\_

WITNESS

(Signature) \_\_\_\_\_

(Signature) \_\_\_\_\_

(Name) -----

(Name) -----

(Official Address)

(Designation with Bank stamp)

Attorney as per Power of Attorney  
No.  
Dated

*Note: Currency of this Bank Guarantee shall be INR (Indian Rupees). This Bank guarantee shall be provided under a cover letter from the bank which is duly signed by 2 (two) authorized officers of such bank.*

**LIST OF ACCEPTABLE BANKS****Foreign banks**

<b>Sl. No.</b>	<b>Name of Bank</b>
1.	Citigroup, USA
2.	HSBC Holdings, United Kingdom
3.	Standard Chartered

**Indian banks**

<b>Sl.No</b>	<b>Name of Indian Banks</b>
1.	Allahabad Bank
2.	Bank of Baroda
3.	Bank of India
4.	Canara Bank
5.	Indian Bank
6.	Oriental Bank of Commerce
7.	Punjab National Bank
8.	State Bank of India
9.	Axis Bank
10.	ICICI Bank
11.	Indusind Bank
12.	HDFC Bank

**CURRENT SHAREHOLDING OF THE CONTRACTOR**

**(To be attached)**

**Annexure-7**

**GUARANTEED PERFORMANCE**

Following are the functional guarantees for the Total Online monitoring system for Bus Reactor:

SI	Parameters	Guaranteed Value
1.0	Availability during Guarantee Test / Trial Operation	<b>99.50%</b>
2.0	Availability during 1 <sup>st</sup> Operating Year / 1 <sup>st</sup> Warranty Year	<b>99.50%</b>
3.0	Availability during 2 <sup>nd</sup> Operating Year/ 2 <sup>nd</sup> Warranty Year	<b>99.50%</b>
4.0	Availability during 3 <sup>rd</sup> Operating Year/ 3 <sup>rd</sup> Warranty Year	<b>99.50%</b>
5.0	Availability during 4 <sup>th</sup> Operating Year / 4 <sup>th</sup> Warranty Year	<b>99.50%</b>
6.0	Availability during 5 <sup>th</sup> Operating Year / 5 <sup>th</sup> Warranty Year	<b>99.50%</b>

1. Availability shall be calculated as follows:

$$A = [TSH - (TUD-TEPD)]*100/TSH$$

Where,

A = Availability (in %)

TSH = Total Service Hour;

TUD = Total Unscheduled Downtime (Hour); and

TEPD = Total Excused Performance Downtime (Hour)

2. Total Service Hour during guarantee test shall be 24 x 30 = 720 Hours
3. Total Service Hour in any operating year shall be 24 x 365 / 366 i.e. 8760 / 8784 Hours
4. Unscheduled downtime shall mean the time when Total Online monitoring system for Bus Reactor is not available for functional use and which is outside scheduled downtime
5. Scheduled downtime is the planned Total Online monitoring system for Bus Reactor Maintenance downtime jointly agreed by Owner and Contractor in advance.
6. Excused performance downtime is the time when Total Online monitoring system for Bus Reactor is not available for functional use for reason which is excused in the Contract.

**MANUFACTURERS AUTHORIZATION FORM (MAF)**

Enquiry No:

To,

Head- Corporate C&M,  
ONGC Tripura Power Company Limited  
10th Floor, Core-4 and Central,  
Scope Minar, Laxmi Nagar  
New Delhi – 110092  
Phone: +91-11-22404700

Dear Sir,

Sub: Manufacturer's Authorization (Enquiry No. \_\_\_\_\_ )

We \_\_\_\_\_ who are established and reputable manufacturers of \_\_\_\_\_ do hereby authorize M/s. \_\_\_\_\_ (Name and Address of bidder) to bid, negotiate and conclude the contract with you against enquiry No. \_\_\_\_\_ dated \_\_\_\_\_ for the above goods to be manufactured and shipped by us from the list of countries as mentioned at Clause No. 23.4 of the Implementation Contract.

We hereby extend our full guarantee and warranty for the goods offered for supply against this invitation for bid by the above firm.

We hereby confirm that this undertaking is made in good faith and the aforesaid declarations are binding on us for the entire term of contract under the aforementioned Bid.

Yours Faithfully

(Name and Designation)

For and on behalf of M/s.  
(Name of manufacturers)  
Seal of Company

**Note: This MAF should be on the letterhead of the manufacturing / OEM concern and should be signed by a person competent and having the power of attorney to bind the manufacturer.**

**SITE**

SITE CONDITIONS - OTPC GAS POWER PLANT AT PALATANA, TRIPURA

Ambient temperature:

Maximum / Minimum temperature: 37.5 °C and 6.7°C

Daily maximum mean temperature: 30.5 °C

Daily minimum mean temperature: 20.5 °C

Design temperature for electrical

Equipment/device/System: 40 °C

Rainfall:

Average annual rainfall: 2000 mm

Max. Recorded in 24 Hrs : 164.9 mm

Period of Monsoon (Avg) Showers: May to October

Relative Humidity: Varies up to 100%

Maximum RH: 100%

Minimum RH: 40%

Mean RH: 77%

Winter season

December to February: Heavy fog for about two months in a year.

Seismic data: (Data from FI)

Seismic intensity: As per IS-1893.

Zone: V

Importance factor: 0.36

Wind data: (Data from FI)

Max Wind Speed: 55 m/s



**LIST OF MANDATORY SPARES**