



ONGC TRIPURA POWER COMPANY LIMITED

**CONTRACT
FOR
SUPPLY OF MULTIPURPOSE TYPE-B FIRE TENDER**

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

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

CONTRACT FOR SUPPLY OF MULTIPURPOSE TYPE-B FIRE TENDER

AT PALATANA POWER PLANT

TABLE OF CONTENT

Clause No.	Description	Page No.
1.0	Definition & Interpretation	
2.0	Effective Date of Contract	
3.0	Term & Authorization to Proceed	
4.0	Scope of Supply	
5.0	Spares, Consumables & Maintenance Tools & Tackles	
6.0	Representatives	
7.0	Contract Price and Price Basis	
8.0	Payment Terms	
9.0	Taxes, Duties and Levies	
10.0	Time for Completion	
11.0	Liquidated Damages	
12.0	Performance Bank Guarantee	
13.0	Engineering Documents, Manuals & Test Certificates	
14.0	Supplier's Obligations	
15.0	Transfer of Title	
16.0	Quality Assurance Program	
17.0	Completion of Supply & Final Acceptance of Fire Tender	
18.0	Indemnification	
19.0	Limitation of Liability	
20.0	Suspension	
21.0	Change in Control	
22.0	Progress Report	
23.0	Subcontracting	
24.0	Lien	
25.0	Force Majeure	
26.0	Representations & Warranties	
27.0	Warranty and Warranty Period	
28.0	Supplier to Inform Itself Fully	
29.0	NOT USED	
30.0	Claim	
31.0	Backcharge	
32.0	Termination	
33.0	Governing Laws and Jurisdiction	
34.0	Settlement of Disputes	
35.0	Change In Law	
36.0	Assignment	

Clause No.	Description	Page No.
37.0	Release of Information	
38.0	Confidential Information	
39.0	Intellectual Property	
40.0	Patent Rights and Royalties	
41.0	Waiver	
42.0	Validity and Survival of Provisions	
43.0	Language and Measures	
44.0	Notices	
45.0	Contractual Relationship	
46.0	Copies of Contract and Counterparts	
47.0	Entire Agreement	
	ANNEXURES	
Annexure-1	Contract Price	
Annexure-2	Technical Specifications	
Annexure-3	Format for Performance Bank Guarantee	
Annexure-4	Format for Advance Bank Guarantee	
Annexure-5	List of Acceptable Banks	
Annexure-6	Current Shareholding of Supplier	
Annexure-7	NOT USED	
Annexure-8	List of Mandatory Spares	

CONTRACT FOR SUPPLY OF MULTIPURPOSE TYPE-B FIRE TENDER
AT PALATANA POWER PLANT

This contract for supply of multipurpose type-B fire tender at Palatana Power Plant ("**Contract**") is signed on [•] day of [•], by and between:

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

AND

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

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

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

WHEREAS:

1. The Owner is procuring one (1) no. multipurpose type-B fire tender for its 2 x 363.3 MW combined cycle power plant at Palatana, which is about 60 (sixty) km from capital city Agartala in the State of Tripura (the "**Project**").
2. The Owner, based on a transparent bidding process, has selected the Supplier as the successful bidder for supply of multipurpose type-B fire tender.
3. The Supplier represents that it has the necessary specialized knowledge, expertise and infrastructure for supplying Fire Tender (as defined hereinafter) and to perform its obligations under this Contract.
4. The Owner desires to engage the Supplier to supply Fire Tender in accordance with the terms and conditions specified in this Contract.
5. The Supplier is willing and has agreed to supply Fire Tender for the Contract Price in accordance with the terms and conditions specified in this Contract.
6. The Owner and the Supplier desire to enter into this Contract pursuant to which the Supplier shall supply, and the Owner shall engage the Supplier to supply Fire Tender, pursuant to the terms and conditions herein set forth.

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

1.0 **DEFINITION AND INTERPRETATION**

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

- 1.1 **"Abandonment"** means the substantial cessation of the performance of the obligations under this Contract for a continuous period of 1 (one) day i.e. 24 (twenty-four) continuous hours and which cessation is not excused under this Contract.
- 1.2 **"Acceptable Bank"** means a bank listed in Annexure 5 (List of Acceptable Banks).
- 1.3 **"Affiliate"** means, with respect to a Person, any entity which directly or indirectly:
- (i) owns or Controls such Person;
 - (ii) is owned or Controlled by such Person; or
 - (iii) is under common ownership or Control with such Person.
- 1.4 **"Applicable Law"** means the substantive or procedural laws of India, whether now or hereafter in effect, including all legislations, acts, rules, regulations, notifications, laws, statutes, awards, orders, decrees, judgments, injunctions, ordinances, codes, requirements, Permits, licenses, Directives, approvals, instructions, standards of any Government Agency, having the force of law.
- 1.5 **"Arbitral Award"** shall have the meaning ascribed to it in Clause 34.4.4.
- 1.6 **"Arbitration Act"** shall have the meaning ascribed to it in Clause 34.4.1.
- 1.7 **"Bankruptcy Event"** means commencement, whether voluntarily or involuntarily, of any proceedings relating to the rescheduling of obligations, bankruptcy, re-organization, insolvency or judicial liquidation or any other similar proceedings.
- 1.8 **"Change in Law Request Date"** shall have the meaning ascribed to it in Clause 35.2.
- 1.9 **"Claim"** shall have the meaning ascribed to it in Clause 30.1.
- 1.10 **"Coercive Practice"** means impairing or harming, or threatening to impair or harm, directly or indirectly, any Person or property to influence any Person's participation or action in relation to negotiation or performance of this Contract.
- 1.11 **"Commissioning Spares"** shall have the meaning ascribed to it in Clause 5.1.1.
- 1.12 **"Completion of Supply of Fire Tender"** shall have the meaning ascribed to it in Clause 17.1.
- 1.13 **"Confidential Information"** shall have the meaning ascribed to it in Clause 38.1.

- 1.14 **"Consumables"** shall have the meaning ascribed to it in Clause 5.3.1.
- 1.15 **"Contract Price"** shall have the meaning ascribed to it in Clause 7.1.1.
- 1.16 **"Control"** means, with respect to any Person, (i) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person whether through the ownership of voting securities, by agreement or otherwise or the power to elect more than one-half of the directors of such Person; or (ii) the possession, directly or indirectly, of a voting interest of more than 50% (fifty percent); or (iii) the power to veto decisions of such Person, whether through ownership of voting securities, by contract, or otherwise.
- 1.17 **"Corrupt Practice"** means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any Person connected with the negotiation, signing or performance of this Contract (for avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of the Owner who is or has been associated or dealt in any manner, directly or indirectly with the negotiation, signing or performance of this Contract or has dealt with matters concerning the Contract or arising there from, before or after the execution thereof, at any time prior to the expiry of 1 (one) year from the Effective Date such official resigns or retires from or otherwise ceases to be in the service of the Owner, shall be deemed to constitute influencing the actions of a Person connected with the negotiation, signing or performance of this Contract); or (ii) engaging in any manner whatsoever, whether during the negotiation of the Contract or after the execution of the Contract, as the case may be, any Person in respect of any matter relating to the Project or the Contract, who at any time has been or is a legal, financial or technical adviser of the Owner in relation to any matter concerning the Project.
- 1.18 **"Cost of Completion"** shall have the meaning ascribed to it in Clause 32.6.1.
- 1.19 **"Directive"** means any directive issued by a Government Agency.
- 1.20 **"Direct Tax"** shall have the meaning ascribed to it in Clause 9.1.
- 1.21 **"Effective Date"** means the date of Letter of Award.
- 1.22 **"Final Acceptance of Fire Tender"** shall have the meaning ascribed to it in Clause 17.2.
- 1.23 **"Fire Tender"** shall have the meaning ascribed to it in Clause 4.2
- 1.24 **"Force Majeure"** shall have meaning ascribed to it in Clause 25.1.
- 1.25 **"Fraudulent Practice"** means any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation.
- 1.26 **"Good Engineering & Manufacturing Practices"** means the exercise of that degree of skill, diligence, prudence, foresight, and engineering & manufacturing practice taking into account Indian conditions, generally followed internationally by highly qualified, prudent professionals in similar industry including in the

procurement, manufacturing, inspection, testing, packing etc in relation thereto; which in any such case should have been expected to accomplish the desired result at the lowest cost, consistent with licensing and regulatory considerations, environmental considerations, reliability, safety and expedition. Good Engineering & Manufacturing Practices is not intended to be limited to the optimum practice, method or act, to the exclusion of all others, but rather to be a spectrum of possible practices, methods or acts employed by owners and contractors.

- 1.27 **"Government Agency"** means any local, State Government in India or the Government of India or any national authority, inspectorate, ministry, department, instrumentality or agency thereof or any corporation (to the extent acting in a legislative, judicial or administrative capacity and not as a contracting party with the Owner) or commission under the direct or indirect control of such local or State Government or the Government of India or any political subdivision thereof or any court, tribunal, judicial body, quasi judicial authority or statutory Person (whether autonomous or not) of the Republic of India which has jurisdiction over the Parties to, or the subject matter of, this Contract or any of the Project Agreements, and this definition includes, for the avoidance of doubt, any authority that may affect the Owner's or the Supplier's ability to perform any or all of its or their obligations under this Contract or any authority that gives consents or permits (including Permits) within India.
- 1.28 **"Governmental Authorizations"** means all approvals, authorizations, permits, licenses, consents, clearances, etc., received or required to be received from Government Agency for the Plant.
- 1.29 **"Hazardous Material"** means (i) "hazardous materials", "hazardous substances", "toxic substances" or "contaminants" as those terms are defined under any Environmental Law, or any other Applicable Laws, (ii) petroleum and petroleum products, including crude oil and any fractions thereof, (iii) any other hazardous, radioactive, toxic or noxious substance, material, pollutant or solid, liquid or gaseous waste, and (iv) any substance that, whether by its nature or its use, is subject to regulation under any Applicable Law or with respect to which any applicable Environmental Law or any Government Agency requires environmental investigation, monitoring or remediation.
- 1.30 **"Indirect Taxes"** shall have the meaning ascribed to it in Clause 9.2.
- 1.31 **"INR" or "Rs" or "Indian Rupees"** means the legal currency of the Republic of India.
- 1.32 **"Latent Defects"** means defects inherently lying within the material or arising out of design deficiency which do not manifest themselves during Warranty Period.
- 1.33 **"Lenders"** means any and all lenders and institutions providing credit, including interim and long-term financing (including any leveraged lease or any other refinancing thereof) in respect of the development, design, engineering, construction, and operation of the Plant, and their respective successors and assigns, including any trustee, agent or designee acting on their behalf.
- 1.34 **"Letter of Award" or "LOA"** means the letter dated [●] issued by the Owner in favour of the Supplier.

- 1.35 **"Loading Point"** means the factory/warehouse or the point of delivery of the Fire Tender by the Supplier or by any of its Subcontractors or its suppliers.
- 1.36 **"Losses"** means any and all liabilities, losses, damages, claims, costs, obligations, charges and expenses (including reasonable attorneys' fees) of whatsoever kind or nature and it does not include indirect and consequential losses.
- 1.37 **"Maintenance Tools & Tackles"** shall have the meaning ascribed to it in Clause 5.4.1.
- 1.38 **"Mandatory Spares"** shall have the meaning ascribed to it in Clause 5.2.1.
- 1.39 **"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.
- 1.40 **"Owner's Event of Default"** shall have the meaning ascribed to it in Clause 32.2.1.
- 1.41 **"Owner Indemnified Parties"** shall have the meaning ascribed to it in Clause 18.1.1.
- 1.42 **"Performance Bank Guarantee"** shall have the meaning ascribed to it in Clause 12.1.
- 1.43 **"Person"** means, unless specified otherwise, a natural person, corporation, society, partnership, joint venture, unincorporated association or other entity.
- 1.44 **"Plant"** means 2 x 363.3 MW gas based combined cycle power plant set-up at Palatana, Tripura including associated Facilities.
- 1.45 **"Project"** shall have the meaning ascribed to it in Recital 1.
- 1.46 **"Quality Assurance Program"** means the quality assurance program provided by the Supplier and approved by the Owner in accordance with the provisions of Clause 16.0.
- 1.47 **"Site"** means 2 x 363.3 MW gas based combined cycle power plant set-up at Palatana, Tripura including associated facilities.
- 1.48 **"Subcontract"** means any contract entered into by the Supplier or its subcontractor with a third party for carrying out any of the responsibilities or obligations of the Supplier under this Contract.
- 1.49 **"Subcontractor"** means any Person carrying out any of the responsibilities or obligations of the Supplier under this Contract under or pursuant to a Subcontract.

- 1.50 **"Subsidiary"** shall have the meaning ascribed to it in Section 4 of the Companies Act, 1956.
- 1.51 **"Supplier's Event of Default"** shall have the meaning ascribed to it in Clause 32.1.1.
- 1.52 **"Supplier Indemnified Parties"** shall have the meaning ascribed to it in Clause 18.2.1.
- 1.53 **"Supplier's Representative"** shall have the meaning ascribed to it in Clause 6.2.1.
- 1.54 **"Taking-Over of Fire Tender"** shall have the meaning ascribed to it in Clause 17.2.
- 1.55 **"Technical Specifications"** means the specifications for supply of multipurpose B-type fire tender attached as Annexure-2.
- 1.56 **"Term"** shall have the meaning ascribed to it in Clause 3.1.1.
- 1.57 **"Termination Date"** means the date upon which termination pursuant to Clause 32.5.1 takes effect.
- 1.58 **"Time for Completion"** shall have the meaning ascribed to it in Clause 10.2.
- 1.59 **"Warranty"** shall have the meaning ascribed to it in Clause 27.1.
- 1.60 **"Warranty Period"** shall have the meaning ascribed to it in Clause 27.2.
- 1.61 **"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.
- 1.62 **Rules of Interpretation**
- In the interpretation of this Contract, unless the context otherwise requires:
- 1.62.1 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;
- 1.62.2 a reference to any gender includes the other genders;
- 1.62.3 a reference to a Clause, Article, Annexure or Recital is a reference to a Clause, Article, Annexure or Recital in this Contract;
- 1.62.4 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;
- 1.62.5 in case of any discrepancy between words and figures, the words shall prevail over the figures;
- 1.62.6 a reference to a statute shall be construed as including all statutory provisions consolidating, amending, modifying, supplementing or replacing the statute referred to;
- 1.62.7 a reference to "writing" includes printing, typing, lithography and other means of reproducing words in a visible form;
- 1.62.8 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;
- 1.62.9 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;
- 1.62.10 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
- 1.62.11 reference to any agreement, deed, document, instrument, or the like shall mean a reference to the same as may have been duly amended, modified or replaced. For the avoidance of doubt, it is clarified that a document shall be construed as amended, modified or replaced only if such amendment, modification or replacement is executed in compliance with the provisions of such document(s).

2.0 **EFFECTIVE DATE OF CONTRACT**

- 2.1 This Contract shall become effective on the date of the Letter of Award and the obligations of the Supplier to supply Fire Tender with associated system shall also commence from such date ("**Effective Date**").

3.0 **TERM AND AUTHORIZATION TO PROCEED**

3.1 **Term**

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

3.2 **Authorization to Proceed**

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

4.0 **SCOPE OF SUPPLY**

- 4.1 The Contract is for supply of one (1) no. multipurpose type-B fire tender along with all materials, equipment and installation of the entire system and training of Owner staff by the Supplier in accordance with the terms and conditions of this Contract.
- 4.2 The Supplier shall supply one (1) no. multipurpose type-B fire tender with all the associated mechanical, electrical and instrumentation materials including Commissioning Spares, Mandatory Spares, Maintenance Tools & Tackles, and Consumables etc required till Taking-over of Fire Tender by Owner in accordance with the terms and conditions specified in this Contract and as set out in detail in the Technical Specifications (the "**Fire Tender**").
- 4.3 The Supplier's obligations include design, engineering, procurement, manufacturing, testing, inspection, packaging, supply, general motor vehicle insurance, vehicle registration and delivery of the Fire Tender in accordance with the terms and conditions of this Contract. Providing training to the OTPC staff to use the Fire Tender efficiently, effectively and in entirety is also in the scope of contractor.
- 4.4 Fire Tender shall be supplied complete in every respect with all mountings, fittings, fixtures and standard accessories normally provided with such materials and/or needed for erection, completion and safe operation of the Fire Tender as required by applicable code though they may not have been specifically specified in Technical Specifications unless included in the list of exclusions.
- 4.5 The Supplier expressly agrees that the scope of supply of Fire Tender shall also include all such items which may not have been specifically mentioned in this Contract or the Technical Specifications but which may be necessary for the successful fulfillment of Supplier's obligation under this Contract and such items shall be supplied by the Supplier without any additional cost to the Owner.
- 4.6 As part of the scope of its obligations under this Contract, the Supplier shall procure and pay for, in its own name as an independent contractor and not as an agent of the Owner, all materials, equipment, manufacturing, fabrication etc. necessary in connection with the supply of Fire Tender in accordance with this Contract. The Fire Tender shall be new, fit for purpose and free from any improper workmanship or defects and properly warranted or guaranteed to the extent required by Article 27.0 (Warranty and Warranty Period) and comply with all Applicable Laws.
- 4.7 The Supplier shall, at all times during the Term, supply the Fire Tender as per approved drawings & documents, Technical Specifications, applicable Indian / International Codes and Applicable Laws and Good Engineering and Manufacturing Practices.
- 4.8 Except as otherwise expressly provided in this Contract, the Supplier agrees and acknowledges that it shall perform all its obligations and responsibilities under this Contract at its own risk, cost and expense
- 5.0 **SPARES, CONSUMABLES AND MAINTENANCE TOOLS & TACKLES**
- 5.1 All the spares for the equipment under the Contract shall strictly conform to the technical specification and documents and shall be identical to the corresponding main equipment / components supplied under the Contract and shall be fully interchangeable.

5.1 **Commissioning Spares**

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

5.2 **Mandatory Spares**

- 5.2.1 The Supplier shall supply spares as per list specified in Annexure-8 ("**Mandatory Spares**").
- 5.2.2 The quality plan and the inspection requirement finalized for the main equipment shall also be applicable to the Mandatory Spares.
- 5.2.3 The Supplier guarantees the long term availability of spares to the Owner for the full life of the equipment covered under the Contract. The Supplier guarantees that before discontinuation of production of spare parts of the equipment covered under the Contract, he shall give the Owner at least six (6) months advance notice so that the Owner may order their requirement of spares. The same provision shall also apply to Subcontractors.
- 5.2.4 In case of discontinuation of manufacturing of any spares by the Supplier or Subcontractors, the Supplier shall provide to the Owner, at least six months in advance, complete manufacturing drawings, material specifications and technical information of such spares. Supplier shall also provide the Owner complete information about replacement of such spares with other equivalent makes commercially available in the market.

5.3 **Consumables**

- 5.3.1 All the consumables such as oils, lubricants, chemicals etc., required till Completion of Supply of Fire Tender shall be supplied by the Supplier ("**Consumables**").
- 5.3.2 Supplier shall also furnish consumption rates of Consumables along with estimated annual requirements and ordering specification to enable the Owner to procure these in time for operation & maintenance of Fire Tender.

5.4 **Maintenance Tools & Tackles**

- 5.4.1 Supplier shall supply all the special tools & tackles, appliances and lifting devices for the effective maintenance of the equipment and components covered under this Contract ("**Maintenance Tools & Tackles**"). Price for Maintenance Tools & Tackles is included in Contract Price. Maintenance Tools & Tackles shall be dispatched simultaneously with equipments and components.
- 5.4.2 Maintenance Tools & Tackles shall not be used for installation of equipments & components.

6.0 REPRESENTATIVES

6.1 Owner's Representative – Project Manager

6.1.1 The Owner shall appoint a representative to act as the project manager ("**Project Manager**") and shall notify the Supplier. 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 Supplier's Representative.

6.1.2 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 Supplier's Representative. The Project Manager may also revoke such assignment or delegation and give notice of the same to the Supplier's Representative.

6.1.3 The Project Manager may, from time to time, issue to the Supplier's Representative instructions which may be necessary for the Supplier to perform its obligations under the Contract.

6.2 Supplier's Representative

6.2.1 The Supplier shall appoint a representative for the purposes of this Contract ("**Supplier's Representative**"), with the prior consent of the Owner.

6.2.2 The Supplier's Representative shall represent and act for the Supplier at all times during the Term and shall provide to the Project Manager all the Supplier's notices, instructions, information and all other communications under this Contract.

6.2.3 All notices, instructions, information and all other communications to be provided by the Project Manager to the Supplier under this Contract shall be provided to the Supplier's Representative, except as otherwise provided.

6.2.4 The Supplier's Representative shall take all instructions from the Project Manager, or from any other Person to whom the appropriate authority has been delegated pursuant to Clause 6.1.2.

6.2.5 The Supplier shall not revoke the appointment of the Supplier's Representative without the Owner's prior consent, which shall not be unreasonably withheld. If the Supplier proposes to appoint another Person as its representative then, it shall provide a 14 (fourteen) days notice to the Owner requesting it to approve such appointment. The provisions of this Clause 6.2.5 shall apply mutatis mutandis to such replacement.

7.0 CONTRACT PRICE AND PRICE BASIS

7.1 Contract Price

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

7.1.2 The Contract Price is full compensation to Supplier for supply of Fire Tender and faithful and satisfactory performance of all its obligations under this Contract in compliance with all terms and conditions of this Contract. The Contract Price as payable hereunder shall cover all costs, expenses, overheads, etc., to be incurred by the Supplier and profit margin for the performance of all its obligations under this Contract including but not limited to costs and expenses of supplying Fire Tender. No additional claim or payment would be admissible in this regard. Contract Price shall be regulated and paid in the manner described in this Article 7.0 and Article 8.0 (Payment Terms) below.

7.2 **Price Basis**

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

7.2.2 Contract Price includes all costs, expenses, overheads etc., to be incurred by the Supplier and profit margin for supply of Fire Tender and for complete performance of its obligations under this Contract. The Contract Price shall be the full and complete payment for satisfactory discharge of the Supplier's performance of its obligations under this Contract and compliance with the terms and provisions of this Contract.

7.2.3 Contract Price also includes all cost associated with RTO registration at Tripura, road tax, TCS and general motor vehicle insurance as per standard practice/ statutory norms.

7.2.4 Contract Price shall be inclusive of all applicable Indirect Taxes, as specified in Part B of Annexure 1 (Contract Price). Tax payable on income or profession of the Supplier, its employees and its Subcontractor shall be the sole responsibility of the Supplier, its employees and its Subcontractor and the Owner shall have no obligation regarding the same.

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

7.2.6 For the avoidance of doubt, it is clarified that the Contract Price includes any and all direct, indirect and ancillary charges, cess, costs and expenses of whatsoever nature, taxes on the Supplier, applicable indirect taxes on supplies under this Contract, all profit, license, royalty and fees, accessories, Consumables, Commissioning Spares, Mandatory Spares, Maintenance Tools & Tackles, and intellectual property licenses to be provided under this Contract, packaging and loading of the Fire Tender and delivery at the Loading Point.

7.2.7 Failure by Supplier to fully assess the scope of supply of Fire Tender, as specified in this Contract shall not be considered as a basis for variations to the Contract Price or any part thereof such as pricing of individual items (unit prices) and time and material rates for changes.

8.0 PAYMENT TERMS

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

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

8.3 Payment Term:

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

8.3.1.1 Unconditional and unequivocal acceptance of Letter of Award;

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

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

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

8.3.2 Seventy percent (70%) of the Contract Price including 100% of applicable all taxes, duties and levies shall be released against the receipt of Fire Tender in good condition at Site within thirty (30) days of receipt of following documents by Owner in 1 (one) original + 2 (two) copies:

8.3.2.1 Invoice;

8.3.2.2 Registration certificate and Motor Insurance certificate in the name of the Owner.

8.3.2.3 Copy of Consignment Note / Lorry Receipt having material receipt endorsed by Owner;

8.3.2.4 Copy of Way Bill / Road Permit used for transportation of Fire Tender; and

8.3.2.5 Material Receipt Certificate issued by Owner;

8.3.3 Twenty percent (20%) of the Contract Price excluding all taxes, duties and levies shall be released by the Owner after Final Acceptance of Fire Tender evidenced by final acceptance certificate issued by Owner and submission of as-built drawings, documents, test reports & certificates, Operation & Maintenance Manuals and completion of training to Owner's staff within 30 days of submission of Invoice and supporting documents.

8.4 **Mode of Payment**

8.4.1 Payment shall be made either by cheque or in such other manner as the Parties may mutually agree in writing. All bank charges shall be to the account of Supplier.

8.4.2 Applicable income tax/withholding tax/TDS shall be deducted while making payment and necessary certificate as per Applicable Law shall be issued in due course of time.

8.4.3 If the Owner disputes any item of an invoice, the Owner shall make payment for the undisputed portion of such invoice when such payment becomes due under this Contract. The Owner shall make the balance payment within 30 (thirty) days after resolution of the dispute in accordance with Clause 34.0 (Settlement of Disputes).

9.0 **TAXES, DUTIES & LEVIES**

9.1 The Supplier shall bear and pay all personal, property and corporate taxes (including withholding tax, if applicable), duties, levies and its related charges assessed on the Supplier (including surcharge on income tax), its Subcontractors (or their contractors) or their employees by a Government Agency in connection with the supply of Fire Tender and performance of its obligations under this Contract ("**Direct Tax**"). For the avoidance of any doubt, it is clarified that all Direct Taxes by whatever name called, arising on the income of the Supplier, its Subcontractors (or their contractors) or their employees, shall be borne by the Supplier. The Supplier shall provide the requisite information/documents to the Owner (including its permanent account number), so as to enable the Owner in complying with its obligations as per Applicable Law.

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

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

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

9.5 Imposition of new Indirect Taxes by the Central or State government within the Time for Completion shall be to the Owner's account. However, any increase in the

rates of Indirect Taxes or imposition of new Indirect Taxes, beyond the Time for Completion shall be to the Supplier's account and any benefit of statutory downward revision in Indirect Taxes beyond the Time for Completion shall be passed on by the contractor to the Owner.

9.6 In the event that the Owner is required to pay the income tax/withholding tax applicable on supply of Fire Tender and the performance of obligations under this Contract whether outside India or within India, the Owner shall deduct such taxes from the gross value of the Supplier'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 Supplier so as to enable it to take the tax credit.

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

9.8 The Supplier shall avail all concessions, exemptions or benefits under Applicable Law including but not limited to under Indian taxation laws and/or Foreign Trade Policy of India. It will be the responsibility of the Supplier 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 Supplier and the Owner shall have no liability whatsoever in this regard.

10.0 **TIME FOR COMPLETION**

10.1 The Supplier agrees to supply the Fire Tender in a timely manner in accordance with the terms of this Contract. The Supplier admits and acknowledges that time is the essence of this Contract for the supply of the Fire Tender.

10.2 The time for Completion of Supply of Fire Tender shall be 3 (three) months from the Effective Date ("**Time for Completion**").

10.3 Supplier shall submit to Owner for his approval, within fifteen (15) days from the Effective Date, a detailed PERT Network, consisting of adequate number of activities covering various key phases of the supply of Fire Tender such as design, engineering, procurement, manufacturing, inspection, testing, packing and loading of materials at the Loading Point. The PERT Network shall be based on Time for Completion specified in Clause 10.2 above. Approved PERT Network shall form integral part of the Contract. As provided elsewhere in this Section, finalization of the PERT Network will be a precondition for release of any initial advance to the Supplier.

10.4 The Supplier shall promptly notify the Owner of any event or conditions which might delay the completion of supply of Fire Tender within Time for Completion and the steps being taken to remedy or mitigate such situation, including on its own initiative and at its own expense, increasing or supplementing the supervision, procurement and manufacturing to such an extent so as to restore the lost sequence or progress and provide assurance of compliance with the Time for Completion under this Contract. In the event the steps taken by the Supplier to remedy or mitigate such situation causes the Owner to incur additional costs, the Supplier shall reimburse such costs to the Owner. If the Supplier fails to take necessary steps to remedy or mitigate a delay, then the Owner may take such steps as it may deem

necessary, in its sole discretion (including but not limited to engaging other suppliers to perform the obligations under this Contract and deduct the cost of the same from the Contract Price).

11.0 LIQUIDATED DAMAGES

11.1 The Owner and the Supplier agree that, because of the unique nature of the Fire Tender, it is impracticable or infeasible to determine actual damages and loss that would be incurred by the Owner as a result of the Supplier's failure to complete the supply of Fire Tender within Time for Completion. It is further understood and agreed by the Parties that any sums which would be payable by Supplier under this Article 11.0, 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 Supplier.

11.2 Liquidated Damages for Delay in Completion

11.2.1 In case of failure of Supplier to complete the supply of Fire Tender within Time for Completion specified in Clause 10.2, the Supplier shall pay to the Owner liquidated damages as follows:

For every 1 (one) week (or part thereof) delay in completion of supply of Fire Tender for reasons not attributable to the Owner, the Supplier shall pay to the Owner a sum equivalent to half percent (0.5%) of the Contract Price.

11.2.2 The total amount of liquidated damages payable by the Supplier on account of delay in completion of supply of Fire Tender under Clause 11.2 shall be limited to 10% (ten percent) of the Contract Price.

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

11.4 Owner may recover the liquidated damages payable by the Supplier from any amounts due to it or which may subsequently become due to it under this Contract or any other contract.

11.5 The Parties acknowledge that the liability for payment of liquidated damages, for any delay in completion of supply of Fire Tender arises separately under this Contract, the contract for civil construction work and the contract for installation services. 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 two contracts 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 two contracts 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 Supplier to pay liquidated damages under all three 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.

11.6 For the avoidance of doubt, it is clarified, that the Owner's right to receive liquidated damages in accordance with this Article 11.0 is without prejudice to any other rights the Owner may have under Applicable Law or otherwise in connection with the breach of any other obligations hereunder by the Supplier.

12.0 **PERFORMANCE BANK GUARANTEE**

12.1 The Supplier 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 supply of Fire Tender and due performance of its obligations under this Contract, with an initial validity of up to 90 (ninety) days beyond the Warranty Period, a format of which is attached as Annexure 3 (Format of Performance Bank Guarantee) ("**Performance Bank Guarantee**").

12.2 If, at the time of discharge of Performance Bank Guarantee, the Warranty Period has been extended pursuant to Clause 27.5 or if a dispute has been referred for resolution pursuant to Article 34.0 (Settlement of Disputes), the Supplier shall, on or before 21 (twenty one) days before the expiry of the Performance Bank Guarantee, issue an extension of the existing Performance Bank Guarantee or issue a separate security in the form of an unconditional and irrevocable bank guarantee for an amount proportionate to the Contract Price for such part, valid till the extended Warranty Period or until final resolution of the dispute and payment of any amount due as a result thereof, as the case may be.

12.3 The Performance Bank Guarantee to be submitted by Supplier shall be from an Acceptable Bank and in the form acceptable to the Owner and as prescribed under Annexure 3 (Format of Performance Bank Guarantee).

12.4 The Supplier 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 Supplier, in accordance with this Contract, including recovery of any amounts due to the Owner from the Supplier. The Owner shall have the unconditional option under the Performance Bank Guarantee to invoke and encash the same and shall be entitled to recover from such Performance Bank Guarantee, any amounts which may become due to the Owner from the Supplier.

In the event the credit rating of the Acceptable Bank which has provided the Performance Bank Guarantee falls below AA+ by Credit Rating and Information Services India Limited or below AA by ICRA Limited or below AA+ by Credit Analysis and Research Limited or below BBB Fitch Ratings, then the Supplier shall provide a fresh Performance Bank Guarantee from an Acceptable Bank which has a credit rating equal to or higher than the credit ratings mentioned in this Clause 12.5

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

13.1 **Engineering Drawings & Documents**

13.1.1 The furnishing of engineering data by the Supplier shall be in accordance with the Technical Specifications. The review of these data by the Owner shall normally cover only general conformance of the data to the provisions of the Contract including Technical Specifications and interfaces, external connections and

dimensions which might affect Plant layout. Such review by the Owner may not be a detailed review of all dimensions, quantities and details of the equipment, materials, any devices or items indicated or the accuracy of the information submitted. This review and or/approval by the Owner shall not be construed by the Supplier, as limiting any of his responsibilities and liabilities for mistakes and deviations from the requirements specified under the Contract including Technical Specifications.

- 13.1.2 Each drawing submitted by the Supplier shall be clearly marked with the name of the Owner, the Project title, the Contract No., the title of drawing, scale, date of drawing, the Supplier's drawing No., space for Owner's drawing No etc. In addition to the above information provided on drawings, each drawing shall carry a revision number, date of revision and brief details of revision carried out. If standard catalogue pages are submitted, the applicable items shall be indicated therein. All titles, noting, markings and writings on the drawing shall be in English. All the dimensions shall be in metric units.
- 13.1.3 Within two (2) weeks from the Effective Date, the Supplier shall submit to Owner for his approval a list of all the drawings, documents, design calculations, material specifications, data-sheets etc proposed to be submitted by Supplier to the Owner for approval / reference identifying each by a serial number and descriptive title and giving the expected date of submission.
- 13.1.4 The Supplier shall satisfy the Owner about the validity of the design with reference to the requirements of Technical Specifications, engineering codes, Good Engineering & Manufacturing Practices and Applicable Laws.
- 13.1.5 Drawings submitted for approval / reference shall be signed by responsible representative of the Supplier and shall be of any of the following sizes in accordance with the Indian Standard: A0, A1, A2, A3 or A4.
- 13.1.6 The drawings and documents submitted by the Supplier shall be reviewed by the Owner as far as practicable within Two (2) weeks and shall be modified by the Supplier if any modifications and / or corrections are required by the Owner. The Supplier shall incorporate such modifications and/or corrections and submit the final drawings and documents for approval within two (2) weeks from the date of receipt of commented drawings and documents from the Owner. Any delays arising out of failure by the Supplier to submit the revised drawings and documents within the time for resubmission specified above shall be to the Supplier's account. While resubmitting the drawings and documents Supplier shall incorporate Owner's drawing and document number in the respective drawings and documents. The Owner's drawing and document number shall be used thereafter for all purpose of reference.
- 13.1.7 Three (3) hard copies and one (1) soft copy of the drawings and documents shall be submitted by the Supplier to the Owner for approval/reference. One copy of such drawings and documents shall be returned to the Supplier by the Owner marked 'Approved / Approved with comments as noted / Marked with comments / Retained for information'. The Supplier shall thereupon furnish to the Owner, the revised drawings and documents after incorporating all corrections for final approval.

- 13.1.8 Supply of equipment/materials shall be in strict accordance with approved drawings and documents and no deviation shall be permitted without the written approval of the Owner, if so required.
- 13.1.9 All manufacturing and fabrication work in connection with the equipment prior to the approval of the drawings (Approved / Approved with Comments as noted) shall be at the risk and cost of Supplier. Subject to approval by the Owner, the Supplier may make necessary changes in the drawings and documents which are necessary to make the equipment conform to the provisions and intent of the Contract including Technical Specifications. Approval of Supplier's drawings by the Owner shall not relieve the Supplier of any of his responsibilities and liabilities under the Contract.
- 13.1.10 Any expenses resulting from an error or omission in or from the delay in delivery of the drawings and documents mentioned in the Technical Specification shall be borne by the Supplier.
- 13.1.11 Drawings shall include all installation and detailed cabling drawings wherever applicable. All drawings shall be fully corrected to agree with actual 'as built' construction.
- 13.1.12 Upon completion of installation, the Supplier shall submit 'As built Drawings' and 'As built Documents' including As built datasheet in required No. of copies as specified in Technical Specifications.
- 13.1.13 If at any time before Final Acceptance of the system, changes are made necessitating revision of the approved drawings and documents, the Supplier shall make such revisions and obtain approval of Owner as specified in Clause No. 13.1.5 and 13.1.6.
- 13.2 **Manuals and Test Certificates**
- 13.2.1 The Supplier shall submit to the Owner for his review and approval, draft installation, operation & maintenance manuals for all the equipments covered under the Contract, within the time agreed upon between the Owner and the Supplier. The final installation, operations & maintenance manuals, complete in all respects shall be submitted by the Supplier within 10 days of the commissioning of the system.
- 13.2.2 If after the Final Acceptance of Fire Tender, the installation, operation & maintenance manuals require any modifications / additions / deletions, the same shall be incorporated and the updated final installation, operation & maintenance manuals shall be submitted by the Supplier to the Owner.
- 13.2.3 The Supplier shall furnish to the Owner spare parts catalogue.
- 13.2.4 The Supplier shall submit the following documents in line with Clause 13.1 and 13.2:
- | | | |
|----------|--------------------------------|-----------------------------|
| 13.2.4.1 | Printed Pamphlets / Catalogues | 6 hard copies + 1 soft copy |
| 13.2.4.2 | Manuals (Preliminary) | 6 hard copies + 1 soft copy |
| 13.2.4.3 | Manuals (Final) | 6 hard copies + 1 soft copy |

13.2.4.4	Manuals (Updated), if required	6 hard copies + 1 soft copy
13.2.4.5	Any other relevant information	6 hard copies + 1 soft copy
13.2.4.6	All Test Certificate in bound volumes	6 hard copies + 1 soft copy
14.0	SUPPLIER'S OBLIGATIONS	
14.1	General	
14.1.1	In addition to other specific obligations set out elsewhere in this Contract, the Supplier shall have the obligations set out in this Clause 14.0.	
14.1.2	It shall be the responsibility of the Supplier to supply Fire Tender which shall be new and in good condition. Supplier shall supply the Fire Tender which shall meet all the requirements provided under the Technical Specifications. Equipment selected shall be sufficient to meet the requirements of the system as mentioned in the Technical specifications.	
14.1.3	The Supplier shall be fully responsible for preparing, packaging and loading the materials / Fire Tender on to the mode of transportation at the Loading Point, including for the payment of all packaging, loading and handling costs and expenses. Unloading of the materials at site, installation and commissioning of the system is also under the scope of contractor.	
14.2	Industrial Practice	
14.2.1	The Supplier shall be responsible for performing its obligations under this Contract, including for associated purchases and/or subcontracting with due care and diligence and in accordance with Good Engineering & Manufacturing Practices, using sound supervisory procedures, and in a professional and workmanlike manner, in accordance with Applicable Law and the Technical Specifications and within the Time for Completion. The Supplier shall supply Fire Tender as per the specifications provided under the Technical Specifications. The Supplier shall ensure that the Fire Tender shall be fit for the purpose for which it is intended as per the provisions of this Contract.	
14.3	Means and Methods	
14.3.1	The Supplier shall, at all times, be responsible for the efficiency and adequacy of its planning, co-ordination with its Subcontractors, design, securing of approvals, means and methods of performance, materials and equipment, irrespective of whether the Supplier acts as a result of any advice or reviews of the Owner.	
14.3.2	The Supplier shall, whenever required by the Owner, submit details of the arrangements and methods which the Supplier proposes to adopt for performance of its obligations under this Contract. No significant alteration to these arrangements and methods shall be made without the same being previously notified to the Owner.	
14.4	Compliance with Laws	

- 14.4.1 The Supplier shall at all times be in compliance with all Applicable Laws, in the performance of its obligations under this Contract. The Supplier shall also ensure such compliance by its Subcontractors.
- 14.4.2 The Supplier shall at its cost, in a timely manner so as not to delay the progress of its obligations hereunder and in any event before the time required by Applicable Law, obtain all applicable Permits required for the completion of its obligations under this Contract.
- 14.4.3 The Supplier shall not, under any circumstances, cause or permit, in connection with the obligations to be performed hereunder, the discharge, emission or release of any hazardous substance and/or waste, pollutant, contaminant or other substance in violation of any Applicable Laws.
- 14.5 **Packaging**
- 14.5.1 **General**
- 14.5.1.1 All materials and equipment shall be protected and securely packed and loaded in a manner commensurate with the transportation stresses and hazards encountered in such supply in accordance with internationally accepted transportation principles. The Supplier shall ensure that the packing provides adequate protection to the materials and equipment from the rigors of multiple handlings, loadings and unloading, as applicable. If Fire Tender or any of its equipment is damaged, lost, stolen, destroyed or otherwise impaired prior to the completion of loading at the Loading Point, the Supplier shall, at its own cost and expense, restore or replace such affected Fire Tender or equipment. The provisions of this Clause are designed to facilitate preservation, safe arrival, and expeditious movement of the Fire Tender to the Site and provide the general requirements for packaging of the materials and equipment of the Fire Tender. The provisions of this Clause are neither a packing manual, nor a substitute for internationally recognized packing practices and the Supplier shall be fully responsible for the quality of packaging.
- 14.5.2 **Packing Procedure**
- 14.5.2.1 The materials and equipment shall be packed in accordance with standard practices of the industry and of the mode(s) of transportation to be utilized or expected to be utilized for transportation and as specifically notified by the Owner from time to time.
- 14.5.2.2 The Supplier shall provide packing and packaging to protect the equipment and materials while in storage for up to 6 (six) months.
- 14.5.2.3 The Supplier will use its knowledge of the materials and equipment to provide supplementary packaging when customary and usual packaging may not provide sufficient protection. The packaging shall be in a manner such that the materials and equipment is protected against mechanical damage (shocks, rupture, breakage, loss, etc.) and corrosion (rain, salty atmosphere, sand, wind, etc.).
- 14.5.2.4 Additional appropriate packing shall be considered when the materials and equipment, or any component thereof is required to be stored outside.

- 14.5.2.5 The materials and equipment shall be clean and free from metallic filings, machining debris and cleaning media such as blasting grit, if applicable.
- 14.5.2.6 Supplier shall adhere to the requirements of Applicable Law governing treatment to prevent infestation and mold in wood used in pallets, skids, crates, boxes or any other items used as packing material.
- 14.5.2.7 Supplier shall ensure adequate additional boxing or crating for consolidated small packaged and/or loose items.
- 14.5.2.8 Each item in each package shall be labelled or marked so that it can easily be identified by the packing list. 1 (one) copy each of the final detailed packing list shall be affixed in water tight containment on the outside of each package, container or crate secured under a metal sheet, and one copy shall be placed inside the package, container or crate. The Supplier shall also apply standard symbols indicating care and precaution to be used in handling and storing of each package. For out-of gauge consignments, either heavy or over dimensional, the center of the package shall be marked and clearly indicate the lifting points.
- 14.5.2.9 All means, methods and techniques of packing utilised, shall be appropriate for the conditions and materials involved and in accordance with the current state of the art and keeping with delivery schedule.

14.5.3 **Protection Against Damage in Transit**

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

14.5.4 **Hazardous Material**

- 14.5.4.1 Hazardous Material shall be packed only in certified containers or only with certified packaging material in accordance with Applicable Law, including BARC and DAE Rules. The Supplier shall clearly mark all packages containing Hazardous Material with the appropriate symbols and placards.
- 14.5.4.2 The Supplier hereby fully indemnifies the Owner with respect to any liability arising on account of any escape of Hazardous Material.

14.6 **Corrupt/Fraudulent Practices**

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

15.0 **TRANSFER OF TITLE**

- 15.1 **Title**
- 15.1.1 The title to the Fire Tender manufactured in India and supplied directly by the Supplier shall be transferred to the Owner upon registration of the Fire Tender.
- 15.1.2 The title to the materials manufactured in India and supplied directly by the Sub-contractor to the Owner, shall be transferred to the Owner during the transit by way of transfer of document of title to materials by the Supplier after loading of the materials at the Loading Point and delivery to the transporter for transportation.
- 15.1.3 The title to the materials manufactured outside India and supplied directly by the Supplier shall be transferred to the Owner at the Loading Point upon completion of loading of the materials on to the mode of transportation used for transporting it to India.
- 15.1.4 The title to the materials manufactured outside India and supplied directly by the Sub-contractor to the Owner, shall be transferred to the Owner during the transit by way of transfer of document of title to materials by the Supplier after completion of loading of the materials at the Loading Point on to the mode of transportation used for transporting it to India.
- 15.1.5 Ownership of materials in excess of the requirement for successful completion of erection and commissioning of Fire Tender shall revert to the Supplier after successful Completion of Supply of Fire Tender and Taking-Over of Fire Tender.
- 15.2 **Responsibilities of Supplier**
- 15.2.1 The Supplier shall continue to be responsible for the risk of loss or damage to the Fire Tender up to the completion of delivery at Site and for the quality and performance of the Fire Tender till the end of the Warranty Period.
- 16.0 **QUALITY ASSURANCE PROGRAM**
- 16.1 **Inspection**
- 16.1.1 To ensure the conformance of the Fire Tender, whether manufactured by Supplier or by its Subcontractors, with the provisions of this Contract, Supplier shall adopt, as well as ensure adoption by its Subcontractor, suitable Quality Assurance Program. The Owner or its representative(s) shall have the right to inspect and/or to test the Fire Tender to check their conformity with the provisions of this Contract.
- 16.1.2 The Quality Assurance Program, proposed for adoption by the Supplier, shall be submitted for review and approval of the Owner, within 30 (thirty) days of the Effective Date. It shall *inter alia* specify required inspections and tests to be carried out by Supplier as per Contract and applicable codes for all phases of manufacturing and supply, the procedures involved, the place where such inspections and tests shall be conducted, acceptance basis, acceptance criteria and the customer hold points (CHPs) beyond which manufacturing shall not proceed without specific clearance from Owner. The approved Quality Assurance Program shall form part of this Contract and shall be strictly adhered to.
- 16.1.3 In case of customer hold points / stage inspection, Supplier shall proceed from one stage to another only after the Fire Tender has been inspected and tested by the

Owner and / or their representative and permission has been given to proceed further. The procedure shall be adopted for any rectification / repairs suggested by Owner or their representative.

- 16.1.4 The Supplier shall give not less than 15 (fifteen) day's prior notice as to the time and place of any scheduled inspection. Supplier shall submit following documents along with inspection call notice:
 - 16.1.4.1 All Non-destructive examination procedures, stress relief and weld repair procedure actually used during fabrication
 - 16.1.4.2 Welder and welding operator qualification certificates
 - 16.1.4.3 Welder identification list, welder' and welding operator' qualification procedure and welding identification symbols.
 - 16.1.4.4 Material mill test reports on components as specified by the specification.
 - 16.1.4.5 The inspection plan with verification, inspection plan check points, verification sketches, if used, and methods used to verify that the inspection and testing points in the inspection plan were performed satisfactorily.
 - 16.1.4.6 Sketches and drawings used for indicating the method of traceability of the radiographs to the location on the equipment.
 - 16.1.4.7 All Non-destructive examination result reports including radiography interpretation reports.
 - 16.1.4.8 Stress relief time temperature charts.
 - 16.1.4.9 Factory test results for testing required as per applicable codes and standard referred in the specifications.
- 16.1.5 In the event the Supplier fails to provide the Owner and/or their representative(s) at least 15 (fifteen) days prior notice of scheduled inspections, the Supplier shall pay for any costs incurred by the Owner and / or their representative in conducting the inspection which are greater than the costs which would have been incurred with proper notice. Provided, all costs of the Owner or their representative shall be borne by Owner if 15 (fifteen) day's prior notice is provided by the Supplier.
- 16.1.6 Supplier shall provide at his own cost all facilities including labour, materials, electricity, fuel, water, stores, apparatus, instruments etc reasonably required by Owner and/or their representative for effectively carrying out such inspection and tests of the Fire Tender in accordance with the Contract and applicable codes.
- 16.1.7 Owner may ask Supplier to perform any such inspection and tests which are not specified in Contract and Quality Assurance Program. Supplier shall perform such inspection and tests and Owner shall pay to the Supplier reasonable cost incurred in carrying out such inspection and tests.
- 16.1.8 Inspection and acceptance of the Fire Tender by the Owner and / or their representative shall not limit the liabilities and responsibilities of the Supplier in any

manner and shall not prejudice the right of the Owner to reject the Fire Tender if it is found to be defective during inspection after receipt at Site or if it fails to achieve guaranteed performance specified in the Contract including Technical Specifications.

16.1.9 Fire Tender shall be dispatched only after inspection at Supplier's / Subcontractor's works is carried out and Fire Tender is found to be acceptable. However, Owner reserves the right to waive-off inspection by Owner and / or their representative and allow dispatch of Fire Tender to Site without inspection.

16.1.10 Supplier shall be responsible for monitoring each Subcontractor's compliance with the approved Quality Assurance Program. The Owner shall have right to conduct audits of the Supplier's Quality Assurance Program. Supplier shall cooperate with and extend all support to Owner in carrying out such audits.

16.2 **Material Tests**

16.2.1 The Supplier shall provide, at his own cost, test pieces as required by the Owner to enable him to determine the quality of material supplied under this Contract. If any test piece fails to comply with the requirements, the Owner may reject the whole material represented by the test piece.

16.2.2 Plates, sheets and bar stock materials meant for components of vessels shall be subjected to ultrasonic testing in accordance with codes specified or approved equal.

16.2.3 All high pressure pumps, valves and other high-pressure casting shall be subjected to radiographic testing in accordance with codes specified or approved equal.

16.2.4 All forgings shall be subjected to ultrasonic and magnetic particle testing in accordance with codes specified or approved equal

16.2.5 All ferrous and non-ferrous pipes and tubes of 65mm size and under shall be subject to eddy current testing in accordance with codes specified or approved equal

16.2.6 All U-bent tubes made of copper alloy shall be stress relieved.

16.2.7 All materials used in manufacturing of Fire Tender covered by the Contract shall also be subjected to one or more of the following non-destructive tests (NDT) – visual, dye penetration, magnetic particles, ultrasonic or radiographic. Salvaging of material due to unacceptable defect is to be attempted by the Supplier only after getting specific concurrence from the Owner and according to the approved procedures.

16.2.8 Unless otherwise specified, NDT tests shall be witnessed by the Owner.

16.3 **Welding**

16.3.1 All welding involved in the manufacturing of Fire Tender shall be carried out in accordance with applicable codes or approved equal.

16.3.2 Welding Procedure and welder's qualifications shall be approved by the Owner, where applicable. Welders shall be tested as detailed in codes specified for pipe welding, vessel welding and structural welding and appropriate to the corresponding weld position using test pieces of appropriate parent metal to be used on the job.

The Owner shall have the right to have any welder retested at any time during this Contract.

16.3.3 Approved methods of radiographic, ultrasonic or other non-destructive testing shall be carried out for the welding of seams in pipes and vessels. Recommendations of codes specified shall be followed where applicable

16.3.4 Weld coupon plates shall be tested subsequent to heat treatment.

16.3.5 Copies of all welding procedures, preheating, post-heating and stress relieving records, NDT records and other test results shall be made available upon request to the Owner.

16.3.6 Fabrication/inspection procedures for vessels, heat exchangers, pipes, tubes, valves, etc. shall be in accordance with codes specified or any other approved equal.

16.3.7 If the Supplier has special requirements relating to the welding procedures for welds at the terminals of the equipment to be procured by the Owner under separate specifications, the requirements shall be submitted to the Owner well in time.

16.4 Price for all inspection and tests to be carried out till Final Acceptance of Fire Tender and during Warranty Period are included in Contract Price.

16.5 Nothing in this Article 14.0 shall, in any way, release the Supplier from any of its Warranty or other obligations under this Contract.

17.0 **COMPLETION OF SUPPLY AND FINAL ACCEPTANCE OF FIRE TENDER**

17.1 After successful completion of trial operation of the Fire Tender as specified in Scope of Supply including Technical Specifications and after satisfying itself about satisfactory completion of supply of Fire Tender, within seven (7) days of receipt of notification from Supplier for successful completion of supply of Fire Tender, Owner shall issue a provisional acceptance certificate to the Supplier (the "**Completion of Supply of Fire Tender**").

17.2 After Completion of Supply of Fire Tender, Supplier shall perform tests to demonstrate that Fire Tender can achieve performance guarantee parameters as specified in the Technical Specifications. After successful achievement of performance guarantee parameters, Owner shall take-over the Fire Tender from Supplier. Upon taking over of the Fire Tender, Owner shall become responsible for care, custody, operation and maintenance of Fire Tender (the "**Taking-Over of Fire Tender**" or the "**Final Acceptance of Fire Tender**"). Taking-Over of part of the Fire Tender is not allowed.

18.0 **INDEMNIFICATION**

18.1 **Indemnification by Supplier**

18.1.1 Supplier agrees to defend, indemnify and hold harmless the Owner, its Affiliates, and all of their directors, officers, employees, agents and representatives ("**Owner Indemnified Parties**"), from and against any and all Losses arising:

- 18.1.1.1 By reason of Supplier's actual or asserted failure to comply with any Applicable Law or any provision of this Contract. If the Supplier fails to comply with the requirements mentioned above and as a result fines, penalties or other assessments are imposed upon either the Supplier or the Owner by any Government Agency under any Applicable Law, then the Supplier shall be liable to pay all such fines, penalties or other assessments;
- 18.1.1.2 From actual or asserted violation or infringement of rights in any patent, copyright, proprietary information, trade secret or other property right caused or alleged to be caused by the use of materials, equipment, methods, processes, designs or information supplied by Supplier or its Subcontractors in performance of its obligations under this Contract. Should any Fire Tender supplied by Supplier become, or appear likely to become, the subject of a claim of infringement of a patent, copyright or other property right, Supplier shall, at the Owner's option, either procure for the Owner the right to continue using such Fire Tender or replace same with equivalent, non-infringing Fire Tender, provided that any such replacement is of equal quality as the infringing Fire Tender;
- 18.1.1.3 From injury to or death of any Person (including employees of the Owner, Supplier and Supplier'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 Supplier or its Subcontractors. Supplier's indemnity obligations hereunder include claims and damages arising from non-delegable duties of the Owner or arising from use by Supplier of facilities furnished to Supplier by the Owner; or
- 18.1.1.4 From present or future Environmental Claims directly or indirectly related to or arising out of the actual or alleged existence, generation, use, delivery, collection, treatment, storage, transportation, recovery, removal, discharge or disposal of Hazardous Material at the Site and/or adjacent areas solely to the extent arising out of the gross negligence or Willful Misconduct of the Supplier, its Subcontractors in the performance of its obligations under this Contract.
- 18.1.2 Supplier'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. Supplier'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 Supplier's indemnity obligations.
- 18.1.3 With respect to claims by employees of Supplier or its Subcontractors on the Owner Indemnified Party, the indemnity obligations created under this Clause 18.1 shall not be limited by the fact of, amount, or type of benefits or compensation payable by or for Supplier, its Subcontractors under any workers' compensation, disability benefits, or other employee benefits acts or regulations, and Supplier waives any limitation of liability or immunity arising from workers' compensation or such other acts or regulations.
- 18.1.4 The Owner shall be entitled to retain from payments otherwise due to Supplier such amounts as shall reasonably be considered necessary to satisfy any claims, suits or liens for damages that fall within Supplier's indemnity obligations under this Clause

18.1, until such claims, suits or liens have been settled and satisfactory evidence to that effect has been furnished to the Owner.

18.1.5 Supplier acknowledges that specific payment has been incorporated into the Contract price as legal consideration for Supplier's indemnity obligations as provided in this Contract.

18.2 **Indemnification by Owner**

18.2.1 Owner agrees to defend, indemnify and hold harmless the Supplier, its Affiliates, and all of their directors, officers, employees, agents and representatives ("**Supplier 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 Supplier Indemnified Parties are negligent or to the extent such Losses are caused by the acts of omission or commissions of the Supplier Indemnified Parties.

18.3 **Defense of Claims**

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

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

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

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

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

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

19.0 **LIMITATION OF LIABILITY**

19.1 Both Owner and Supplier 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 Supplier for the payment of any amounts due hereunder, or performance of any obligations hereunder.

19.2 With the exception of those provision of this Contract providing for the payment of liquidated damages, neither the Supplier nor the Owner shall be liable to the other as a result of any action or inaction under this Contract or otherwise for any special, indirect, incidental or consequential losses such as but not limited to loss of profit, loss of revenue, loss of power, loss of opportunity, loss of goodwill, loss of contracts or cost of capital. It is hereby agreed that this limitation of liability shall not apply in respect of claims for which either Party is indemnified under Article 18.0 (Indemnification). Nothing in this Article 19.0 shall reduce the Supplier's liability for liquidated damages in accordance with the provisions of this Contract.

19.3 The aggregate liability of the Supplier with respect to all claims arising out of or in connection with performance or non-performance of this Contract whether in contract, warranty, tort or otherwise shall not exceed the Contract Price, provided that this limitation shall not apply in case of negligence, Willful Misconduct or liabilities arising out of indemnity provisions in this Contract.

19.4 The provisions of this Contract constitute Supplier's and Owner's exclusive liability, respectively, to each other, and Supplier's and Owner's exclusive remedy, respectively, to each other, with respect to the obligations under this Contract.

20.0 **SUSPENSION**

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

20.2 Upon receiving any such notice of suspension, Supplier shall promptly suspend further performance of this Contract to the extent specified, and during the period of such suspension shall take proper care of and protect all supplies Supplier has with it for performance of its obligations under this Contract. Upon the request of the

Owner, the Supplier shall promptly deliver to the Owner copies of outstanding Subcontracts of Supplier and shall take such action with respect to such Subcontracts as may be directed by the Owner. Supplier shall use its best efforts to mitigate costs associated with suspension. Owner may, at any time, withdraw the suspension of performance of the Contract as to all or part of the suspended obligations by written notice to the Supplier specifying the effective date and scope of withdrawal, and Supplier shall resume diligent performance of its obligations for which the suspension is withdrawn on the specified effective date of withdrawal.

20.3 The Time for Completion shall be extended for a period equal to the duration of the suspension provided the suspension is not due to some default on the part of Supplier.

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

21.0 **CHANGE IN CONTROL**

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

22.0 **PROGRESS REPORT AND APPLICABLE LABOR LAWS**

22.1 The Supplier shall submit formal written and quantitative reports to the Owner on the progress of the manufacturing and supply of Fire Tender 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 Supplier and the Owner shall meet to discuss progress. Each monthly progress report shall be submitted no later than the 5th day of the month following that in respect of which it is made, but may report on actual progress only up to the 25th day of the month and anticipated progress thereafter. Monthly progress reports shall include the followings:

22.1.1 executive summary;

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

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

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

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

- 22.1.6 areas of concern;
- 22.1.7 Corrective Action Plan;
- 22.1.8 such other information and supporting documentation as the Owner may reasonably request;
- 22.2 Supplier shall submit six (6) hard copies and one soft copy of the progress report.
- 22.3 All progress review meeting shall be held at Palatana or New Delhi as advised by Owner.
- 22.4 In the event performance of the Contract is not in compliance with the schedule established for such performance, Owner may, in writing, require the Supplier 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. Supplier shall thereupon take such steps as may be directed by Owner or otherwise necessary to improve its progress without additional cost to Owner.

23.0 **SUBCONTRACTING**

- 23.1 Supplier may subcontract part of the Contract at its own cost; however, the Supplier shall remain responsible for the overall timely completion of supply of the Fire Tender. Fire Tender along with equipment to be supplied under this Contract shall be procured by Supplier as per specification and quality standard specified in Technical Specification.
- 23.2 Supplier shall furnish Owner a copy of all Subcontracts (with price deleted) including technical specification for Owner's information and record within seven (7) days after award of such Subcontract.
- 23.3 Supplier shall ensure that its Subcontractors shall comply fully with the terms of this Contract applicable to the portion of the Fire Tender to be supplied by them. If any portion of the Fire Tender which has been subcontracted by Supplier is not processed in accordance with this Contract, on request of the Owner, the Subcontractor shall be replaced at no additional cost to the Owner and shall not be engaged again.
- 23.4 Supplier shall include a provision in every Subcontract that it executes authorizing assignment of such Subcontract to Owner without requiring further consent from such Subcontractor.
- 23.5 Owner shall have the right from time to time to contact Supplier's Subcontractors and visit their office / manufacturing works to discuss, assess and expedite their progress.
- 23.6 Supplier shall be solely responsible for the performance and cooperation of its Subcontractors. Supplier shall not be relieved of its responsibility for the supply of

Fire Tender or performance of any obligations under this Contract by virtue of any Subcontracts it may execute regardless of Owner's acceptance of such Subcontract.

24.0 **LIEN**

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

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

25.0 **FORCE MAJEURE**

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

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

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

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

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

- 25.1.5 Fire or explosion, except as may be attributable to the Supplier;
- 25.1.6 An act of God;
- 25.1.7 Any act, failure to act, restraint or regulation, of any Government Agency (excluding actions that constitute remedies or sanctions lawfully exercised as a result of breach by the affected Party of any Applicable Law which is not discriminatory in nature); or
provided either Party shall within 7 (seven) days from the occurrence of any such cause notify the other Party in writing.
- 25.2 For avoidance of doubt, it is clarified that lack of funds shall not be construed as an event of Force Majeure.
- 25.3 Supplier 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 Supplier for delays under this Clause.
- 25.4 Neither Party shall be considered to have defaulted in the performance of any of its obligations under this Contract, when and to the extent such failure of performance shall be due to a Force Majeure event.
- 25.5 **Obligation to cure Force Majeure Diligently**
- 25.5.1 If either Party claims an event of Force Majeure, then the Party claiming the event shall:
- 25.5.1.1 Provide prompt notice and in any event within 7 (seven) days from the occurrence of such Force Majeure event, to the other Party of the occurrence of Force Majeure event, stating whether it claims relief under this Article 25.0 by giving reasons of such event, expected duration of such event and probable impact of such event on the performance of its obligations hereunder;
- 25.5.1.2 Exercise all reasonable efforts to continue to perform its obligations hereunder;
- 25.5.1.3 Consult with the other Party, agree upon the action to be taken and expeditiously take action to correct or cure the event or condition excusing performance;
- 25.5.1.4 Exercise all reasonable efforts to mitigate or limit damages to the other Party to the extent such action will not adversely affect its own interests;
- 25.5.1.5 Furnish weekly reports with respect to its progress in overcoming the adverse affects of such event or circumstances; and
- 25.5.1.6 Provide prompt notice to the other Party of the cessation of the event or condition giving rise to its excuse from performance.
- 25.5.2 The affected Party shall not be obliged, when complying with its obligations under this Clause 25.5, to take any steps which would be beyond its reasonable control. The suspension of the obligations hereunder of the affected Party shall be of no

greater scope and no longer duration than is reasonably necessitated by the Force Majeure event.

25.6 So long as the affected Party has at all times since the occurrence of the Force Majeure event complied with the obligations of Clause 25.5 and continues to so comply then, the affected Party shall not be liable for any failure or delay in performing its obligations under or pursuant to this Contract during the existence of a Force Majeure event; provided, however, that no relief shall be granted to the affected Party pursuant to this Clause 25.6 to the extent that such failure or delay would have nevertheless been experienced by the affected Party had the Force Majeure event not occurred.

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

26.0 **REPRESENTATIONS AND WARRANTIES**

26.1 The Supplier represents and warrant that:

26.1.1 The Supplier is a company duly organized, validly existing and in good standing under the jurisdiction of its incorporation. The Supplier 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 Supplier, enforceable in accordance with its terms except to the extent that such enforcement may be limited by any Bankruptcy Event, agreement of creditors, insolvency, moratorium or similar laws affecting generally the enforcement of lenders rights;

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

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

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

26.1.5 The Supplier 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 Supplier's obligations under this Contract and accepts the same and agrees that the Site, the battery limits and such specifications, information, requirements, obligations, rules and procedures are satisfactory and will not prevent or impair or have any adverse effect on the performance by the Supplier of its obligations under this Contract;

26.1.6 It is fully experienced and properly qualified to supply the Fire Tender and perform its obligations hereunder, and that it is properly equipped, organized and financed to fulfill its obligations and responsibilities under this Contract; and

26.1.7 It is properly licensed and qualified to do business in all governmental jurisdictions in which the Fire Tender are to be delivered. Upon written request by Owner, Supplier shall furnish to them such evidence as Owner may require relating to the Supplier's ability to fully perform the obligations under this Contract.

26.2 The Owner represents and warrant that:

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

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

26.2.3 The Owner is not in default under any Loan Agreement, mortgage, deed of trust, indenture executed in relation to any Loan Agreement or any other agreement evidencing indebtedness to which it is a party or by which it or its property is bound or affected to the Lenders;

26.2.4 There is no legal action, suit, proceeding, inquiry or investigation against the Owner before or by any Government Agency of which the Owner has received legal notice and which adversely affects its ability to comply with its obligations under this Contract.

27.0 **WARRANTY AND WARRANTY PERIOD**

27.1 The Supplier hereby warrants to the Owner that the Fire Tender supplied under this Contract shall (the "**Warranty**"):

27.1.1 comply strictly with the terms of this Contract, all specifications, drawings and standards referred to in the Technical Specifications or this Contract or furnished by the Owner hereafter, in accordance with Good Engineering & Manufacturing Practices and Applicable Law;

- 27.1.2 be first-class in every particular and free from defects and deficiencies in design, engineering, material and workmanship; and
- 27.1.3 shall be new, merchantable, of the most suitable grade and fit for their intended purposes.
- 27.2 Supplier shall be liable for any defects in the Fire Tender supplied by it for a period of 12 (twelve) months after the date of Taking-Over of Fire Tender by the Owner(the "**Warranty Period**").
- 27.3 Without limitation of any other rights or remedies of the Owner, if any defect in the materials or equipment supplied under this Contract in violation of the foregoing warranties arises within the Warranty Period, Supplier shall, upon receipt of written notice of such defect, at no cost to the Owner, promptly furnish replacement materials or equipment or parts thereof necessary to correct such defect or repair/modify the defective materials or equipment of Fire Tender, so as to meet the specifications.
- 27.4 If any replacement, repair or modification is of such a character which may affect the subsequent performance of the materials or equipment or any part thereof in accordance with the Technical Specifications, Owner may within 30 (thirty) days after such replacement, repair or modification give to the Supplier notice requiring the Supplier to demonstrate the adequacy and efficacy of the replacement, repair or modification.
- 27.5 In the event Supplier shall have been notified of any defects in the materials or equipment of Fire Tender including the chassis, in violation of Supplier's foregoing warranties and it has failed to promptly and adequately correct such defects, Owner shall have the right to correct or to have such defects corrected for the account of Supplier, and Supplier shall promptly pay to the Owner the costs incurred in correcting such defects. In the event the Supplier replaces the defected materials or equipment, then such replaced materials or equipment, as the case may be, shall be warranted by the Supplier in accordance with the warranties set forth in Clause 27.1 for a period of 18 (eighteen) months from the date of replacement of such materials or equipment, as the case may be.
- 27.6 Supplier shall include, as a minimum, the foregoing warrantee requirements in any Subcontract that it executes.
- 27.7 The acceptance of the Fire Tender, as the case may be, by the Owner shall in no way relieve the Supplier of its obligation under this Clause.
- 27.8 In respect of goods supplied by the Subcontractors to the Supplier where a longer warranty (more than 12 (twelve) months) is provided by Subcontractors, the Owner shall be entitled to the benefit of such longer warranty period.
- 27.9 At the end of Warranty Period set forth in clause 27.2 above, Supplier's liability ceases except for the Latent Defects. The Supplier's liability for Latent Defects shall be limited to a period of ten (10) years from the date of Final Acceptance of Fire Tender.

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

28.0 **SUPPLIER TO INFORM ITSELF FULLY**

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

28.2 The Supplier acknowledges that the Technical Specifications provided by the Owner may not be complete in every detail. Supplier 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 Supplier, in the performance of its obligations hereunder, encounters or comes across any conflict, error, omission or discrepancy in the specifications of the Fire Tender, or in Site conditions, the Supplier 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 Supplier proceeds with the supply of Fire Tender prior to receiving such instructions, then required corrections shall be at Supplier's expense.

29.0 **NOT USED**

30.0 **CLAIM**

30.1 If, for any reason, Supplier 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, Supplier 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, Supplier shall submit to Owner details of Claim as per provisions of Clause 30.2. Supplier 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 Supplier hereby waives, any claim or potential claim which have not been notified by Supplier in accordance with provisions of this Clause 30.1.

30.2 After examining Claim submitted by Supplier, 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 Supplier. If Supplier disputes Owner's decision and notifies Owner within five (5) working days of receiving Owner's Decision, Supplier may seek to resolve the dispute in accordance with Article 34.0 (Settlement of Disputes). If Supplier decides to proceed pursuant to Article 34.0 (Settlement of Disputes), Supplier agrees to limit its claim to the amount claimed by it in accordance with Clause 30.1. In no event shall any supply be halted, whether or not the claim can be resolved to Supplier's satisfaction, and Supplier

shall be bound by the terms and conditions of this Contract to supply the Fire Tender without delay till its successful completion.

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

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

30.3.1.1 to achieve compliance with the Contract by Supplier; or

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

30.3.2 Delay in the completing supply of Fire Tender or any additional work caused by Supplier.

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

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

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

31.0 **BACKCHARGE**

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

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

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

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

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

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

31.4 A backcharge shall consist of:

31.4.1 Labor: at actual cost plus 25 % (twenty five percent) to cover payroll additives;

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

- 32.1.1.5 Supplier indulging in Corrupt Practices or Coercive Practices or Fraudulent Practices or Obstructive Practices during the signing of this Contract or during the Term in the opinion of the Owner;
- 32.1.1.6 Any Bankruptcy Event or insolvency of the Supplier; provided, that in the case of involuntary bankruptcy proceedings, the Supplier shall have 60 (sixty) days cure period after the commencement of such proceedings to stay or lift such proceedings;
- 32.1.1.7 Transfer or charge by the Supplier of any of its rights or obligations under this Contract without prior written consent of the Owner;
- 32.1.1.8 Any change in the Control of the Supplier which is not in accordance with Article 21.0 (Change in Control);
- 32.1.1.9 Any act or omission by the Supplier such that the Owner is or is likely to be or become in breach of any of its obligations under this Contract or constitutes or is likely to give rise to a Owner's event of default as mentioned under Clause 32.2;
- 32.1.1.10 Supplier ceases to carry on its business;
- 32.1.1.11 Failure of the Supplier to comply with an Arbitral Award within 30 (thirty) days of the Arbitral Award or within such time as prescribed under such award, whichever is earlier;
- 32.1.1.12 Supplier has incurred or is liable for liquidated damages in excess of the amount set out in Clause 11.2.2;
- 32.1.1.13 A breach by the Supplier of any of the terms of the contracts for providing civil construction works and installation services dated on or about the date of this Contract;
- 32.1.1.14 Failure by the Supplier 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 Supplier by the Owner; provided, that the Supplier shall have up to 30 (thirty) days after such notice is given to cure such default or to diligently commence and continue in good faith to cure such default prior to any such termination (provided that in no event shall such cure period exceed 120 (one hundred and twenty) days including the 30 (thirty) days of notice period); or
- 32.1.1.15 If any of the representations and warranties provided by the Supplier under Clause 26.1 or during the negotiation of this Contract is incorrect, false or misleading.
- 32.2 **Termination by Supplier for Owner's Event of Default**
- 32.2.1 Each of the following events, unless occurring as a result of a breach by the Supplier 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 Supplier may terminate this Contract by giving 30 (thirty) days written notice of termination to the Owner ("**Owner's Event of Default**"):

32.2.1.1 Failure by the Owner to pay to the Supplier any undisputed amount due and payable under this Contract, which is not less than 25% (twenty five percent) of the Contract Price and that remains unpaid for a period of 90 (ninety) days or more from the due date for such payment;

32.2.1.2 Any willful and persistent material breach of this Contract by the Owner and such breach continues for 60 (sixty) days after written notice is provided to the Owner by the Supplier; provided, that the Owner shall have further 30 (thirty) days after such expiry of above period to cure such breach or to diligently commence and continue in good faith to cure such breach prior to any such termination; or

32.2.1.3 Any Bankruptcy Event or insolvency of the Owner; provided, that in the case of involuntary bankruptcy proceedings, the Owner shall have 60 (sixty) days cure period after the commencement of such proceedings to stay or lift such proceedings.

32.3 **Termination due to Force Majeure Events**

32.3.1 The Owner shall have a right to forthwith terminate this Contract if the performance of this Contract is prevented, hindered or delayed due to a Force Majeure event for a continuous period of 90 (ninety) days from the beginning of a Force Majeure event.

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

32.4 **Termination for Convenience by Owner**

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

32.5 **Termination Procedure**

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

32.6 **Payment on Termination**

32.6.1 Owner shall not be liable to make any further payments to the Supplier until the costs of execution and all other expenses incurred by the Owner in completing the scope of supply of Fire Tender have been ascertained (the "**Cost of Completion**"). If the Cost of Completion when added to the total amounts already paid to Supplier

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

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

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

32.7 **Obligation upon Termination**

32.7.1 Supplier shall discontinue supply of Fire Tender from the Termination Date.

32.7.2 Supplier shall advise Owner of its outstanding Subcontracts pertaining to performance of the terminated scope of supply of Fire Tender and, upon request, furnish Owner with complete copies.

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

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

33.0 **GOVERNING LAW AND JURISDICTION**

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

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

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

34.0 **SETTLEMENT OF DISPUTES**

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

- 34.2 All unsettled disputes or differences arising out of or in connection with this Contract which cannot be amicably resolved by the Parties shall in the first instance be decided by the Owner in accordance with provisions of Clause 34.3 below.
- 34.3 **Owner's Decision**
- 34.3.1 If any dispute or difference of any kind whatsoever shall arise between the Owner and the Supplier, arising out of this Contract whether during the performance of the obligations under this Contract or after its completion or whether before or after the termination, Abandonment or breach of this Contract, such dispute or difference cannot be amicably settled by the Parties in accordance with Clause 34.1, it shall, in the first place, be referred to and settled by the Managing Director of the Owner, who, within a period of 30 (thirty) days after being requested to do so, shall give written notice of its decision to the Supplier.
- 34.3.2 Save as hereinafter provided, such decision in respect of every matter so referred shall be final and binding upon the Parties until the Completion of Supply of Fire Tender under this Contract and shall forthwith be given effect to by the Parties who shall comply with all such decisions, with all due diligence, whether it requires arbitration, as hereinafter provided or not.
- 34.3.3 If after the Owner has given written notice of its decision to the Supplier and no notice for arbitration has been communicated to it by the Supplier within 30 (thirty) days from the receipt of such notice, the said decision shall become final and binding on the Parties.
- 34.3.4 The Owner's decision (or the failure of the Owner to give decision within the time specified in Clause 34.3.1) and issuance of a written notice for arbitration pursuant to Clause 34.3.3 shall be a condition precedent to the right to request arbitration. It is the intent of this Contract that there shall be no delay in the performance of obligations and the decision of the Owner, as rendered, shall be promptly observed.
- 34.3.5 In the event of the Owner failing to notify its decision, as aforesaid, within 30 (thirty) days after being requested, or in the event of a Party being dissatisfied with any such decision, either Party may require that the matters in dispute be referred for arbitration as provided in Clause 34.4.
- 34.4 **Arbitration**
- 34.4.1 All disputes or differences in respect of which the decision, if any, of the Owner has not become final or binding as aforesaid, shall be settled by arbitration, under and in accordance with the provisions of the Indian Arbitration and Conciliation Act, 1996 (the "**Arbitration Act**") or any statutory modification, in the manner hereinafter provided. The Place, Venue and Seat of arbitration shall be New Delhi, India.
- 34.4.2 The arbitration shall be conducted in accordance with the Arbitration Act by 3 (three) arbitrators, 1 (one) each to be nominated by the Supplier and the Owner and the 3rd (third) to be nominated by the 2 (two) arbitrators nominated by the Parties at the commencement of arbitration proceedings. The 3rd (third) arbitrator so appointed shall act as the presiding arbitrator.

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

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

36.0 **ASSIGNMENT**

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

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

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

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

36.3 The holder of any security interest in this Contract shall not be prevented or impeded by the Supplier from enforcing such security interest. The Supplier 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 Supplier agrees that such consents and acknowledgements shall, *inter alia*, include:

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

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

36.3.3 representations and warranties by the Supplier;

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

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

36.4 The Supplier 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 Supplier agrees to consider any such requirements in good faith and otherwise to co-operate with the Lenders/insurers in executing such amendments to this Contract or providing such other letters of consent and comfort as may be reasonably requested by the Lenders/insurers.

37.0 **RELEASE OF INFORMATION**

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

38.0 **CONFIDENTIAL INFORMATION**

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

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

38.2.1 was furnished prior to this Contract without restriction;

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

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

38.2.4 is independently developed by either Party;

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

38.2.6 is required to be provided to the Lenders;

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

38.2.8 if and to the extent required to be provided under Applicable Law or pursuant to an order of any court of competent jurisdiction provided that the original disclosing Party is given notice and adequate time to seek a protective order applicable to the information, if practicable, before it is disclosed;

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

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

38.2.11 if required to be provided to directors, employees and officers of such Party provided that the disclosing Party determines in good faith that the recipient has a

legitimate need to see such Confidential Information; and the recipient has been made aware of and has agreed to be bound by the requirements of this Article 39.0;

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

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

38.3 **Confidentiality of Intellectual Property and Information**

38.3.1 Each Party shall:

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

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

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

38.3.3 All documents, papers, computer discs, magnetic tapes or other records made or created wholly in relation to the performance by the Supplier 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 Supplier to the Owner during the Term on the Owner giving the Supplier 2 (two) days notice and in any event immediately on the termination or expiry of this Contract.

39.0 **INTELLECTUAL PROPERTY**

39.1 **Ownership and License of Intellectual Property**

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

39.1.2 The Owner shall, subject to any applicable third party restrictions, grant the Supplier during the Term a royalty-free, non-exclusive, personal and nontransferable 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 Supplier to perform its obligations under this Contract. Such licenses shall not carry the right to grant sublicenses.

40.0 **PATENT RIGHTS AND ROYALTIES**

40.1 Royalties and fees for patents covering materials, articles, apparatus, devices, equipment or processes relating to the Fire Tender shall be deemed to have been included in the Contract Price. Supplier 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. Supplier 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 Fire Tender, and, in case of an award of damages, Supplier 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 Supplier who shall also satisfy/comply any decree, order or award made against Owner.

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

41.0 **WAIVER**

41.1 **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.

41.2 **Payments Not to Affect Right of the Owner and Liability of Supplier**

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

42.0 **VALIDITY AND SURVIVAL OF PROVISIONS**

42.1 **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.

42.2 **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.

43.0 **LANGUAGE AND MEASURES**

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

44.0 **NOTICES**

44.1 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 44.2 and 44.3 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.

44.2 Address for Notice to Owner:

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

44.3 Address for Notice to Supplier:

[*To be provided by Supplier*]

Attn: _____

Address: _____

Fax: _____

Email: _____

44.4 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.

45.0 **CONTRACTUAL RELATIONSHIP**

45.1 The Supplier 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, Supplier shall be

solely responsible for the manner in which the Fire Tender are supplied. All employees, representatives or Subcontractors engaged by the Supplier in performing this Contract shall be under the complete control of the Supplier and shall not be deemed to be employees of the Owner and nothing contained in this Contract or in any Subcontract awarded by the Supplier shall be construed to create any contractual relationship between any such employees or representative or Subcontractors and the Owner. Supplier shall be responsible for its acts, defaults or negligence and acts, defaults or negligence of its agencies, servant, employees, workmen or Subcontractors.

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

45.3 The execution of three separate contracts for civil construction work, installation services and supply of the Fire Tender shall not in any way dilute the responsibility of the Supplier for the successful completion of the entire scope covered in these three contracts and supplying the Fire Tender in accordance with this Contract. The Supplier agrees to perform its obligations under each of the civil construction contract, installation services contract and this Contract in a manner that facilitates the due performance of its obligations under the other two contracts.

45.4 A breach in any one of the contracts mentioned in Clause 45.3 above shall automatically be construed as a breach of the other two contracts which will confer a right on the Owner to suspend or terminate the other two contracts also at the risk and cost of the Supplier, including but not limited to, the right to receive liquidated damages and/or recover damages and/or invoke the Performance Bank Guarantee, under and in accordance with the terms of this Contract and the contracts for civil construction work and installation services.

46.0 **COPIES OF CONTRACT AND COUNTERPARTS**

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

46.2 Subsequent to signing of this Contract, the Supplier, 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.

47.0 **ENTIRE AGREEMENT**

47.1 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.

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

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

Annexure-1

CONTRACT PRICE

Part A

[•]

Part B

[•]

Annexure-2

TECHNICAL SPECIFICATIONS

(To be attached)

Annexure-3

FORMAT FOR PERFORMANCE BANK GUARANTEE

(To be stamped in accordance with Stamp Act)

Bank Guarantee No. _____

Date _____

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

Dear Sirs,

At the request and for the account of our client _____ having its registered office at _____ (hereinafter referred to as the "Supplier", which expression shall, unless inconsistent with the context or meaning thereof, include its successors and assigns), and in consideration of ONGC Tripura Power Company Ltd having its registered office in **ONGC Tripura Power Company Limited, Udaipur-Kakraban Road, Palatana P.O., District Gomti, Tripura-799116.** (India) (hereinafter referred to as the "Owner", which expression shall, unless inconsistent with the context or meaning thereof, include its successors and assigns) having awarded the contract for supply of 1 no. multipurpose type-B fire tender at 2x363.3 MW Combined Cycle Power Plant at Palatana, Tripura, India under reference no. _____ dated _____ to the Supplier (as amended, supplemented or modified from time to time in accordance with the terms thereof, hereinafter referred to as the "Contract") and the Supplier having agreed to provide a contract performance guarantee to the Owner for the full and faithful performance of each of Supplier'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 Supplier. 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 Supplier 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 Supplier, 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 Supplier. 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 Supplier, 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 Supplier and notwithstanding any security or other guarantee the Owner may have in relation to the Supplier's liabilities.

The Bank's liability under this Guarantee is limited to the Aggregate Maximum Amount and it shall remain in force up to and including _____, 201_ (such date as may be extended, the "End Date"). The End Date shall be extended from time to time for such period as may be desired by the Owner and accepted by the Supplier 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-4

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

Bank Guarantee No. _____

Date _____

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

Dear Sirs,

At the request and for the account of our client having its registered office (hereinafter referred to as the **"Supplier"**, which expression shall, unless inconsistent with the context or meaning thereof, include its successors and assigns), and in consideration of ONGC Tripura Power Company Ltd having its registered office at **ONGC Tripura Power Company Limited, Udaipur-Kakraban Road, Palatana P.O., District Gomti, Tripura-799116.** (India) (hereinafter referred to as the **"Owner"**, which expression shall, unless inconsistent with the context or meaning thereof, include its successors and assigns) having awarded the contract for supply of 1 no. multipurpose type-B fire tender at 2x363.3 MW Combined Cycle Power Plant at Palatana, Tripura, India under reference no. _____ dated _____, to the Supplier (as amended, supplemented or modified from time to time in accordance with the terms thereof, hereinafter referred to as the **"Contract"**) and the Owner having agreed to make advance payments to the Supplier as provided therein in an amount not to exceed **Rs _____ (Rupees _____)** (as such amount may change pursuant to conditions of the Contract, hereinafter **"Aggregate Maximum Amount"**),

we, _____, having our head office at _____ (hereinafter referred to as the **"Bank"**, which expression shall, unless inconsistent with the context or meaning thereof, include its successors and assigns) do hereby irrevocably and unconditionally guarantee and undertake to pay to the Owner, immediately on receipt of written demand, any and all monies which the Owner certifies that it is entitled to draw hereunder pursuant to the terms and conditions of the Contract to the extent of the Aggregate Maximum Amount for claim(s) arising up to the End Date (as defined below) without any demur, reservation, contest, recourse or protest and without any reference to the Supplier. 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 Supplier or any dispute pending before any court, tribunal, arbitrator or any other authority.

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

The Owner shall have the fullest liberty, without affecting in any way the liability of the Bank under this Guarantee, from time to time to extend the time for performance of the Contract by the Supplier. 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 Supplier, 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 Supplier and notwithstanding any security or other guarantee the Owner may have in relation to the Supplier's liabilities.

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

Dated this ____ day of _____, 20__ at _____

WITNESS

(Signature) _____ (Signature) _____

(Name) ----- (Name) -----

(Official Address) (Designation with Bank stamp)

Attorney as per Power of Attorney
No.
Dated

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

Annexure-5

LIST OF ACCEPTABLE BANKS**Foreign banks**

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

Indian banks

Sl.No	Name of Indian Banks
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-6

CURRENT SHAREHOLDING OF THE CONTRACTOR

(To be attached)

Annexure-7

NOT USED

Annexure-8

List of Mandatory Spares