



**ONGC TRIPURA POWER COMPANY LIMITED**

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**CONTRACT**  
**FOR**  
**OPERATION & MAINTENANCE SERVICES**

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**DATA CENTRE AND IT INFRASTRUCTURE**  
**AT**  
**DELHI OFFICE AND PALATANA PLANT**

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Project: OPERATION & MAINTENANCE SERVICES

# CONTRACT FOR OPERATION & MAINTENANCE OF DATA CENTRE AND IT INFRASTRUCTURE AT DELHI OFFICE AND PALATANA PLANT

## TABLE OF CONTENT

Clause No.	Description	Page No.
1.0	Definition & Interpretation	5
2.0	Effective Date of Contract	11
3.0	Scope of Services	11
4.0	Term & Authorization to Proceed	13
5.0	Staffing & Authority	14
6.0	Contract Price and Price Basis	18
7.0	Payment	21
8.0	Taxes, Duties and Levies	22
9.0	Operation and Maintenance Period	23
10.0	Liquidated Damages	23
11.0	Insurance	24
12.0	Indemnification	25
13.0	Limitation of Liability	27
14.0	Suspension	28
15.0	Change in Control	28
16.0	Applicable Labour Laws	29
17.0	Progress Report	30
18.0	Subcontracting	31
19.0	Lien	31
20.0	Force Majeure	31
21.0	Representations & Warranties	33
22.0	Warranty and Warranty Period	35
23.0	Performance Bank Guarantee	36
24.0	Field Quality Assurance and Inspection	37
25.0	Deleted	38
26.0	Amenities to Be Provided By Owner & Contractor	38
27.0	Change / Variation Order	38
28.0	Claim	39
29.0	Backcharges	40
30.0	Contractor to Inform Itself Fully	41
31.0	Deleted	42
32.0	Access to Site	42
33.0	Fire Protection	42
34.0	Security	43
35.0	Contractor's Area Limits	43

<b>Clause No.</b>	<b>Description</b>	<b>Page No.</b>
36.0	Deleted	43
37.0	Cooperation and Coordination at the Site	43
38.0	Contractor's Material Brought on to Plant	44
39.0	Deleted	44
40.0	Deleted	44
41.0	Statutory Approvals, Permits & Fraudulent Practices	44
42.0	Emergencies	45
43.0	Termination	46
44.0	Governing Laws and Jurisdiction	49
45.0	Settlement of Disputes	49
46.0	Change in Law	51
47.0	Assignment	51
48.0	Release of Information	52
49.0	Confidential Information	52
50.0	Intellectual Property	54
51.0	Patent Rights and Royalties	54
52.0	Waiver	54
53.0	Validity and Survival of Provisions	55
54.0	Language and Measures	55
55.0	Notices	55
56.0	Contractual Relationship	56
57.0	Copies of Contract and Counterparts	56
58.0	Entire Agreement	56

#### **ANNEXURES**

Annexure-1	Staffing Plan	58
Annexure-2	Contract Price	59
Annexure-3	Guaranteed Performance	60
Annexure-4	Technical Specifications	61
Annexure-5	Format for Performance Bank Guarantee	62
Annexure-6	Minimum Qualification	65
Annexure-7	List of Acceptable Banks	67
Annexure-8	Price for Manpower Addition & Deletion	68

**CONTRACT FOR OPERATION & MAINTENANCE SERVICES FOR DATA  
CENTRE AND IT INFRASTRUCTURE AT DELHI OFFICE AND PALATANA  
PLANT**

This contract for operation and maintenance services for Data Centre and IT Infrastructure at Delhi Office and Palatana Plant ("**Contract**") is signed on the [•] 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 Udaipur-Kakraban Road, P.O. Palatana, District Gomati, Tripura - 799105 (India) and one of its offices at 6<sup>th</sup> Floor, IFCI Tower, Nehru Place, New Delhi – 110019 (India) (herein after 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 has setup Data Centre and IT Infrastructure at Delhi Office and Palatana Plant, 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 performing the Services (as defined hereinafter) required for operation and maintenance of Data Centre and IT Infrastructure.
3. The Contractor represents that it has the necessary specialized knowledge, expertise and infrastructure for providing Services and to perform its obligations under this Contract.
4. The Owner desires to engage the Contractor to provide the Services required for operation and maintenance of Data Centre and IT Infrastructure in accordance with the terms and conditions specified in this Contract.
5. The Contractor is willing and has agreed to provide the Services required for operation and maintenance of Data Centre and IT Infrastructure 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 perform, and the Owner shall engage the Contractor for the performance of the Services, 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 this Contract, the following terms shall have the meanings specified in this Article 1.0:

1.1 **"Abandonment"** means the substantial cessation of the performance of the Services 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 7 (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 45.4.4.

1.6 **"Arbitration Act"** shall have the meaning ascribed to it in Clause 45.4.1.

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 46.2.

1.9 **"Claim"** shall have the meaning ascribed to it in Clause 28.1.

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 **"Confidential Information"** shall have the meaning ascribed to it in Clause 49.1.

1.12 **"Contract Price"** shall have the meaning ascribed to it in Clause 6.1.1.

1.13 **"Contractor Indemnified Parties"** shall have the meaning ascribed to it in Clause 12.2.1.

- 1.14 **"Contractor Staff"** means each individual and collectively the Contractor's employees, labour (skilled, semi-skilled and unskilled), Subcontractors, and their respective employees, contractors (of the Subcontractors), officers, licensees, invitees, agents and representatives, dedicated for the performance of the Services and working at the Site, and any other personnel notified to the Owner by the Contractor as the Contractor's personnel.
- 1.15 **"Contractor's Event of Default"** shall have the meaning ascribed to it in Clause 43.1.1.
- 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 this Contract or arising there from, before or after the execution thereof, at any time prior to the expiry of 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 this Contract or after the execution of this Contract, as the case may be, any Person in respect of any matter relating to the Project or this 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 43.6.1.
- 1.19 **"Data Center & IT Infrastructure"** means data center and information technology infrastructure facility of Owner at Delhi Office and Palatana Plant.
- 1.20 **"Directive"** means any directive issued by a Government Agency.
- 1.21 **"Direct Tax"** shall have meaning ascribed to it in Clause 8.1.
- 1.22 **"Effective Date"** means the date of Letter of Award.
- 1.23 **"Existing Contractor"** means Sify Technologies Limited.
- 1.24 **"Emergency Event"** means a sudden and unexpected event or circumstance which has caused or reasonably threatens to cause (i) serious bodily injury to any personnel employed at the Site or any other Persons at or in the vicinity of the Site; (ii) serious physical damage to the Plant, including the Facility or other material or

property located at or in the vicinity of the Site; (iii) a work stoppage or other serious labour disturbance at the Site; (iv) imposition of fines or other penalties or sanctions under any Applicable Law, which fines, penalties or sanctions would be likely to affect seriously the ability of Owner or the Contractor to perform any of its or their obligations under this Contract; or (v) an occurrence of any accident materially impacting on the environment.

- 1.25 **"Facility"** or **"Facilities"** means Data Centre and IT Infrastructure set-up at Delhi Office and at Palatana Plant.
- 1.26 **"Field Quality Program"** means the field quality program prepared by the Contractor and approved by the Owner in accordance with the provisions of Article 24.0 (Field Quality Assurance and Inspection).
- 1.27 **"Force Majeure"** shall have the meaning ascribed to it in Clause 20.1.
- 1.28 **"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.
- 1.29 **"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.
- 1.30 **"Governmental Authorizations"** means all approvals, authorizations, permits, licenses, consents, clearances, etc., received or required to be received from Government Agency for the Plant.
- 1.31 **"GST"** means Goods and Services Tax.
- 1.32 **"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.
- 1.33 **"HES Policy"** means the health, environment and safety policy of the Owner.

- 1.34 "IL&FS" means Infrastructure Leasing & Financial Services Limited.
- 1.35 "Indirect Taxes" shall have the meaning ascribed to it in Clause 8.2.
- 1.36 "INR" or "Rs" or "Indian Rupees" means the legal currency of the Republic of India.
- 1.37 "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 including Facility, and their respective successors and assigns, including any trustee, agent or designee acting on their behalf.
- 1.38 "Letter of Award" or "LOA" means the letter dated [●] issued by the Owner in favour of the Contractor.
- 1.39 "Loan Agreements" means the loan agreements entered into by the Owner with the Lenders pursuant to which the Lenders have agreed to provide debt financing to the Owner for developing, constructing and operating the Plant.
- 1.40 "Losses" means any and all liabilities, losses, damages, claims, costs, obligations, charges, demands, cause of action and expenses (including reasonable attorneys' fees) of whatsoever kind or nature and it does not include indirect and consequential losses.
- 1.41 "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.
- 1.42 "Operating Fee" shall have the meaning ascribed to it in Clause 6.3.1.
- 1.43 "Operating Year" means the (i) first operating year period starting from 00:00 hrs of 1<sup>st</sup> May 2021 till 24:00 hrs of 30<sup>th</sup> April 2022 (ii) second operating year period starting from 00:00 hrs of 1<sup>st</sup> May 2022 till 24:00 hrs of 30<sup>th</sup> April 2023.
- 1.44 "Operational Phase" means the period starting from 00:00 hrs of 1<sup>st</sup> May 2021 and till the expiry of this Contract i.e., 24:00 hrs of 30<sup>th</sup> April 2023 or termination of this Contract.
- 1.45 "Owner's Event of Default" shall have the meaning ascribed to it in Clause 43.2.1.
- 1.46 "Owner Indemnified Parties" shall have the meaning ascribed to it in Clause 12.1.1.

- 1.47 **"Owner's Staff"** means employees of the Owner employed by the Owner for the construction, operation and maintenance of the Plant including Facility.
- 1.48 **"Performance Bank Guarantee"** shall have the meaning ascribed to it in Clause 23.1.
- 1.49 **"Person"** means, unless specified otherwise, a natural person, corporation, society, partnership, joint venture, unincorporated association or other entity.
- 1.50 **"Plant"** means 2 x 363.3 MW gas based combined cycle power plant at Palatana, Tripura.
- 1.51 **"Project"** shall have the meaning ascribed to it in Recital 1.
- 1.52 **"Project Manager"** means the project manager appointed by the Owner pursuant to Clause 5.3.1.
- 1.53 **"Promoters"** means ONGC, IL&FS, IDFC and Government of Tripura.
- 1.54 **"Prudent Operating & Maintenance Practices"** means the exercise of that degree of skill, diligence, prudence, foresight, and operating practice taking into account Indian conditions, generally followed internationally by highly qualified, prudent professionals in information technology industry with respect to the testing, repair, operation and maintenance of Data Center and Information technology facilities including the procurement, construction, installation, testing, operation, maintenance 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. Prudent Operating & maintenance 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 of facilities similar in size and operational characteristics to the Facility.
- 1.55 **"Punch List"** means the list generated during joint inspection of Facility by the Owner and the Contractor at the closing stages of completion of Contracts setting out the balance list of works to be fulfilled by the Contractor to fully meet their obligations under this Contracts.
- 1.56 **"Resident Project Manager"** means the resident project manager appointed by the Contractor pursuant to Clause 5.1.4.
- 1.57 **"Services"** shall have the meaning ascribed to it in Clause 3.1.
- 1.58 **"Staffing Plan"** means the staffing plan to be adopted by the Contractor for the performance of Services and as set out in Annexure 1 (Staffing Plan).
- 1.59 **"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.

- 1.60 **"Subcontractor"** means any Person carrying out any of the responsibilities or obligations of the Contractor under this Contract under or pursuant to a Subcontract.
- 1.61 **"Subsidiary"** shall have the meaning ascribed to it in Section 4 of the Companies Act, 1956.
- 1.62 **"Takeover Fees"** shall have the meaning ascribed to it in Clause 6.2.1.
- 1.63 **"Takeover Phase"** means the period starting from 00:00 hrs of 20<sup>th</sup> April 2021 and ending on 24:00 hrs on 30<sup>th</sup> April 2021.
- 1.64 **"Technical Specifications"** means the specifications for performing the obligations under this Contract and as set out in Annexure 4 (Technical Specifications).
- 1.65 **"Term"** shall have the meaning ascribed to it in Clause 4.1.1.
- 1.66 **"Termination Date"** means the date upon which termination pursuant to Clause 43.5.1 takes effect.
- 1.67 **"Warranty"** shall have the meaning ascribed to it in Clause 22.1.
- 1.68 **"Warranty Period"** shall have the meaning ascribed to it in Clause 22.2.
- 1.69 **"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.
- 1.70 **"Yearly Operating Fee"** shall have the meaning ascribed to it in Clause 6.3.1.
- 1.71 **Rules of Interpretation**
- In the interpretation of this Contract, unless the context otherwise requires:
- 1.71.1 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;
- 1.71.2 a reference to any gender includes the other genders;
- 1.71.3 a reference to a Clause, Article, Annexure or Recital is a reference to a Clause, Article, Annexure or Recital in this Contract;
- 1.71.4 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;

- 1.71.5 in case of any discrepancy between words and figures, the words shall prevail over the figures;
- 1.71.6 a reference to a statute shall be construed as including all statutory provisions consolidating, amending, modifying, supplementing or replacing the statute referred to;
- 1.71.7 a reference to "writing" includes printing, typing, lithography and other means of reproducing words in a visible form;
- 1.71.8 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;
- 1.71.9 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;
- 1.71.10 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
- 1.71.11 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 Effective Date and the obligations of the Contractor to provide the Services shall also commence from the Effective Date.
- 3.0 **SCOPE OF SERVICES**
- 3.1 The Contractor shall provide all the support services required for operation and maintenance of Facility during Operational Phase, including but not limited to:
- 3.1.1 operation and maintenance of Data Centre and IT Infrastructure in conformity with this Contract and Applicable Laws during Operational Phase;
- 3.1.2 operating and maintaining the Facility along with Existing Contractor during Takeover Phase, including mobilization of staff and resources as per the Staffing Plan for Takeover Phase which is attached herewith as Annexure-1 (Staffing Plan);
- 3.1.3 taking over of the Facility including tools & tackles, software, hardware, spare parts, materials, drawings, documents, manuals, reports, operation & maintenance records etc. from the Existing Contractor during Takeover Phase;
- 3.1.4 upon taking over of Facility from Existing Contractor, provide maintenance support for successful and uninterrupted operation of Facility for a period of twenty-four (24) months in conformity with this Contract and Applicable Laws;

- 3.1.5 maintenance and repair of the equipment of the Facility under supervision of OEM for which supervision of OEM shall be hired at Owner's cost;
- 3.1.6 maintenance of warranty and support of OEM hired at Owner's cost;
- 3.1.7 preparing the operation and maintenance procedure;
- 3.1.8 providing required reports documenting the operation and maintenance of the Facility, including but not limited to the Daily Reports, Monthly Reports and Annual Reports;  
  
as set out in further detail in the Technical Specifications (such services, the "**Services**")
- 3.2 The only exclusion from the scope of Services are supply of Spares and consumables during Operational Phase. Except for specified exclusion in this Clause 3.2, all other services required to operate, maintain & repair the Facility as per standard of performance described in Clause 3.7 are included in the scope of Services of Contractor.
- 3.3 The Contractor will operate and maintain the Facility in such manner so as to enhance life and safety of Facility, minimize operating cost and maximize the system availability.
- 3.4 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.
- 3.5 The Contractor agrees that the scope of Services also includes all temporary work, ancillary work, enabling work etc including provision of tools & software required for performing Services.
- 3.6 The Contractor expressly agrees that the scope of Services shall also include all such 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 Prudent Operating & Maintenance Practices and such services shall be performed by the Contractor without any additional cost to the Owner.
- 3.7 Standard of Performance of Services
  - 3.7.1 The Contractor shall, at all times during the Term, perform the Services in a prudent, efficient and careful manner and in accordance with:
    - 3.7.1.1 the provisions of the Contract;
    - 3.7.1.2 the Operation & Maintenance Plan and Procedures for the Facility to be developed by the Contractor and to be approved by the Owner;

- 3.7.1.3 the O&M Manuals provided by the Contractor;
- 3.7.1.4 the recommendations and requirements of any warranties or guarantees existing in relation to Facility, so as not to invalidate or reduce the scope or coverage of any such warranties;
- 3.7.1.5 all Applicable Laws, Permits, clearances and Governmental Authorization in relation to Contractor's obligation under the Contract; and
- 3.7.1.6 all insurance policies specified in Article 11.0 of the Contract
- 3.7.2 The Services shall be performed:
  - 3.7.2.1 so as to minimize Scheduled Outage and not to cause any outage except Scheduled Outages;
  - 3.7.2.2 so as to achieve or improve upon guaranteed performance Parameters specified in Annexure-3 of the Contract.
  - 3.7.2.3 In a manner consistent with insurance policies maintained either by the Contractor or the Owner in relation to Facility and so as not to vitiate or annul any cover afforded by such insurance policies; and
  - 3.7.2.4 So as to optimize useful life of the Facility and minimize cost of operation and maintenance.
- 3.7.3 In the event that any of the standards and requirements specified under Clause 3.7.1 and Clause 3.7.2 above or elsewhere in the Contract, for the performance of the Services by the Contractor require a higher level of performance or a greater degree of care or are otherwise more stringent, more restrictive or more onerous than other such standards and requirements, the more stringent, restrictive or onerous of the standards or requirements shall apply to the Contractor's performance of the Services.
- 4.0 **TERM AND AUTHORIZATION TO PROCEED**
- 4.1 **Term**
  - 4.1.1 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 for 2 (two) years from 00:00 hrs of 1<sup>st</sup> May 2021 till 24:00 hrs of 30<sup>th</sup> April 2023 ("**Term**").
  - 4.1.2 Prior to the expiration of the Term, the Owner and the Contractor may agree to extend the Term for the time period to be mutually agreed. However, such extension shall be solely based on the performance of Contractor and at the sole discretion of the Owner. Any such extension must be agreed at least 3 (three) months prior to the end of Term.
  - 4.1.3 If the Owner decides to extend the Term pursuant to Clause 4.1.2 and the Parties cannot agree the revised price for the extension of this Contract by 3 (three) months prior to the end of the Term, then the Parties expressly agree that the Operating

Fees to the extended term shall be the Operating Fees payable for the immediately preceding year escalated by 5% (five percent).

4.2 **Authorization to Proceed**

4.2.1 Letter of Award shall be considered as authorization to proceed. Contractor shall commence performance of the Services from the date of Letter of Award and continue the performance of the Services during the Term.

5.0 **STAFFING AND AUTHORITY**

5.1 **Contractor's Staff**

5.1.1 The Site shall be staffed adequately to perform the Services in accordance with Prudent Operating & Maintenance Practices and the provisions of this Contract, including but not limited to, in a prudent, efficient, reliable and safe manner.

5.1.2 Contractor shall employ only such Persons, for the performance of Services, who have requisite qualification and experience of particular work. Please refer Annexure 6 (Minimum Qualification and Experience of Contractor's Staff) for minimum qualification & experience requirements for Staff to be employed by the Contractor. All staff to be deployed by the Contractor for the Services shall be regular employee of the Contractor.

5.1.3 Contractor shall deploy staff at Delhi Office and Palatana Plant during Takeover Phase and Operational Phase to fully meet the Contractor's obligation and perform the Services as defined in this Contract.

5.1.4 Contractor shall provide experienced manpower employed by them on their direct role for the following Position:

5.1.4.1 Resident Project Manager (during Takeover Phase)

5.1.4.2 Resident Project Manager (during Operational Phase)

5.1.5 Resident Project Manager shall necessarily be employee on the direct role of the Contractor. CV of Resident Project Manager shall be submitted to Owner for their review and concurrence at least seven (7) days prior to their deployment at site. Owner shall reserve the right to accept or reject proposed Resident Project Manager. Resident Project Manager shall be deployed at site only after approval of their CV by Owner.

5.1.6 The minimum staff to be deployed during Takeover Phase at Delhi Office and Palatana Plant shall not be less than what is specified in the Annexure 1 (Staffing Plan). However, in order to fully meet the Contractor's obligation and perform the Services 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.

5.1.7 The minimum staff to be deployed during Operational Phase at Delhi Office and Palatana Plant shall not be less than what is specified in the Annexure 1 (Staffing

Plan). However, the Owner may, from time to time, ask Contractor to provide additional manpower in *lieu of* off-site manpower for performing the Services which is not included in the scope of services of the Contractor. Contractor shall provide additional manpower, as and when requested by the Owner, as per the schedule of price for manpower addition provided by the Contractor and as set in Annexure 8 (Price for Manpower Addition / Deletion).

- 5.1.8 The minimum staff to be deployed during Takeover Phase and Operational Phase at Delhi Office and Palatana Plant shall be mobilized not later than 20<sup>th</sup> April 2021 and 1<sup>st</sup> May 2021 respectively.
- 5.1.9 No later than 7 (seven) days prior to deploying any Personnel, the Contractor shall submit the CV of such Personnel, for approval by the Owner prior to deployment. Owner shall reserve the right to accept or reject any or all of the proposed Personnel. The same procedure shall be adopted in the event of deployment of any replacement personnel.
- 5.1.10 If the existing Personnel mentioned above die, resign, retire, are dismissed/removed or are otherwise unable to carry out their duties or the term of their appointment ends, the Contractor shall ensure that suitably qualified and experienced replacement is appointed promptly, after due approval from the Owner.
- 5.1.11 All personnel engaged in the performance of the Services 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.
- 5.1.12 Contractor shall provide experienced and qualified operation and maintenance personnel required till completion of Services.
- 5.1.13 Holidays observed by Owner at Delhi / Palatana Site, as applicable, shall apply to Contractor Staff also. Remaining days shall be considered as normal working days.
- 5.1.14 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.
- 5.1.15 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.

- 5.1.16 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.
- 5.1.17 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.
- 5.1.18 Contractor shall arrange local transportation facility for all Contractor Staff.
- 5.1.19 The hours of work at OTPC shall be decided by the Owner and the Contractor shall adhere to it. Working hours shall normally be Nine (9) hours per day - Monday through Friday at Delhi and Monday through Saturday at Palatana Plant. However, Contractor's staff shall have to provide services on a Holiday or beyond working hours, if required, at no additional cost to the Owner.
- 5.1.20 No personnel involved in the provision of Services 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.
- 5.1.21 The Contractor shall ensure that required Contractor Staff is always available at the Site. In addition, the Contractor shall make appropriate arrangements by providing replacement of Contractor Staff, acceptable to the Owner, to take care of responsibilities of Contractor Staff absent from work for any reason whatsoever so that work is not affected in any manner. Details of such replacement of Contractor Staff shall be submitted to the Owner for his approval before any Contractor Staff proceeds on leave. 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.
- 5.1.22 Contractor's Staff at Delhi / Palatana site shall work exclusively for the Project and they shall not be transferred / deputed to any other site of the Contractor, without prior written consent of the Owner.
- 5.1.23 Contractor shall not withdraw any of its staff working on the Project, on temporary or permanent basis without approval of Owner which approval shall not be unreasonably withheld or denied. The Owner can remove Contractor's personnel on any of the following grounds:
- 5.1.23.1 Personnel is not having required skills or experience.
- 5.1.23.2 Personnel is absent when required by the Owner for performing the Services.
- 5.1.23.3 Personnel's conduct is inappropriate or such person is incompetent or negligent or otherwise undesirable.

5.1.24 Contractor shall provide technical assistance and support from its other offices in India or abroad to its Staff or as requested by the Owner and as necessary to fulfill its obligations under this Contract and towards operation and maintenance problem analysis, solving and rectification as well as towards Data Center & IT Infrastructure improvements. This shall not be considered as additional work and will be part of the Services.

5.2 **Authority of Resident Project Manager**

5.2.1 The Resident Project 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 Project Manager. The Resident Project Manager will direct and manage Contractor's resources and shall have full responsibility for performing the Services.

5.2.2 The Resident Project Manager will report to the Owner's designated officer in matters relating to performance of the Services.

5.3 **Owner's Staff**

5.3.1 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 Project Manager.

5.3.2 Contractor shall report to the Project Manager.

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

5.3.4 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.

5.4 **General Personnel Requirement**

5.4.1 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.

5.4.2 The Contractor is expected to employ only such Persons, for the performance of Services, who have requisite experience of particular work.

5.4.3 The Contractor shall employ only qualified and medically fit Persons who are not below 18 (eighteen) years of age.

- 5.4.4 No female staff or labour shall be employed for night shifts or after darkness.
- 5.4.5 Contractor's Staff shall wear identification badges at all times while on work at Site.
- 5.4.6 Contractor shall employ local people under unskilled workmen category.
- 5.4.7 Local people shall be given preference by Contractor in employment of staff and skilled workmen wherever local people with requisite skills are available.
- 5.4.8 Contractor shall comply with labour rules, regulations and statutes as specified in Article 16.0 (Applicable Labour Laws).
- 5.4.9 All Contractor Staff shall be considered employees of Contractor only and Owner shall have no relation whatsoever with the Contractor Staff.
- 5.4.10 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.
- 5.4.11 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.
- 5.4.12 Payment shall be made on pro-rata basis for the day staff is present on-site.
- 5.5 **Discipline of Workmen**
- 5.5.1 The Contractor shall be responsible for maintaining strict discipline and good order amongst its personnel and those of its Subcontractors at all times.
- 5.5.2 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.
- 6.0 **CONTRACT PRICE AND PRICE BASIS**
- 6.1 **Contract Price**
- 6.1.1 The Owner shall, in consideration for the Services, pay to the Contractor, the contract price comprising of the amounts specified in Part A of Annexure 2 (Contract Price), subject to the terms of this Article 6.0 and Article 7.0 (Payment) below ("**Contract Price**").

6.1.2 The Contract Price is full compensation to Contractor for faithful and satisfactory performance of all the Services included in this Contract, compliance with all terms and conditions of this Contract, and for Contractor's payment of all obligations incurred in, or applicable to the performance of the Services. Contract Price shall be regulated and paid in the manner described in this Article 6.0 and Article 7.0 (Payment).

## 6.2 **Takeover Fees**

6.2.1 The Owner shall pay to the Contractor during the Takeover Phase, a part of Contract Price specified in Part C of Annexure 2 (Contract Price), as the Takeover Phase fee (the "**Takeover Phase Fee**") for performance of its complete scope of Services and obligations during the Takeover Phase under this Contract. Subject to the provisions of Article 6.2.2 of the Contract, the Takeover Phase Fees shall become payable only after complete mobilization of staff for Takeover Phase is achieved as per Staffing Plan for Takeover Phase which is attached herewith as Annexure 1 (Staffing Plan).

6.2.2 The minimum staff to be deployed at OTPC during Takeover Phase, shall not be less than as provided under Annexure 1 (Staffing Plan). If Contractor fails to mobilize staff for Takeover Phase as per Staffing Plan for Takeover Phase then the Takeover Phase Fee shall be adjusted for such shortfall in manpower based on the schedule of price for manpower provided by the Contractor and as set out in Annexure 8 (Price for Manpower Addition / Deletion).

## 6.3 **Operating Fees**

6.3.1 The Owner shall pay to the Contractor during the Operational Phase, a part of Contract Price specified in Part D of Annexure 2 (Contract Price), as operational phase fees (the "**Operating Fees**") for performance of its complete scope of Services and obligations during operational phase under this Contract. For each Operating Year, the fee payable shall be equivalent to such Operating Fees which is calculated on a pro rata basis based on the number of days in such operating Year (the "**Yearly Operating Fees**").

6.3.2 The minimum staff to be deployed at OTPC during Operational Phase, shall not be less than as provided under Annexure 1 (Staffing Plan). If Contractor fails to mobilize staff for Maintenance Phase as per Staffing Plan for Maintenance Phase then the Maintenance Phase Fee shall be adjusted for such shortfall in manpower based on the schedule of price for manpower provided by the Contractor and as set out in Annexure 8 (Price for Manpower Addition / Deletion).

## 6.4 **Price Basis**

6.4.1 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.

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

6.4.2.1 Cost of providing tools & plants, scaffoldings;

- 6.4.2.2 Cost of design, engineering, dismantling, transportation, insurance, unloading, handling, storage, installation, testing, commissioning, maintenance and housekeeping;
- 6.4.2.3 Salaries and wages, including benefits, general and administrative overheads, and all miscellaneous expenses for the Contractor Staff;
- 6.4.2.4 Cost of visits of Contractor's Staff to Palatana Plant on Owner's request during Operational Phase for discussions, meetings, support, and training the Owner's Staff shall be borne by the Owner including cost of travel, boarding, lodging, local conveyance and incidental expenses. Cost of visits of Contractor's Staff does not include man-day rate as specified in Schedule of Price for manpower provided by the Contractor as set out in Annexure 8 (Price for Manpower Addition / Deletion). Any other expense other than specified in this Clause 6.5.2.4 shall be borne by the Contractor;
- 6.4.2.5 Out-of-pocket costs paid or reimbursed for travel and subsistence during said periods of travel of the Contractor Staff;
- 6.4.2.6 Cost of evaluation, selection, employment, relocation, and training of Contractor's Staff;
- 6.4.2.7 All office and administrative expenses (including stationery, telephone, fax, printer, scanner, photocopier, etc.);
- 6.4.2.8 Cost of uniform, personal safety equipment, etc. for Contractor's Staff;
- 6.4.2.9 Premium of insurance policies and deductible amounts for all insurance policies provided by the Contractor, as per Article 11.0 (Insurance);
- 6.4.2.10 All costs and expenses associated with records management, including but not limited to preparation of materials, equipments, reproduction and storage expenses;
- 6.4.2.11 Cost of transporting the systems, equipments, spares, construction materials, tools & plants, etc to the Site;
- 6.4.2.12 Cost to test, evaluate and correct equipment failure;
- 6.4.2.13 Cost of development of procedures and manuals;
- 6.4.2.14 Cost of training Owner's personnel;
- 6.4.2.15 Cost of audit of operation & maintenance of Data Centre and IT Infrastructure and preparation of audit report;
- 6.4.2.16 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; and
- 6.4.2.17 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.

- 6.4.3 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.
- 6.4.4 The Contract Price (including the break-up) specified under Annexure 2 (Contract Price), shall apply regardless of when the Services are performed, during day or night or a holiday.
- 6.4.5 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.
- 6.4.6 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.
- 6.4.7 Contract Price shall be inclusive of all applicable Indirect Taxes as specified in Annexure 2 (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.
- 6.4.8 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.
- 7.0 **PAYMENT**
- 7.1 The payment to the Contractor for the performance of the Services under this Contract shall be made by the Owner as per the guidelines and conditions specified herein. Payments to be made hereunder are subject to any adjustment/deductions as per the provisions of this Contract.
- 7.2 The Contract Price will be paid in Indian Rupees only.
- 7.3 **Payment Term: Takeover Phase Fees**
- 7.3.1 Subject to the receipt of the Performance Bank Guarantee by the Owner as provided in Article 23.0 (Performance Bank Guarantee), the Takeover Phase Fees shall be paid, after the complete mobilization of staff for Takeover Phase is achieved as prescribed under Clause 6.2.1, within 30 (thirty) days of completion of Takeover Phase and receipt of following documents by the Owner duly certified by Owner's representative: (i) invoice, (ii) satisfactory work completion certificate, and (iii) attendance register of Contractor Staff for the Takeover Phase.
- 7.4 **Payment Term: Operational Phase Fees**

7.4.1 Subject to the receipt of the Performance Bank Guarantee by the Owner as provided in ARTICLE 23.0 (Performance Bank Guarantee), the Yearly Operating Fee shall be paid monthly calculated on a *pro rata* basis based on the number of days in such month. Each such monthly installment shall be paid within 30 (thirty) days of receipt by the Owner of Invoice and work progress certificate for the previous month from the Contractor, duly certified by Owner's representative.

7.5 **Due Date and Mode of Payment**

7.5.1 All invoices during Takeover Phase for Takeover Fees shall be submitted by the 3<sup>rd</sup> (third) day of the next calendar month following the relevant month during the Takeover Phase and shall be paid by the Owner after adjustments as allowed in the Contract.

7.5.2 All invoices during Operational Phase for Operating Fees shall be submitted by the 3<sup>rd</sup> (third) day of the next calendar month following the relevant month during an Operating Year and shall be paid by the Owner after adjustments as allowed in the Contract.

7.5.3 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.

7.5.4 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.

7.5.5 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 Article 45.0 (Settlement of Disputes) of this Contract.

8.0 **TAXES, DUTIES & LEVIES**

8.1 The Contractor shall bear and pay all personal, property and corporate taxes (including withholding tax), 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 performance of the Services ("**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.

8.2 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 2 (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.

- 8.3 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 2 (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 Taxes is indicated in Part B of Annexure 2 (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.
- 8.4 Any statutory variation (upward or downward) in Indirect Taxes, as specified in Part B of Annexure 2 (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.
- 8.5 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.
- 8.6 In the event that the Owner is required to pay the income tax/withholding tax applicable on Services provided 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.
- 8.7 All taxes, duties and levies applicable outside India for the Services to be provided outside India or within India under this Contract shall be included in the Contract Price. The Owner shall have no liability whatsoever in this regard.
- 8.8 The Contractor shall avail all concessions, exemptions or benefits available to the Mega Power Project, if any, under laws of India including but not limited to under Indian taxation laws and/or Foreign Trade Policy of India. It will be the responsibility of the Contractor to take all necessary steps in order to avail all such concessions, exemptions or benefits. Any failure to obtain such concessions, exemptions or benefits would be to the account of the Contractor and the Owner shall have no liability whatsoever in this regard.
- 9.0 **OPERATION AND MAINTENANCE PERIOD**
- 9.1 The term of the Contract shall be 2 (two) years from 00:00 hrs of 1<sup>st</sup> May 2021 and till the expiry of this Contract i.e., 24:00 hrs of 30<sup>th</sup> April 2023 or termination of this Contract.
- 10.0 **LIQUIDATED DAMAGES**
- 10.1 The Owner and the Contractor agree that, because of the unique nature of the Services, it is impracticable or infeasible to determine actual damages and loss that

would be incurred by the Owner as a result of the Contractor's failure to demonstrate performance guarantee of Facility during Operational Phase. It is further understood and agreed by the Parties that any sums which would be payable by Contractor under this Article 10.0, are in the nature of liquidated damages, and not a penalty, and are fair and reasonable estimate of damages and loss which Owner would suffer due to such failure of Contractor.

10.2 **Liquidated Damages for Shortfall in Guaranteed Performance during Operational Phase**

10.2.1 In case of failure of Contractor to achieve the guaranteed performance for the Facility as set out in Annexure-3 during Operational Phase, 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 Facility, 0.5% (zero decimal five percent) of Yearly Operating Fees for the relevant Operating Year shall be paid as liquidated damage by the Contractor to the Owner on a *pro rata* basis.

10.2.2 The total amount of liquidated damages payable by the Contractor on account of shortfall in guaranteed performance under Clause 10.2 shall be limited to 10% (ten percent) of the Yearly Operating Fees for the relevant Operating Year.

10.3 Applicable GST shall be charged on the amount of such liquidated damages.

10.4 Payment or deduction of liquidated damages shall in no way relieve the Contractor from discharging its other obligations under this Contract.

10.5 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.

10.6 The Parties acknowledge that the liability for payment of liquidated damages, for any delay in completion of Services or any shortfall in performance arises separately under this Contract and the contract for supply of materials. However, notwithstanding the foregoing, the Parties agree that the circumstances giving rise to a claim by the Owner for liquidated damages under any one of the said contracts shall be deemed to be circumstances giving rise to a claim by the Owner for liquidated damages under the other contract and shall automatically (without any notice or action on the part of the Owner) be deemed to be a claim by the Owner for liquidated damages under the other contract and under this Contract (provided that, in no event shall the Owner be entitled to a double recovery for any such claim). The aggregate liability of the Contractor to pay liquidated damages under both contracts, as a whole, shall not be vitiated, affected or reduced notwithstanding that the relevant default or breach is attributable to only one of the said contracts.

10.7 For the avoidance of doubt it is clarified, that the Owner's right to receive liquidated damages in accordance with this Article 10.0 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.

## 11.0 **INSURANCE**

11.1 Without prejudice to its obligations under this Contract or otherwise under Applicable Law, the Consultant, 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.

11.2 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.

11.3 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.

11.4 Neither failure to comply nor full compliance with the insurance provisions of this Contract shall limit or relieve the Consultant of its liabilities and obligations under this Contract.

## 12.0 **INDEMNIFICATION**

### 12.1 **Indemnification by Contractor**

12.1.1 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:

12.1.1.1 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;

12.1.1.2 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 furnished by Contractor or its Subcontractors in performance of the Services. Should any Services provided 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 services, replace same with equivalent, non-infringing services, or modify the services so that the use thereof becomes non-infringing, provided that any such modification or replacement is of equal quality and provides equal performance as provided by the infringing services;

12.1.1.3 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 Plant, equipments, tools, scaffolding or facilities furnished to Contractor by the Owner; or

- 12.1.1.4 From present or future Environmental Claims directly or indirectly related to or arising out of the actual or alleged existence, generation, use, 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 or sub-vendors in the performance of the Services under this Contract; provided, however, that nothing contained herein shall be construed as requiring Contractor to take any corrective action with respect to any Hazardous Material in existence prior to the Effective Date.
- 12.1.2 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.
- 12.1.3 With respect to claims by employees of Contractor or its Subcontractors on the Owner Indemnified Party, the indemnity obligations created under this Clause 12.1 shall not be limited by the fact of, amount, or type of benefits or compensation payable by or for Contractor, its Subcontractors or suppliers 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.
- 12.1.4 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 12.1, until such claims, suits or liens have been settled and satisfactory evidence to that effect has been furnished to the Owner.
- 12.1.5 Contractor acknowledges that specific payment has been incorporated into the Contract Price as legal consideration for Contractor's indemnity obligations as may be provided in this Contract.
- 12.2 **Indemnification by Owner**
- 12.2.1 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.

### 12.3 **Defense of Claims**

12.3.1 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.

12.3.2 Notwithstanding the provisions of Clause 12.3.1, 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 12.3.1, 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.

12.3.3 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.

12.3.4 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.

12.4 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.

12.5 Provision of this Article 12.0 shall survive termination or expiry of this Contract.

### 13.0 **LIMITATION OF LIABILITY**

13.1 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.

13.2 With the exception of those provisions 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 use of the Plant, 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 Article 12.0 (Indemnification) or covered by the insurance under Article 11.0 (Insurance). Nothing in this Article 13.0 shall reduce the Contractor's liability for liquidated damages in accordance with the provisions of this Contract.

13.3 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.

13.4 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.

#### 14.0 **SUSPENSION OF SERVICES**

14.1 Owner reserves the right, at its convenience, to suspend and reinstate performance of the whole or any part of the Services without invalidating the provisions of this Contract. Orders for suspension or reinstatement of the Services shall be issued to the Contractor in writing.

14.2 Upon receiving any such notice of suspension, Contractor shall promptly suspend further performance of the Services to the extent specified, and during the period of such suspension shall take proper care of and protect all equipments at the Site, inventories in stores, supplies and equipment Contractor has with it for performance of the Services. 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 utilize its material, labor and equipment in such a manner as to mitigate costs associated with suspension. Owner may, at any time, withdraw the suspension of performance of the Services as to all or part of the suspended Services by written notice to the Contractor specifying the effective date and scope of withdrawal, and Contractor shall resume diligent performance of the Services for which the suspension is withdrawn on the specified effective date of withdrawal.

14.3 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.

14.4 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 43.6 as if such a termination was a termination under Clause 43.4.

15.0 **CHANGE IN CONTROL**

15.1 From the Effective Date no change in Control of the Contractor shall be permitted without the prior written consent of the Owner.

16.0 **APPLICABLE LABOUR LAWS**

16.1 The Contractor shall comply with all the rules and regulations under the Applicable Law during the performance of the Services under this Contract.

16.2 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).

16.3 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.

16.4 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.

16.5 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.

16.6 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.

16.7 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.

- 16.8 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.
- 16.9 In the event of the Contractor committing a default or breach of any of the provisions of the Applicable Law as mentioned in this Article 16.0, 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.
- 17.0 **PROGRESS REPORT**
- 17.1 The Contractor shall submit formal written and quantitative reports to the Owner on the progress of the Services 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:
- 17.1.1 executive summary;
  - 17.1.2 description of the Services performed during the preceding month;
  - 17.1.3 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 Services), current schedule of activities and targets for the next month;
  - 17.1.4 manpower report for the previous month and current months showing deployment / proposed deployment area wise and skill wise
  - 17.1.5 updated billing schedule showing the billing and payment status and cash flow forecast;
  - 17.1.6 areas of concern;
  - 17.1.7 Corrective Action Plan;
  - 17.1.8 such other information and supporting documentation as the Owner may reasonably request;
- 17.2 Contractor shall submit six (6) hard copies and one soft copy of the progress report.

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

17.4 In the event performance of the Services 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.

18.0 **SUBCONTRACTING**

18.1 Contractor shall not subcontract any portion of the Contract.

19.0 **LIEN**

19.1 To the full extent permitted by Applicable Law, Contractor hereby waives and releases any and all rights of mechanic's lien and similar rights for payment for services, labor, equipment or materials bought by the Contractor for performance of the Services and granted by law to Persons performing services and bringing things of value to improve or modify land or structures hereon, which Contractor may have against property belonging to the Owner.

19.2 Contractor shall at all times promptly pay for all services, materials, equipment and labour used by Contractor in the performance of the Services under this Contract and shall, to the fullest extent allowed by Applicable Law, at its expense keep all properties belonging to the Owner free and clear of any and all of the above mentioned liens and rights of lien arising out of services, labor, equipment or materials furnished by Contractor or its employees, supplier or Subcontractors in the performance of the Services. If Contractor fails to release and discharge any lien or threatened lien against the property of the Owner arising out of performance of the Services within 7 (seven) 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 discharging/releasing such lien, including reasonable attorneys' fees incurred by the Owner.

19.3 The Owner shall have lien on all materials and equipments including those of the Contractor brought to the Site for the purpose of construction, erection, testing and commissioning of the Facility. The Owner shall continue to hold the lien on all such equipment throughout the period of Contract. No material brought to the Site shall be removed from the Site by the Contractor and/or its Sub-contractor(s) without the prior written approval of the Owner.

20.0 **FORCE MAJEURE**

20.1 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, and which substantially affects the performance of the obligations under this Contract ("**Force Majeure**"), such as:

- 20.1.1 Natural phenomena, including but not limited to floods, droughts, earthquakes, epidemics, cyclone, lightning, storm, plague;
- 20.1.2 Lawful strikes and lawful lockouts and other generalized labour action occurring within India (excluding such events which are Site specific and attributable to Contractor);
- 20.1.3 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;
- 20.1.4 Radioactive contamination or ionising radiation or chemical contamination originating from a source in India or resulting from another Force Majeure event;
- 20.1.5 Fire or explosion, except as may be attributable to the Contractor;
- 20.1.6 An act of God;
- 20.1.7 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);

provided either Party shall within 7 (seven) days from the occurrence of any such cause notify the other Party in writing.

- 20.2 For avoidance of doubt, it is clarified that lack of funds shall not be construed as an event of Force Majeure.
- 20.3 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.
- 20.4 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.

20.5 **Obligation to cure Force Majeure Diligently**

- 20.5.1 If either Party claims an event of Force Majeure, then the Party claiming the event shall:
  - 20.5.1.1 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 Article 20.0 by giving reasons of such event, expected duration of such event and probable impact of such event on the performance of its obligations hereunder;

- 20.5.1.2 Exercise all reasonable efforts to continue to perform its obligations hereunder;
- 20.5.1.3 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;
- 20.5.1.4 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;
- 20.5.1.5 Furnish weekly reports with respect to its progress in overcoming the adverse affects of such event or circumstances; and
- 20.5.1.6 Provide prompt notice to the other Party of the cessation of the event or condition giving rise to its excuse from performance.
- 20.5.2 The affected Party shall not be obliged, when complying with its obligations under this Clause 20.5, to take any steps which would not be in accordance with Prudent Operating & Maintenance Practices or to take any steps 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.
- 20.6 So long as the affected Party has at all times since the occurrence of the Force Majeure event complied with the obligations of Clause 20.5 and continues to so comply then, the affected Party shall not be liable for any failure or delay in performing its obligations (other than an obligation to make a payment) 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 20.6 to the extent that such failure or delay would have nevertheless been experienced by the affected Party had the Force Majeure event not occurred.
- 20.7 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 43.3.2.
- 21.0 **REPRESENTATIONS AND WARRANTIES**
- 21.1 The Contractor represents and warrant that:
- 21.1.1 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;

- 21.1.2 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;
- 21.1.3 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;
- 21.1.4 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;
- 21.1.5 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 (including labour conditions in India) 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;
- 21.1.6 It is fully experienced and properly qualified to perform the Services provided for herein, and that it is properly equipped, organized and financed to perform such Services;
- 21.1.7 It is properly licensed and qualified to do business in all governmental jurisdictions in which the Services are to be performed. 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;
- 21.2 The Owner represents and warrant that:
- 21.2.1 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;
- 21.2.2 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;

- 21.2.3 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;
- 21.2.4 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.
- 22.0 **WARRANTY AND WARRANTY PERIOD**
- 22.1 The Contractor hereby warrants to the Owner that the Services shall be performed in a manner consistent with the terms of this Contract, all specifications, drawings and standards referred to in this Contract (including under the Technical Specifications) or thereafter furnished by Owner, in accordance with Prudent Operating & Maintenance Practices and Applicable Law (the "**Warranty**"):
- 22.1.1 using the skill, care and diligence to be expected of appropriately qualified and experienced professional engineers with experience in rendering services of a type, nature and complexity similar to the Services in the power plant construction industry;
- 22.1.2 using the standards of all workmanship which conform in all respects to the standards specified under the Technical Specifications;
- 22.1.3 shall be first-class in every particular aspect and free from defects and deficiencies in workmanship; and
- 22.1.4 using means, methods and techniques required for the performance of the Services which are appropriate for the conditions and materials involved.
- 22.2 Contractor shall be liable for defects in workmanship of the Services provided by it for a period of 12 (twelve) months after the date of expiry of: (i) Term of this Contract; or (ii) termination of this Contract in accordance with the terms hereof, whichever is earlier (the "**Warranty Period**").
- 22.3 Without limitation of any other rights or remedies of the Owner, if any defect in the 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 re-perform such non-conforming portion of the Services and/or promptly furnish design and engineering, labour, equipment and materials necessary to correct such defect and cause the Services to comply fully with the foregoing warranties.
- 22.4 If any replacement, repair or modification is of such a character which may affect the subsequent performance of the Facility or any part thereof, Owner may within 30 (thirty) days after such replacement, repair or modification give to the Contractor notice requiring that such further tests be conducted in respect of the relevant part as may be necessary to demonstrate the adequacy and efficacy of the replacement, repair or modification.

- 22.5 In case of a re-performance of Service and/or furnishing of labor, equipment and materials by the Contractor pursuant to Clause 22.3 to correct defects, then such re-performance shall be warranted by Contractor in accordance with the warranties set forth in Clause 22.1 for a period of 12 (twelve) months from the date of re-performance of such Services or date of completion of the correction.
- 22.6 In the event Contractor shall have been notified of any defects in the Services in violation of Contractor's foregoing warranties and shall fail to promptly and adequately correct such defects, Owner shall have the right to correct or to have such defects corrected at the account of Contractor, and Contractor shall promptly pay to the Owner the costs & expenses incurred in correcting such defects.
- 22.7 Contractor shall include, as a minimum, the foregoing Warranty requirements in any Subcontract that it places.
- 22.8 Contractor shall provide Technical support, Operating System Installation, upgrades, updates and applying patches during warranty period. Any software updates/enhancements released during the warranty period of the system shall be supplied for installation & commissioning free of cost by the contractor along with corresponding documentation within a period of 1 (one) month from the date of release.
- 22.9 Support shall be provided during the applications loading and tuning of the system. All support with respect to Operating System tuning, kernel parameter optimizing etc. for smooth running of applications shall be provided during Warranty period.
- 22.10 The Contractor shall be responsible for payment of all costs, expenses, taxes (including all indirect taxes) and duties incurred in the course of performance of its obligations under this Article 22.0.
- 23.0 **PERFORMANCE BANK GUARANTEE**
- 23.1 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 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 5 (Form of Performance Bank Guarantee) ("**Performance Bank Guarantee**").
- 23.2 If, at the time of discharge of Performance Bank Guarantee, the Warranty Period has been extended on any part of the Services, pursuant to Clause 22.5 or if a dispute has been referred for resolution pursuant to Article 45.0 (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 pursuant to Clause 22.5 or until final resolution of the dispute and payment of any amount due as a result thereof, as the case may be.

- 23.3 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 5 (Form of Performance Bank Guarantee).
- 23.4 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 the Performance Bank Guarantee, any amounts which may become due to the Owner from the Contractor.
- 23.5 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 by 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 23.5.
- 24.0 **FIELD QUALITY ASSURANCE AND INSPECTIONS**
- 24.1 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.
- 24.2 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 installation, 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. Test procedure shall list the step-by-step activities associated with each test. Quality Assurance Program shall include description of functions to be tested, test set-up, test configuration, test procedure, required inputs and expected outputs for each test segment. The test formats shall essentially include the standard test parameters specified by the Original Equipment Manufacturers. The approved Field Quality Program shall form part of this Contract and shall be strictly adhered to.
- 24.3 The testing and diagnostic tools/software to be used during inspection & testing shall be latest available version and shall have the ability to perform all hardware diagnostic tests and system configuration checks. The details of diagnostic tools/software shall be provided along with Field Quality Program.
- 24.4 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).

- 24.5 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.
- 24.6 Contractor shall provide reasonable advance notice to Owner for witnessing inspection and tests specified in Field Quality Program.
- 24.7 Contractor shall provide at his own cost all facilities including labour, materials, electricity, fuel, water, stores, apparatus, automated testing tools, instruments, consumables 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.
- 24.8 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.
- 24.9 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.
- 24.10 Price for all inspection and tests to be carried out till Final Acceptance of Facility and during Warranty Period are included in Contract Price.
- 24.11 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 Article 24.0 shall, in any way, release the Contractor from any of its Warranty or other obligations under this Contract.
- 25.0 **-DELETED-**
- 26.0 **AMENITIES TO BE PROVIDED BY OWNER AND CONTRACTOR**
- 26.1 Following amenities at Site shall be provided by Owner:
- 26.1.1 Owner shall provide to Contractor space as available at Site for operation and maintenance of Facility.
- 26.2 Following amenities at Site shall be provided by Contractor:
- 26.2.1 The Contractor shall make his own arrangement for laptop, desktop, telephone, fax etc required during Takeover Phase and Operational Phase.
- 27.0 **CHANGE / VARIATION ORDER**

- 27.1 The scope of Services 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.
- 27.2 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:
- 27.2.1 price of performing change along with material/services take-off, detailed calculations of price for performing change and supporting documents, for cases requiring amendment of Contract Price; and
- 27.2.2 modified Time for Completion along with necessary justification, for cases requiring amendment of Time for Completion.
- 27.3 Contractor shall not perform changes in the Services notified in accordance with Clause 27.1 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 27.4 and 27.5.
- 27.4 Notwithstanding Clause 27.3, 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 performance of Services during the review and negotiation of any change, except as may be directed by Owner pursuant to Article 14.0 (Suspension of Services). In the event Owner and Contractor are unable to reach timely agreement regarding any change, Contractor shall comply with Article 28.0 (Claims).
- 27.5 Contractor shall perform only such changes in the Services which have been notified in writing. If any oral notice or instruction received from Owner involves change in the Contract Price, Time for Completion or integrity of the Services, 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 Services not notified in writing by Owner.
- 28.0 **CLAIM**
- 28.1 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 28.2. 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 28.1.

- 28.2 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 Article 45.0 (Settlement of Disputes). If Contractor decides to proceed pursuant to Article 45.0 (Settlement of Disputes), Contractor agrees to limit its claim to the amount claimed by it in accordance with Clause 28.1. In no event shall any work 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 perform the Services without delay till its successful completion.
- 28.3 The following shall not constitute changes and Contractor has no right to make any claim in relation thereto:
- 28.3.1 Instructions, interpretations, decisions or acts by Owner which are:
- 28.3.1.1 to achieve compliance with the Contract by Contractor; or
- 28.3.1.2 to correct errors, omissions, poor engineering, defective workmanship or other failure of the Contractor to comply with the Contract;
- 28.3.2 Delay in the performance of Contractor's work or any additional work caused by Contractor.
- 28.3.3 Any work performed by Contractor arising out of Owner's comments on Contractor's submittals to the extent that such comments are consistent with the Contract.
- 28.4 If Contractor fails to follow the requirements of Clause 28.1, it shall have waived any right to make any claim in respect of the events referred to in Clause 28.1. Contractor's sole remedy in respect of any claim will be as provided in Clause 28.2. No claim by Contractor in relation to events referred to in Clause 28.1 shall be allowed after final payment is made.
- 28.5 Owner shall not be bound to any adjustments in the Contract Price or Time for Completion unless expressly agreed to by Owner in writing.
- 29.0 **BACKCHARGE**
- 29.1 A backcharge is a cost sustained by Owner and chargeable to Contractor for the Owner's performance of Services that is the responsibility of Contractor.
- 29.2 Without limitation and by way of example only, backcharge may result from:
- 29.2.1 Services performed by the Owner, at Contractor's request, which are within Contractor's scope of Services under this Contract;
- 29.2.2 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
- 29.2.3 Costs incurred by the Owner to fix all defects, deficiencies or errors that may appear in the Services during the Warranty Period.

- 29.3 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.
- 29.4 A backcharge shall consist of:
- 29.4.1 Labor: at actual cost plus 25 % (twenty five percent) to cover payroll additives;
- 29.4.2 Materials: at actual supplier and freight invoice cost delivered to jobsite;
- 29.4.3 Equipment: at actual third party rental cost or at Owner's equipment rental rates, whichever may be applicable;
- 29.4.4 Subcontracts: At actual cost;
- 29.4.5 All taxes, levies, duties and assessments attributable to the backcharge work; and
- 29.4.6 25% (twenty-five percent) shall be added to the foregoing for indirect costs, overhead, supervision and administration.
- 29.5 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.
- 29.6 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.
- 30.0 **CONTRACTOR TO INFORM ITSELF FULLY**
- 30.1 Contractor shall be deemed to have carefully examined the Technical Specifications, the Site location and the Plant including documentation, drawings and specifications for the Services and fully acquainted itself with Site conditions and all other conditions relevant to the Services, and its surroundings, including for the mobilization of resources to the Site and transportation of the equipment or materials required for the performance of the Services. Contractor shall be deemed to have assumed the risk of such conditions and will, regardless of such conditions, expenses, and difficulty of performing the Services, or negligence of the Owner, if any, fully complete the Services 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, drawings or otherwise is not guaranteed by the Owner and is furnished only for the convenience of the Contractor.
- 30.2 The Contractor acknowledges that the specifications and drawings 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 Services, encounters or comes across any conflict, error, omission or discrepancy in the drawings, specifications, instructions, in work done by any other contractor, 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 Services prior to receiving such instructions, then required corrections shall be at Contractor's expense.

30.3 If any part of Contractor's Services is dependent upon the quality and/or completeness of work performed under another contract, Contractor shall inspect such other work and promptly report to Owner any defects therein which render such work unsuitable for the proper execution of the Services under this Contract. Failure to make such inspections or to report any such defects to Owner shall constitute Contractor's acceptance of such other work as suitable for performing Services provided however, that Contractor shall not be responsible for defects which could not have reasonably been detected.

31.0 **-DELETED-**

32.0 **ACCESS TO SITE**

32.1 Subject to security and safety requirements, reasonable access to the Site at all times, as is necessary to perform the Services in accordance with the terms of this Contract, shall be provided to the Contractor.

32.2 The Off-Site Services shall be performed on 24 (twenty four) hours basis with emergency coverage as necessary.

32.3 In the execution of the Services, no Person other than the Contractor or its duly appointed representative, Subcontractor and workmen, shall be allowed to work at the Site, except by the special permission, in writing of the Owner. Contractor shall be solely responsible for the performance and cooperation of its Subcontractors.

32.4 The Owner, the Owner's Engineer and their respective agents/representative shall have at all times access to the Site and any logs, records, documents, drawings, procedures and manuals related to the Services.

32.5 During inspection or review of the Site, the Owner, the Owner's Engineer, and their respective agents/representatives shall comply with security and safety rules and procedures as prescribed by the Owner. Such inspection and reviews shall be carried out in such manner that they do not interfere unreasonably with Contractor's Services.

32.6 The Owner may allow access to other contractors for working in the Site without interfering with the Services of Contractor.

33.0 **FIRE PROTECTION**

33.1 The Contractor shall at all times comply with the HES Policy while performing the Services during the Term. Without prejudice to the obligation under the preceding

sentence, the work procedures that are to be used during the performance of the Services shall be those which minimize fire hazards to the extent practicable. The Contractor shall ensure that combustible materials, combustible waste, rubbish and any Hazardous Material shall be collected and removed from the Site at least once each day. Fuel, oils and volatile or flammable materials shall be stored away from the equipment and materials storage areas in safe containers. Untreated canvas, paper, plastic or other flammable flexible materials shall not at all be used at Site for any purpose unless otherwise specified. If any such material is received with any other equipment/material at the Plant, the same shall be removed and replaced with acceptable material before moving into the construction or storage area.

33.2 The Contractor shall ensure that corrugated paper, fabricated cartons, etc. will not be permitted at the Site either for storage or for handling of materials. All such materials used shall be of water proof and flame resistant type. All other materials such as working drawings, plans, etc. which are combustible but are essential for the Services to be performed shall be protected against combustion resulting from welding sparks, cutting flames and other similar fire sources.

33.3 The entire supervisory personnel and sufficient number of workers of the Contractor shall be trained for fire-fighting and shall be assigned specific fire protection duties. Adequate number of such trained personnel must be available at the Site during the entire Term at all times.

33.4 The Contractor shall ensure that access to fire protection equipment placed at various locations at the Site are easily accessible at all times.

#### 34.0 **SECURITY**

34.1 Contractor shall be solely responsible for all equipment and materials in its custody, stores, loose, semi-assembled and/or installed by it at Site. The Contractor shall make suitable security arrangements including employment of security personnel to ensure protection of all materials, equipment and Services from theft, fire, pilferage and any other damage and loss. All materials of the Contractor shall enter and leave the project site only with the written permission of the Owner.

#### 35.0 **CONTRACTOR'S AREA LIMITS**

35.1 The Owner will mark-out the boundary limits of access roads, parking spaces, storage and operational areas for the Contractor and the Contractor shall not trespass the areas which are outside the boundary limits so marked out. The Contractor shall be responsible to ensure that none of the Contractor Staff move out of the areas marked out for its operations. In case of a need for the Contractor Staff to work in areas other than those marked out for it, written permission of the Owner shall be obtained before proceeding to work in such areas.

#### 36.0 **-DELETED-**

#### 37.0 **COOPERATION AND COORDINATION AT THE SITE**

37.1 Contractor shall co-operate with Owner's contractors and Owner's Engineer and freely exchange with them such technical information as is necessary to perform the Services most efficiently and economically and to avoid unnecessary duplication of

efforts. Owner shall be provided with a copy of all correspondence addressed by the Contractor to such other contractors and Owner's Engineer in respect of such exchange of technical information.

37.2 In case where the performance of the Services by the Contractor affects the operation of the existing IT Infrastructure, such Services of the Contractor shall be scheduled to be performed only in the manner stipulated by the Owner and the same shall be acceptable at all times by the Contractor. The Owner may impose such restrictions on the facilities provided to the Contractor as it may think fit in the interest of the Owner and the Contractor shall strictly adhere to such restrictions and co-operate with the Owner.

37.3 The field activities of the contractors working at Site will be coordinated by the Owner and the Owner's decision shall be final in resolving any dispute or conflict between the Contractor and other contractors of the Owner regarding scheduling and co-ordination of Services. Such decision by the Owner shall not be a cause for extra compensation for the Contractor.

37.4 The Parties expressly agree that the procedures in relation to implementation of the terms of this Contract shall be discussed mutually between the Parties forthwith after the Effective Date.

37.5 **Meetings**

37.5.1 The Owner shall hold weekly meetings (or meetings at such shorter duration as it may deem necessary) of all contractors working at Site, at a time and place to be designated by the Owner. The Contractor shall attend such meetings and take notes of discussions during the meeting and the decisions of the Owner and shall strictly adhere to those decisions in performing the Services. In addition to the above meetings, the Owner may call for other meetings either with individual contractors or with selected number of contractors and in such a case the Contractor, if called, will also attend such meetings.

37.5.2 On Owner's invitation, Contractor shall participate in discussions with other parties including other contractors, Lenders, Owner's consultants, Owner's insurers, Owner's advisors, Promoters, and Government Agencies, etc.

38.0 **CONTRACTOR'S MATERIALS BROUGHT ON TO SITE**

38.1 The Contractor shall bring to Site all equipment, tools, software etc. for the purpose of performing the Services with prior written notice to the Owner. Ownership of such materials shall remain with Contractor. All such goods shall be used for the purpose of providing the Services only and shall not on any account be removed or taken away by the Contractor without the written permission of the Owner. The Contractor shall nevertheless be solely liable and responsible for any loss or destruction thereof and damage thereto.

38.2 After the completion of Term, the Contractor shall remove from the Site under the direction and with written permission of the Owner the materials brought by it for performing the Services which are not property of the Owner. If the Contractor fails to remove such materials, within 15 (fifteen) days of issue of a notice by the Owner

to do so then the Owner shall have the liberty to dispose of such materials and credit the proceeds thereto to the account of the Contractor.

39.0 **-DELETED-**

40.0 **-DELETED-**

41.0 **STATUTORY APPROVALS, PERMITS AND FRAUDULENT PRACTICES**

41.1 **Statutory Approvals**

41.1.1 The Contractor shall obtain all clearances, approvals, licenses, permits etc in accordance with applicable rules of Government Agency which are required for performing Services including implementation, administration, operation and maintenance of Facility. Price for obtaining clearances, approvals, licenses, permits etc including payment of statutory fees is included in Contract Price.

41.1.2 The Contractor shall submit to concerned authorities, on behalf of Owner, duly filled-in application form along with required certificates and other documents well in time. Contractor shall coordinate and liaise with concerned authorities and ensure that performance of Services are not adversely affected for want of clearances, approvals, licenses, permits etc.

41.1.3 The Contractor shall carryout all modifications, additions, and deletions to the Facility as asked by concerned authorities for granting clearances, approvals, licenses, permits etc. Price for modifications, additions and deletions to the Facility is included in Contract Price.

41.2 **Permits for Performing Services**

41.2.1 The Contractor shall in its name obtain any and all Permits necessary for the Contractor to do business and to be authorized to provide the Services (in the jurisdictions where the Services are to be performed) as contemplated by this Contract. Contractor shall also obtain such Permits required, for any employees, contractors or Subcontractors who are not citizens of India, to work, reside or otherwise perform the Services in India. Owner shall provide reasonable assistance to Contractor in obtaining, renewing and replacing all such Permits.

41.3 **Corrupt / Fraudulent Practices**

41.3.1 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.

42.0 **EMERGENCIES**

42.1 Notwithstanding anything to the contrary contained herein, the Contractor shall take any action as the Contractor deems to be necessary in the case of an Emergency Event affecting the performance of Services to counteract the effects where the Contractor considers immediate action is required to safeguard life or property.

- 42.2 In the event of occurrence of an Emergency Event, the Contractor shall notify the Owner by telephone as soon as reasonably practicable, and in any case within 8 (eight) hours, and in writing within 24 (twenty four) hours of the occurrence of any Emergency Event, providing details of the Emergency Event and Contractor's actions taken in an effort to prevent any threatened damage, injury or loss to the Plant or Facility or Persons or property located on or in the vicinity of the Plant or Facility. Following such notification, at the request of the Owner, the Parties shall discuss without delay the further actions which should be taken in relation to the Emergency Event.
- 42.3 If the Owner considers that any Emergency Event has occurred in relation to the Facility, the Owner may give notice (which may be oral notice and confirmed with subsequent written notice) to the Contractor specifying the nature of the Emergency Event which it has identified and the manner in which such Emergency Event should be rectified. The Contractor shall rectify such defect with all due diligence. If the Contractor fails to comply with such notice promptly, the Owner shall be entitled to take such actions as may be necessary to remedy such breach by the Contractor at Contractor's expense.
- 43.0 **TERMINATION**
- 43.1 **Termination by Owner for Contractor's Event of Default**
- 43.1.1 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 Clause 43.1.1.5 where the Owner may terminate this Contract by giving 7 (seven) days written notice ("**Contractor's Event of Default**"):
- 43.1.1.1 Contractor refuses or neglects to comply with any reasonable order given to it in writing by the Owner in connection with the Services to be provided under this Contract;
- 43.1.1.2 Failure of the Contractor to comply with or fulfill its Warranty obligations under Article 22.0 (Warranty and Warranty Period);
- 43.1.1.3 Abandonment of the Services by the Contractor;
- 43.1.1.4 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;
- 43.1.1.5 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;
- 43.1.1.6 Transfer or charge by the Contractor of any of its rights or obligations under this Contract without prior written consent of the Owner;

- 43.1.1.7 Any change in the Control of the Contractor which is not in accordance with Article 15.0 (Change in Control);
- 43.1.1.8 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 43.2;
- 43.1.1.9 Contractor ceases to carry on its business;
- 43.1.1.10 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;
- 43.1.1.11 Contractor has incurred or is liable for liquidated damages in excess of the amount set out in Clause 10.2;
- 43.1.1.12 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 fifteen (15) 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 sixty (60) days including the fifteen (15) days of notice period); or
- 43.1.1.13 If any of the representations and warranties provided by the Contractor under Clause 21.1 or during the negotiation of this Contract is incorrect, false or misleading.
- 43.2 **Termination by Contractor for Owner's Event of Default**
- 43.2.1 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**"):
- 43.2.1.1 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;
- 43.2.1.2 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 thirty (30) 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
- 43.2.1.3 Any Bankruptcy Event or insolvency of the Owner; provided, that in the case of involuntary bankruptcy proceedings, the Owner shall have sixty (60) days cure period after the commencement of such proceedings to stay or lift such proceedings.

**43.3 Termination due to Force Majeure Events**

43.3.1 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.

43.3.2 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, 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.

**43.4 Termination for Convenience by Owner**

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

**43.5 Termination Procedure**

43.5.1 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.

**43.6 Payment on Termination**

43.6.1 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 Services 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 performing the Services, 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 value of the Works ascertained and the total of all payments received by the Contractor as on the date of termination.

43.6.2 In the event of termination for convenience by Owner as per Clause 43.4, the Contractor shall be paid compensation, equitable and reasonable, dictated by the circumstances prevalent at the time of termination.

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

**43.7 Obligation upon Termination**

43.7.1 Contractor shall discontinue performance of the Services from the Termination Date.

- 43.7.2 Contractor shall preserve and protect tools, construction equipment and facilities on Site, materials purchased for or committed to the Services (whether delivered to the Site or on order), Services in progress and Services completed till receipt of Owner's instructions and if requested by Owner, handover the same to Owner, including title to said materials, plant and equipment, or dispose of same in accordance with Owner's instructions
- 43.7.3 Contractor shall advise Owner of its outstanding subcontracts pertaining to performance of the terminated Services and, upon request, furnish Owner with complete copies.
- 43.7.4 Contractor shall place no further subcontracts except as may be necessary for completion of such portion of the Services which is not terminated.
- 43.7.5 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 performance of Services 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.
- 44.0 **GOVERNING LAW AND JURISDICTION**
- 44.1 This Contract shall be governed by the laws of India.
- 44.2 The courts of New Delhi shall have exclusive jurisdiction in all matters arising under this Contract, including execution of arbitration awards.
- 45.0 **SETTLEMENT OF DISPUTES**
- 45.1 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.
- 45.2 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 45.3 below.
- 45.3 **Owner's Decision**
- 45.3.1 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 Services 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 45.1, 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.

- 45.3.2 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 the entire Services 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.
- 45.3.3 If after the Owner has given written notice of its decision to the Contractor and no notice to 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.
- 45.3.4 The Owner's decision (or the failure of the Owner to give decision within the time specified in Clause 45.3.1) and issuance of a written notice for arbitration pursuant to Clause 45.3.3 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 execution of the Services and the decision of the Owner, as rendered, shall be promptly observed.
- 45.3.5 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 to arbitration as provided in Clause 45.4.
- 45.4 **Arbitration**
- 45.4.1 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 venue of arbitration shall be New Delhi, India.
- 45.4.2 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 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.
- 45.4.3 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 two arbitrators appointed by both Parties do not succeed in appointing a third arbitrator within 30 (thirty) days after the latter of the two arbitrators has been appointed, the third arbitrator shall, at the request of either Party, be appointed by the Chairman of OTPC.
- 45.4.4 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.

- 45.4.5 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.
- 45.4.6 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.
- 45.5 During settlement of disputes including arbitration proceedings, both Parties shall be obliged to carry out their respective obligations under this Contract.
- 45.6 Parties agree that neither Party to this Contract shall be entitled for any interest on the amount of award.
- 45.7 The provisions of this Article 45.0 shall survive termination of this Contract.
- 46.0 **CHANGE IN LAW**
- 46.1 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 46.2, 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.
- 46.2 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.
- 47.0 **ASSIGNMENT**
- 47.1 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.
- 47.2 Notwithstanding the foregoing, it is agreed that, without the consent of the Contractor:

- 47.2.1 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
- 47.2.2 The Owner may assign this Contract or its rights or obligations here under to any Subsidiary or Affiliate of the Owner.
- 47.3 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:
- 47.3.1 an agreement by the Contractor to allow the holder of such security interest to cure defaults by the Owner;
- 47.3.2 an acknowledgement by the Contractor that the Owner is not in default under this Contract due to such assignment;
- 47.3.3 representations and warranties by the Contractor;
- 47.3.4 a prohibition against amending, assigning or terminating this Contract without the written consent of the holder of such security interest; and
- 47.3.5 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.
- 47.4 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.
- 48.0 **RELEASE OF INFORMATION**
- 48.1 The Contractor shall not communicate or use in advertising, publicity, sales releases or in any other medium, photographs or other reproduction of the Services under this Contract, or description of the Site or the Plant, dimensions, quantity, quality or other information, concerning the Services, the Plant, the Site or the Project unless prior written permission has been obtained from the Owner.
- 49.0 **CONFIDENTIAL INFORMATION**
- 49.1 Subject to Clause 49.2, 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.

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

49.2.1 was furnished prior to this Contract without restriction;

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

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

49.2.4 is independently developed by either Party;

49.2.5 is required to be provided to any contractor/subcontractor, subject to inclusion of terms similar to the provision of this Article 49.0 in the agreement with such contractor/subcontractor;

49.2.6 is required to be provided to the Lenders;

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

49.2.8 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;

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

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

49.2.11 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 Article 49.0;

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

49.2.13 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.

49.3 **Confidentiality of Intellectual Property and Information**

49.3.1 Each Party shall:

- 49.3.1.1 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 Services 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 Services as the other may reasonably request for the purposes of exercising its rights or carrying out its duties in respect of the Facility or performing its obligations under this Contract; and
- 49.3.1.2 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 49.3.1.1 above and as would normally be made available by Persons acting in accordance with Prudent Operating & Maintenance Practices.
- 49.3.2 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.
- 49.3.3 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 of this Contract on the Owner giving the Contractor 2 (two) day's notice and in any event immediately on the termination or expiry of this Contract.
- 50.0 **INTELLECTUAL PROPERTY**
- 50.1 **Ownership and License of Intellectual Property**
- 50.1.1 If any intellectual property is developed by the Contractor and/or its employees, agents, consultants, representatives or Subcontractors for the purpose of performing the Services during the Term of this Contract, such intellectual property shall belong to the Owner.
- 50.1.2 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.
- 51.0 **PATENT RIGHTS AND ROYALTIES**
- 51.1 Royalties and fees for patents covering materials, articles, apparatus, devices, equipment or processes used in the Services 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 Services, 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.

51.2 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 or maintain the Services.

52.0 **WAIVER**

52.1 **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.

52.2 **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 the Services or be interpreted as approval of the Services done.

53.0 **VALIDITY AND SURVIVAL OF PROVISIONS**

53.1 **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.

53.2 **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.

54.0 **LANGUAGE AND MEASURES**

54.1 The governing language for the Contract shall be English. All documents pertaining to this Contract including specifications, schedules, notices, correspondence, operating and maintenance instructions, drawings or any other document shall be written in English language. The metric system of measurement shall be used exclusively in this Contract.

55.0 **NOTICES**

55.1 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 55.2 and 55.3 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.

55.2 Address for Notice to Owner:

Attn: Managing Director  
ONGC Tripura Power Company Limited  
6<sup>th</sup> Floor, IFCI Tower,  
61, Nehru Place  
New Delhi – 110019  
Fax: +91-11-26227532  
Email: \_\_\_\_\_

55.3 Address for Notice to Contractor:

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

55.4 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.

56.0 **CONTRACTUAL RELATIONSHIP**

56.1 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 Services are performed. 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, Contractor's staff, workmen or Subcontractor.

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

57.0 **COPIES OF CONTRACT AND COUNTERPARTS**

57.1 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.

57.2 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.

58.0 **ENTIRE AGREEMENT**

58.1 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.

58.2 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.

58.3 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**

**STAFFING PLAN**

*Minimum no. of each category of staff to be deployed during each phase (On-site)*

Sl. No.	Position	Location	Takeover Phase (On-site)	Operational Phase (On-site)	Operational Phase (Off-site)
1	Resident Project Manager	Delhi	1	1	-
2	Windows Server Administrator for AD, DNS, DHCP, Exchange Server, Email Gateway etc.	Delhi	1	1	-
3	SUSE Linux Server Administrator	Delhi	1	1	-
4	Network (Juniper), Security (Palo Alto) & Load Balancer (Array)	Delhi	1	1	-
5	Helpdesk Management	Delhi	1	1	-
6	Data Centre Facility & BMS	Delhi	4	4	-
7	Data Centre Facility & BMS	Palatana	4	4	-
8	System Administration & Server Management (L-1, L-2 & L-3)	-	1	-	As Required
9	Technical support (L-1, L-2 & L-3)	-	1	-	As Required
10	Network Management (L-1, L-2 & L-3)	-	1	-	As Required
11	Security Management (L-1, L-2 & L-3)	-	1	-	As Required
12	E-Mail Support (L-1, L-2 & L-3)	-	1	-	As Required
13	Backup & Storage Management (L-1, L-2 & L-3)	-	1	-	As Required
14	Application Management & Technical Support (L-1, L-2 & L-3)	-	1	-	As Required

**Note:**

1. Contractor shall deploy additional manpower during Takeover Phase and Operational Phase at no additional cost to Owner if required to complete the Services within time for completion of Services and to achieve guaranteed performance specified in the Contract.
2. Manpower to be deployed during Taking Over phase shall be on on-site basis.
3. Manpower to be deployed during Operational phase shall be on on-site / off-site model as per above details.

**CONTRACT PRICE**

**Part A**

[•]

**Part B**

[•]

**Part C**

[•]

**Part D**

[•]

**Annexure-3**

**GUARANTEED PERFORMANCE**

Following are the functional guarantees required for the Facility:

SI	Parameters	Guaranteed Value
1.0	Availability during 1 <sup>st</sup> Operating Year	<b>99.50%</b>
2.0	Availability during 2 <sup>nd</sup> Operating Year	<b>99.50%</b>

1. Availability shall be calculated as follows:

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

Where,

A = Availability

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 IT Infrastructure is not available for functional use and which is outside scheduled downtime
5. Scheduled downtime is the planned Facility Maintenance downtime jointly agreed by Owner and Contractor in advance.
6. Excused performance downtime is the time when Facility is not available for functional use for reason which is excused in the Contract.
7. Availability shall be applicable to Data Centre and IT Infrastructure Taken-over excluding communication links.

**TECHNICAL SPECIFICATIONS**

**[To be attached]**

## Annexure-5

**FORMAT FOR PERFORMANCE BANK GUARANTEE***(To be stamped in accordance with Stamp Act)*

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

Date \_\_\_\_\_

To,  
**ONGC Tripura Power Company Limited,**  
**6th Floor, A –Wing, IFCI Tower**  
**61, Nehru Place**  
**New Delhi - 110019**  
**Ph: +91-11-26402100**  
**Fax: +91-1126227532**

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 at **ONGC Tripura Assets, Badarghat Complex, Agartala, Tripura – 799014** (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 work for support services for operation and maintenance of Data Centre and IT Infrastructure at Delhi Office and Palatana Plant 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 \_\_\_\_\_, 20\_ (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.*

**Annexure-6**

**MINIMUM QUALIFICATION & EXPERIENCE OF CONTRACTOR'S STAFF**

<b>SI</b>	<b>Position</b>	<b>Qualification &amp; Experience</b>
1.	Project Manager	BE / B. TECH / MBA / MCA degree with minimum 10 years of total experience with 7 years relevant experience of IT Infrastructure Implementation. He should have successfully completed at least three (3) IT Infrastructure implementation projects out of which he should have worked as Project Manager in at least two (2) projects. He should have knowledge of cross-functional processes.
2.	System Administration & Server Management	BE / B. TECH / MCA degree with minimum 5 years of total experience with 3 years relevant experience of IT Implementation and System Administration. He should have knowledge of cross-functional processes.
3	Technical support	BE / B. TECH / MCA degree with minimum 5 years of total experience with 3 years relevant experience of IT Implementation, System Administration and Technical Support. He should have knowledge of cross-functional processes.
4	Network Management	BE / B. TECH / MCA degree with minimum 5 years of total experience with 3 years relevant experience of IT Implementation and Network Management on Juniper Equipments. He should have knowledge of cross-functional processes.
5	Security Management	BE / B. TECH / MCA degree with minimum 5 years of total experience with 3 years relevant experience of IT Implementation and Security Management on Palo Alto Equipments. He should have knowledge of cross-functional processes.
6	E-Mail Support	BE / B. TECH / MCA degree with minimum 5 years of total experience with 3 years relevant experience of IT Implementation and E-Mail System Management on Microsoft Exchange and Symantec E-Mail Gateway Systems. He should have knowledge of cross-functional processes.
7	Backup & Storage Management	BE / B. TECH / MCA degree with minimum 5 years of total experience with 3 years relevant experience of IT Implementation and Backup & Storage Management on IBM V7000 or similar and IBM Tape Library and NetBackup Application. He should have knowledge of cross-functional processes.

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8	Helpdesk Management	Diploma with relevant certifications with minimum 5 years of total experience of IT Support and Helpdesk Management. He should have knowledge of working on CA Service Desk application and knowledge of cross-functional processes.
9	Data Centre Facility & BMS	BE / B. TECH / Diploma with minimum 3 years of relevant experience of operating and managing Data Centre Facility and BMS Systems. He should have experience of managing UPS, PAC, WLD, fire systems, access control, CCTV system, electrical systems etc.

**Annexure-7****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

**Annexure-8**

**PRICE FOR MANPOWER ADDITION & DELETION**