ONGC TRIPURA POWER COMPANY LIMITED

CONTRACT

FOR

HIRING OF VEHICLES

FOR

2 X 363.3 MW

GAS BASED COMBINED CYCLE POWER PLANT,

PALATANA, UDAIPUR, TRIPURA

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TPC

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

CONTRACT FOR HIRING OF VEHICLES AT PALATANA POWER PLANT

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CONTRACT FOR HIRING OF VEHICLES AT PALATANA POWER PLANT

This contract for Hiring of Vehicles at Palatana Power Plant in Tripura ("**Contract**") is signed on the [●] day of [●], by and between:

ONGC Tripura Power Company Limited, a public limited company incorporated under the Indian Companies Act, 1956 and having its registered office at ONGC Tripura Power Company Limited, Udaipur-Kakraban Road, Palatana P.O., District Gomati, Tripura – 799116 (India) (herein after referred as "**OTPC**" or "**Owner**" which expression shall include its successors and permitted assigns);

AND

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

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

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

WHEREAS:

1. The Owner is owning, operating and maintaining a 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.

2. The Owner, based on a transparent bidding process, has selected the Contractor as the successful bidder for performing the Services (as defined hereinafter) required for **Hiring of Vehicles at 2 x 363.3 MW combined cycle power plant at Palatana, Tripura** (the "**Project**").

3. The Contractor represents that it has the necessary specialized knowledge, expertise, infrastructure, vehicles and manpower for providing Services and to perform its obligations under this Contract.

4. The Owner desires to engage the Contractor to provide the Services in accordance with the terms and conditions specified in this Contract.

5. The Contractor is willing and has agreed to provide the Services in accordance with the terms and conditions specified in this Contract.

6. The Owner and the Contractor desire to enter into this Contract pursuant to which the Contractor shall perform, and the Owner shall engage the Contractor for the performance of the Services, pursuant to the terms and conditions herein set forth.

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

1.0 **DEFINITION AND INTERPRETATION**

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

1.1 "**Abandonment**" means the substantial cessation of the performance of the Services for a continuous period of 7 (seven) days 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 35.3.4.

1.6 "**Arbitration Act**" shall have the meaning ascribed to it in clause 35.3.1.

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 36.2.

1.9 **"Claim"** shall have the meaning ascribed to it in clause 22.1.

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 **"Completion of Services"** shall have the meaning ascribed to it in clause 9.2.

1.12 "**Confidential Information**" shall have the meaning ascribed to it in clause 39.1.

1.13 **"Contract Price"** shall have the meaning ascribed to it in clause 6.1.1.

1.14 "**Contractor Indemnified Parties**" shall have the meaning ascribed to it in clause 11.2.1.

1.15 **"Contractor Staff"** means each individual and collectively the Contractor's employees, labour (skilled, semi-skilled and unskilled), Subcontractors, and their respective employees, contractors (of the Subcontractors), officers, licensees, invitees, agents and representatives, dedicated for the performance of the Services, and any other personnel notified to the Owner by the Contractor as the Contractor's personnel.

1.16 "**Contractor's Event of Default**" shall have the meaning ascribed to it in clause 33.1.1.

1.17 "**Corrupt Practice**" means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any Person connected with the negotiation, signing or performance of this Contract (for avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of the Owner who is or has been associated or dealt in any manner, directly or indirectly with the negotiation, signing or performance of this Contract or has dealt with matters concerning this Contract or arising there from, before or after the execution thereof, at any time prior to the expiry of one year from the Effective Date such official resigns or retires from or otherwise ceases to be in the service of the Owner, shall be deemed to constitute influencing the actions of a Person connected with the negotiation, signing or performance of this Contract); or (ii) engaging in any manner whatsoever, whether during the negotiation of this Contract or after the execution of this Contract, as the case may be, any Person in respect of any matter relating to the Project or this Contract, who at any time has been or is a legal, financial or technical adviser of the Owner in relation to any matter concerning the Project.

1.18 **"Cost of Completion"** shall have the meaning ascribed to it in clause 33.5.1.

1.19 "**Directive**" means any directive issued by a Government Agency.

1.20 "**Direct Tax**" shall have meaning ascribed to it in clause 8.1.

1.21 **"Effective Date"** means the date of Letter of Award.

1.22 "**Emergency Event**" means a sudden and unexpected event or circumstance which has caused or reasonably threatens to cause (i) serious bodily injury to any personnel employed at the Site or any other Persons at or in the vicinity of the Site; (ii) serious physical damage to the Plant, including the Facility or other material or property located at or in the vicinity of the Site; (iii) a work stoppage or other serious labour disturbance at the Site; (iv) imposition of fines or other penalties or sanctions under any Applicable Law, which fines, penalties or sanctions would be likely to affect seriously the ability of Owner or the Contractor to perform any of its or their obligations under this Contract; or (v) an occurrence of any accident materially impacting on the environment.

1.23 "**Force Majeure**" shall have the meaning ascribed to it in clause 17.1.

1.24 "**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.

1.25 "**Government Agency**" means any local, State Government in India or the Government of India or any national authority, inspectorate, ministry, department, instrumentality or agency thereof or any corporation (to the extent acting in a legislative, judicial or administrative capacity and not as a contracting party with the Owner) or commission under the direct or indirect control of such local or State Government or the Government of India or any political subdivision thereof or any court, tribunal, judicial body, quasi judicial authority or statutory Person (whether autonomous or not) of the Republic of India which has jurisdiction over the Parties to, or the subject matter of, this Contract or any of the Project Agreements, and this definition includes, for the avoidance of doubt, any authority that may affect the Owner's or the Contractor's ability to perform any or all of its or their obligations under this Contract or any authority that gives consents or permits (including Permits) within India.

1.26 **"Governmental Authorizations"** means all approvals, authorizations, permits, licenses, consents, clearances, etc., received or required to be received from Government Agency for the Plant/Site.

1.27 "**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.

1.28 **"HES Policy"** means the health, environment and safety policy of the Owner.

1.29 "**Indirect Taxes**" shall have the meaning ascribed to it in clause 8.2.

1.30 **"INR"** or **"Rs"** or **"Indian Rupees"** means the legal currency of the Republic of India.

1.31 "**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.

1.32 **"Letter of Award"** or **"LOA"** means the letter dated [●] issued by the Owner in favour of the Contractor.

1.33 "**Losses**" means any and all liabilities, losses, damages, claims, costs, obligations, charges, demands, cause of action and expenses (including reasonable attorneys' fees) of whatsoever kind or nature and it does not include indirect and consequential losses.

1.34 "**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.

1.35 "**Owner Indemnified Parties**" shall have the meaning ascribed to it in clause 11.1.1.

1.36 "**Owner's Staff**" means employees of the Owner employed by the Owner for the construction, operation and maintenance of the Plant.

1.37 **"Performance Bank Guarantee"** shall have the meaning ascribed to it in clause 18.1.

1.38 **"Person"** means, unless specified otherwise, a natural person, corporation, society, partnership, joint venture, unincorporated association or other entity.

1.39 **"Plant"** means 2 x 363.3 MW gas based combined cycle power plant at Palatana, Tripura.

1.40 "**Project**" shall have the meaning ascribed to it in Recital 2.

1.41 **"Project Manager"** means the project manager appointed by the Owner pursuant to clause 5.2.1.

1.42 "**Services**" shall have the meaning ascribed to it in clause 3.1.

1.43 "**Site**" means the land over which the Service is to be provided including Plant and non-Plant area.

1.44 **"Subcontract"** means any contract entered into by the Contractor or its subcontractor with a third party for carrying out any of the responsibilities or obligations of the Contractor under this Contract.

1.45 **"Subcontractor"** means any Person carrying out any of the responsibilities or obligations of the Contractor under this Contract under or pursuant to a Subcontract.

1.46 "**Subsidiary**" shall have the meaning ascribed to it in Section 4 of the Companies Act, 1956.

1.47 **"Technical Specifications"** means the specifications for performing the Services and obligations under this Contract and as set out in Annexure 3 (Technical Specifications).

1.48 **"Term"** shall have the meaning ascribed to it in clause 4.1.1.

1.49 **"Termination Date"** means the date upon which termination pursuant to clause 33.4.1 takes effect.

1.50 **"Time for Completion"** or **"Completion of Services"** shall have the meaning ascribed to it in clause 9.2.

1.51 **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.

1.52 **Rules of Interpretation**

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

1.52.1 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;

1.52.2 a reference to any gender includes the other genders;

1.52.3 a reference to a Clause, Article, Annexure or Recital is a reference to a Clause, Article, Annexure or Recital in this Contract;

1.52.4 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;

1.52.5 in case of any discrepancy between words and figures, the words shall prevail over the figures;

1.52.6 a reference to a statute shall be construed as including all statutory provisions consolidating, amending, modifying, supplementing or replacing the statute referred to;

1.52.7 a reference to "writing" includes printing, typing, lithography and other means of reproducing words in a visible form;

1.52.8 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;

1.52.9 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;

1.52.10 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

1.52.11 reference to any agreement, deed, document, instrument, or the like shall mean a reference to the same as may have been duly amended, modified or replaced. For the avoidance of doubt, it is clarified that a document shall be construed as amended, modified or replaced only if such amendment, modification or replacement is executed in compliance with the provisions of such document(s).

2.0 **EFFECTIVE DATE OF CONTRACT**

2.1 This Contract shall become effective on the Effective Date and the obligations of the Contractor to provide the Services shall also commence from the Effective Date.

3.0 SCOPE OF SERVICES

3.1 The Contractor shall provide all the services required for hiring of vehicles at 2 x 363.3 MW gas based combined cycle power plant at Palatana, Tripura, as set out in further detail in the Technical Specifications (such services, the "**Services**").

3.2 The Contractor expressly agrees that the scope of Services shall also include all such services which may not have been specifically mentioned in this Contract or the Technical Specifications but which may be necessary for the successful fulfillment of Contractor's obligation under this Contract and such services shall be performed by the Contractor without any additional cost to the Owner.

4.0 TERM AND AUTHORIZATION TO PROCEED

4.1 Term

4.1.1 This Contract shall become effective on the Effective Date and unless terminated earlier in accordance with the provisions of this Contract, this Contract shall remain valid, in full force and in effect for 1 (one) year from 00:00 hrs of ____ ("**Term**"). The Term may be extended by another twelve (12) months based on performance to be evaluated at the end of the first year service period.

4.2 Authorization to Proceed

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

5.0 STAFFING AND AUTHORITY

5.1 Contractor's Staff

5.1.1 The Contractor shall employ or hire driver adequately to perform the Services in accordance with the provisions of this Contract, including but not limited to, in a prudent, efficient, reliable and safe manner.

5.1.2 All personnel like drivers, supervisors, staff engaged for maintenance of vehicles engaged in the performance of the Services shall be sufficiently trained and experienced in the duties to which they are assigned. Contractor shall demonstrate that the personnel provided under this Contract are properly trained, competent to perform the work assigned and are aware of the rules under central vehicle act, safety rules and regulations inside Plant, traffic rules in the state of Tripura.

5.1.3 All personnel engaged by the Contractor shall have the necessary qualifications as laid in the Rules under the Central Motor Vehicles Act currently in force and any subsequent amendments thereto.

5.1.4 No female staff or labour shall be employed.

5.1.5 All personnel engaged by the Contractor are educated about the safety rules & regulations especially within the Plant and abide by the same.

5.1.6 All personnel engaged by the Contractor do not smoke or light a flame while driving the Vehicle or while they are in the Plant.

5.1.7 All personnel engaged by the Contractor are medically fit in all respects and examined by a Registered Medical Practitioner and submit the fitness certificate every twelve-months to OTPC authorities for the purpose Plant entry pass.

5.1.8 All personnel engaged by the Contractor including driver shall never be under the influence of liquor while on duty.

5.1.9 All drivers engaged by the Contractor shall not use mobile phones while driving and should undergo security verification for entering Plant on a regular basis and the same should be submitted to OTPC authorities.

5.1.10 The Contractor shall be responsible for maintaining strict discipline and good order amongst its personnel.

5.1.11 Contractor shall bear the entire responsibility, liability and risk relating to coverage of Contractor Staff under Applicable Law including but not limited to Workmen's Compensation Act, 1923, Industrial Disputes Act, 1947, Maternity Benefits Act, 1961, Employees' Provident Funds and Miscellaneous Provisions Act, 1952, Contract Labour (Regulation and Abolition) Act, 1970, Employees State Insurance Act, 1948, Factories Act, 1948, Motor Vehicles Act 2016 and any other relevant act/regulations as will be applicable during the Term.

5.1.12 Contractor shall also be solely responsible for the payment of all benefits to the Contractor Staff under Applicable Law, such as provident fund, bonus, retrenchment compensation, leave, etc., and shall keep the Owner indemnified in this regard against any claims. The Owner shall be entitled to, if it is noticed that Contractor is in default, make such payment, solely at its discretion and recover such amounts as deemed fit from any sum due and payable to Contractor by the Owner.

5.1.13 Contractor shall be responsible for making any overtime payment for providing Services under this Contract and Owner shall not bear any liability whatsoever in this regard.

5.1.14 It shall be responsibility of Contractor to take care of the boarding, lodging, and local transportation for all Contractor Staff engaged in providing Services.

5.1.15 The hours of work for performance of Services shall be decided by the Owner and the Contractor shall adhere to it. Working hours in each shift shall normally be Eight (8) hours per day - Monday through Sunday. Vehicles for Security, Ambulance, and Operational Emergency which are engaged for 24 hours shall be run by three drivers with duty hours of 8 hours each. Contractor to also arrange for leave relievers for driver duty on Sundays/weekly off/holidays/leaves etc.

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

5.2 **Owner's Staff**

5.2.1 Owner shall appoint a admin manager and the Contractor shall report to the admin manager ("Project Manager").

5.2.2 Admin manager or Persons authorized by him shall co-ordinate with Contractor and supervise performance of Services.

5.3 **General Personnel Requirement**

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

5.3.2 Contractor's Staff shall wear identification badges at all times while on work.

5.3.3 Contractor shall employ local people from Tripura for the post of driver.

5.3.4 Deleted.

5.3.5 All Contractor Staff shall be considered employees of Contractor only and Owner shall have no relation whatsoever with the Contractor Staff.

5.4 **Discipline of Workmen**

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

6.0 **CONTRACT PRICE AND PRICE BASIS**

6.1 **Contract Price**

6.1.1 The Owner shall, in consideration for the Services, pay to the Contractor, the contract price comprising of the amounts specified in Annexure 2 (Contract Price), subject to the terms of this Article 6.0 and Article 7.0 (Payment) below ("**Contract Price**").

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

6.1.3 Contract Price excludes the total price of Rs. _____/- including GST for second year service period, as per break-up provided in Appendix-1 and shall be paid separately by the Owner subject to extension of Term by additional one year based upon the performance of the Contractor to be evaluated by the Owner at the end of the first year service period, solely at the Owner's discretion.

6.2 **Price Basis**

6.2.1 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.

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

6.2.2.1 Cost of providing vehicles as per the technical specification;

6.2.2.2 Cost of providing drivers, supervisors and other maintenance staff;

6.2.2.3 Cost of operation & maintenance of vehicles;

6.2.2.4 Salaries and wages, including benefits, general and administrative overheads, and all miscellaneous expenses including annual medical tests for the Contractor Staff including drivers;

6.2.2.5 Cost of evaluation, selection, employment, relocation, and training of Contractor's Staff including drivers;

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

6.2.2.7 Cost of premium of insurance policies and deductible amounts for all insurance policies provided by the Contractor including comprehensive insurance policy, Third Party Liability insurance as per Article 10.0 (Insurance). Under no circumstance shall OTPC be liable to compensate for any loss or damage that may be caused to / by the vehicles while engaged in discharge of the Contractor's obligations under this contract.

6.2.2.8 Cost associated with any incident occurring after the release of vehicle/driver from duty or when the vehicle is moving without any authorized OTPC official.

6.2.2.9 Cost of transporting and mobilizing the vehicles at Plant.

6.2.2.10 Cost of obtaining and maintaining documents in the vehicle like R.C Book, Driving License, pollution certificate and any Permit/license required for fulfilling the obligation etc.

6.2.2.11 Cost for abiding to Road Safety, Plant safety, security and Services requirements including cost of installation and maintenance of Spark Arrestors, Car-reversing horn, Portable fire extinguisher, Foot matting, premium quality large size seat towel (white) of Bombay dyeing, car freshener of good qualities, mosquito repellent, one litre water bottle every day, torch, well equipped first aid box and Umbrella etc.

6.2.2.12 DELETED

6.2.2.13 Cost of legal, payroll and accounting services with respect to the Contractor Staff, and accounting and legal matters related to the administration of this Contract;

6.2.2.14 Cost of GPS device fitted in all the vehicles along with associated software fees as applicable.

6.2.2.15 Cost of Local conveyance (To & Fro) from residence of drivers to Plant.

6.2.2.16 Cost of tyre replacement after every 50,000 km running.

6.2.2.17 Cost of mobile phone attached with the vehicle and monthly mobile bills thereof.

6.2.2.18 Any and all other costs and expenses for performing Services, not specifically set forth herein but incurred by the Contractor for fulfillment of its overall obligation covered under this Contract;

6.2.3 Deleted.

6.2.4 The Contract Price shall include the cost of operation and maintenance of vehicles for all days (24 hours per day, 7 days a week) of the month.

6.2.5 The Contract Price (including the break-up) specified under Annexure 2 (Contract Price) shall apply regardless of when the Services are performed, during day or night or a holiday.

6.2.6 The Contract Price shall include the cost of Route Permit, state or national permit, clearance from RTO (Tripura) or any other authority concerned and compliance of any legal formalities connected with the Contract.

6.2.7 The Contract Price shall include the cost of all types of insurance (whichever is applicable).

6.2.8 Contract Price shall include all costs associated with and relating to, performing Services in accordance with all Applicable Laws as well as Owner's HES Policy and security regulations.

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

6.2.10 Contract Price shall be inclusive of all applicable Indirect Taxes as specified in Annexure 2 (Contract Price). Tax payable on income or profession of the Contractor shall be the sole responsibility of the Contractor and the Owner shall have no obligation regarding the same.

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

6.3 Quantity Variation

6.3.1 In case, owner decides to increase/decrease the quantity of vehicle in any category given in Part-B and Part-C, Contractor shall provide/withdraw the same at the same price as indicated in Part-B and Part-C of Annexure-2.

7.0 **PAYMENT**

7.1 The payment to the Contractor for the performance of the Services under this Contract shall be made by the Owner as per the guidelines and conditions specified herein. Payments to be made hereunder are subject to any adjustment/deductions as per the provisions of this Contract.

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

7.3 Payment shall be made for supply of vehicles for normal duty hours of 24 hours i.e. round the clock per day. There shall be no weekly off/PH, but the vehicle may be used outside the Site in case of exigencies/emergency work for which no extra payment shall be considered except the charges mentioned in Annexure-2. The vehicle may or may not be utilized on listed holidays or other holidays. All necessary arrangement for running of vehicle in 30/31 days in a month should be provided by the Contractor.

7.4 **Payment Term:**

7.4.1 **Total monthly rental price for vehicle hiring services** including GST shall be released against completion of Services duly certified by Manager, HR & Admin (OTPC) within thirty (30) days of receipt of following documents by Owner in 1 (one) original + 2 (two) copies on fulfillment of the following conditions:

7.4.1.1 Unconditional and unequivocal acceptance of Letter of Award;

7.4.1.2 Submission of Performance Bank Guarantee as provided in clause 18.0 ;

7.4.1.3 On mobilizing all the vehicles along with drivers with mobile phones as per Technical Specification;

7.4.1.4 Submission of a copy of following certificate, license and agreements for all vehicle: (i) Vehicle Registration Certificate (RC) (ii) Insurance (iii) Pollution under control certificate(PUC) (iv) Driving License (v) Agreement with the Vehicle Owners;

7.4.1.5 Authorization of total Kilometers travelled with opening and closing meter reading duly certified by Project Manager;

7.4.1.6 Log book kept in the vehicle and the movement of the vehicle is recorded correctly (both odometer and GPS device reading) with time and running details of vehicle movement as indicated in Technical Specification. Signature of the User/company representative, confirming the information entered each day shall be taken on a daily basis.

7.4.1.7 Invoice shall be submitted to the Admin department, OTPC complete in all respects including submission of all statutory compliances within 7th day of every

month for the preceding month along with log book and monthly statement of journey.

7.4.2 **Reimbursement of Fuel and other charges:**

7.4.2.1 Actual Cost of the Diesel shall be reimbursed as per certification of actual duty hours and the Kilometers covered during the month by the Project Manager based upon: (i) the mileage given in Part-B of Annexure-2 (Bill of Quantities), (ii) the total Kilometers covered during the month as per the log book (both odometer and GPS device readings as indicated in Technical Specifications)with signature of the User/company representative, (iii) actual bills of Diesel submitted along with the invoice and (iv) Average fuel price for the billing month.

7.4.2.2 Parking charges, Toll Tax, wherever incurred shall be reimbursed as per actual by OTPC on certification by the user on submission of documentary proof (original receipt) along with monthly Bill.

7.5 Contractor shall be solely responsible for payment of wages/salaries including any overtime, bonus and allowances to Contractor's personnel that might become applicable under any new act or order of Government. OTPC shall have no liability whatsoever in this regard.

7.6 All kinds of repairs/maintenance cost, cost of oil & lubricants, cost of any spares, fee towards licenses/registration taxes such as road tax, permit fee, passenger Tax, Border Tax etc., challans, salary of the driver, insurance premium etc. are Contractor's responsibility and Contractor shall bear all the costs.

7.7 Bill having cutting and over writing shall not be entertained. No advance payment shall be made under any circumstances.

7.8 The vehicle may be released giving 30 days notice without assigning any reasons whatsoever and the contract shall automatically stand terminated and all pending dues shall be cleared in due course. The successful Contractor can also withdraw the vehicle on justifiable grounds of contract termination only upon receipt and acceptance of written notice three (3) months prior to the planned withdrawal.

7.9 OTPC shall not be held liable for any incident occurring after the release of vehicle/driver from duty or when the vehicle is moving without any authorised OTPC official.

7.10 There will no extra payment for the outstation trips.

7.11 Price variation: Only variation in price applicable as per the Contract shall be the rate of fuel, which shall be reimbursed at actuals as per para 7.4.2 above

7.12 **Mode of Payment**

7.12.1 Payment shall be made either by NEFT/RTGS or in such other manner as the Parties may mutually agree in writing. All bank charges shall be to the account of Contractor.

7.12.2 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.

7.12.3 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 Article 35.0 (Settlement of Disputes) of this Contract.

8.0 TAXES, DUTIES & LEVIES

8.1 The Contract Price is inclusive of all 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 D of Annexure 2 (Contract Price) ("**Taxes**"). Only such Taxes shall be paid / reimbursed by Owner to Contractor as part of the Contract Price against documentary evidence of payment by Contractor thereof.

8.2 The Contractor acknowledges and agrees that the description, rates and corresponding amounts of Taxes included in the Contract Price, as specified in Part-D of Annexure 2 (Contract Price), has been provided by the Contractor on the Effective Date. The Owner's liability to reimburse/pay the Contractor in respect of any Indirect Tax is restricted to the extent such Indirect Taxes is indicated in Annexure 2 (Contract Price). In the event this information is subsequently found to be incomplete, incorrect or misleading, the Owner shall have no liability to reimburse/pay the Contractor the excess amounts with respect to any Indirect Tax, if such amounts are finally levied / imposed / recovered by any Government Agency on / from the Contractor.

8.3 Any statutory variation (upward or downward) in Indirect Taxes, as specified in Part-D of Annexure 2 (Contract Price) within Time for Completion shall be to the account of the Owner. The Contractor shall submit documentary evidence of above variation along with his invoice.

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

8.5 In the event that the Owner is required to pay the income tax/withholding tax applicable on Services provided, the Owner shall deduct such taxes from the gross value of the Contractor's invoice and remit the net amount taking into account such deductions. However, the Owner shall furnish a TDS certificate to this effect in favour of the Contractor so as to enable it to take the tax credit.

9.0 TIME FOR COMPLETION

9.1 The Contractor agrees to provide the Services in a timely manner in accordance with the terms of this Contract. The Contractor admits and acknowledges that time is the essence of this Contract for the performance of the Services.

9.2 The Vehicle Hiring Services shall be provided for a continuous period of twelve (12) months from the Effective Date (**"Completion of Services"**). Period for

Vehicle Hiring Services may be extended by another twelve (12) months based on performance to be evaluated at the end first year period.

9.3 Contractor shall submit to OTPC within 7 days of LOA (a) key manpower and the mobilization plan for vehicles to be deployed as per list of vehicles indicated in technical specification (b) documentary evidence (RC, Insurance, PUC) for vehicles owned by the Contractor to be deployed under the Contract (c) Agreement with the owners of the vehicles to be hired by the Contractor (d) plan for statutory compliance with timelines in line with the Contract and technical specification.

9.4 For the avoidance of doubt, it is clarified that the Owner shall not be responsible to decide when the Contractor should commence, cease or resume the performance of its obligations under this Contract or in any way to superintend the same, so as to relieve the Contractor of the responsibility or of any consequence of its neglect or carelessness or by that of its Subcontractors/partners.

10.0 **INSURANCE**

10.1 The insurances described below in clause 10.2 shall be obtained and maintained by the Contractor.

10.2 **Contractor's Insurance Obligation**

10.2.1 Without prejudice to its obligations under this Contract or otherwise under Applicable Law, the Contractor, at its cost, shall arrange, secure and maintain all such insurance as may be required in connection with the performance of the Services and obligatory in terms of Applicable Law to protect its interest and interests of the Owner against all perils relating to performance of Services. The Contractor shall *inter alia* arrange, secure and maintain the following insurance policies:

10.2.1.1 **Workmen's Compensation Insurance**

10.2.1.1.1 This insurance policy shall protect the Contractor against all claims applicable under the Workmen's Compensation Act, 1923. This insurance policy shall also cover the Contractor against claims for injury, disability, disease or death of its (and/or its Subcontractor's) employees, which, for any reason, are not covered under the Workmen's Compensation Act, 1923. This insurance policy shall cover liability for such minimum amounts which shall not be less than:

a. Workmen's compensation: As per statutory provisions.

b. Employee's liability: As per statutory provisions.

10.2.1.2 **Comprehensive Automobile Insurance**

10.2.1.2.1 This insurance policy shall be in such a form to protect the Contractor against all claims for injuries, disability, disease and death to members of public including the employees of the Owner and damage to the property of others arising from the use of motor vehicles during performance of Services, irrespective of the ownership of such vehicles. This insurance policy shall cover liability for the minimum amounts subject to the Motor Vehicles Act, 1988 and Motor Vehicles Act, 2016.

a. Fatal Injury: Rs 1,000,000 (Rupees One Million only) each Person & Rs 1,000,000 (Rupees One Million only) each occurrence.

b. Property Damage: Rs. 1,000,000 (Rupees One Million only) each occurrence.

10.2.1.3 **Comprehensive General Liability Insurance**

10.2.1.3.1 This insurance policy shall protect the Contractor against all claims arising from injuries, disabilities, disease or death of members of public or damage to property of others, due to any act or omission on the part of the Contractor, its agents, its employees, its representatives and Subcontractors or from riots, strikes and civil commotion. This insurance policy shall also cover all the liabilities of the Contractor arising out of the Article 11.0 (Indemnity) of this Contract. This insurance policy shall cover liability for a minimum amount of [Any one accident : Any one year : Rs 1,000,000 (Rupees One Million only) : Rs 1,000,000 (Rupees One Million only)]

10.2.1.4 **Group Personnel Accident Policy**

10.2.1.4.1 This insurance policy shall protect the Contractor against all claims arising from injuries, disabilities, disease or death of any of its and its Subcontractor's employees, due to any accident. This insurance policy shall cover liability for a minimum amount of for [Any one accident : Any one year : Rs 1,000,000 (Rupees One Million only) : Rs 1,000,000 (Rupees One Million only)].

10.2.2 The above are only illustrative list of insurance covers normally required and it will be the responsibility of the Contractor to maintain all necessary insurance coverage to the extent both in time and amount to take care of all its liabilities either direct or indirect, in pursuance of this Contract and as per good Service practices.

10.2.3 Any deductibles or claims under recovery from the insurance providers shall be to the account of the Contractor.

10.2.4 If the Contractor does not maintain the insurance coverage specified in this clause 10.0, the Owner shall have right, but not the obligation, to provide for such insurance coverage at the Contractor's risk and cost.

10.2.5 Neither failure to comply nor full compliance with the insurance provisions of this Contract shall limit or relieve the Contractor of its liabilities and obligations under this Contract and in particular from the Contractor's obligation to hold the Owner harmless in accordance with any indemnity provisions contained in this Contract.

11.0 **INDEMNIFICATION**

11.1 **Indemnification by Contractor**

11.1.1 Contractor agrees to defend, indemnify and hold harmless the Owner, its Affiliates, and all of their directors, officers, employees, agents and representatives ("Owner Indemnified Parties"), from and against any and all Losses arising: by reason of Contractor's actual or asserted failure to comply with any Applicable Law or any provision of this Contract, from actual or asserted violation or infringement of rights in any patent, copyright, proprietary information, trade secret or other property right caused or alleged to be caused by the use of materials, equipment, methods, processes, designs or information furnished by Contractor or its Subcontractors in performance of the Services,

from injury to or death of any Person (including employees of the Owner, Contractor and Contractor's Subcontractors or any third party) or from damage to or loss of property (including the property of the Owner or a third party) arising directly or indirectly out of this Contract or out of any acts of omission or commissions of Contractor or its Subcontractors, or from present or future Environmental Claims directly or indirectly related to or arising out of the actual or alleged existence, generation, use, collection, treatment, storage, transportation, recovery, removal, discharge or disposal of Hazardous Material at the Plant and/or adjacent areas solely to the extent arising out of the gross negligence or Willful Misconduct of the Contractor, its Subcontractors or sub-vendors in the performance of the Services under this Contract.

11.1.2 The Owner shall be entitled to retain from payments otherwise due to Contractor such amounts as shall reasonably be considered necessary to satisfy any claims, suits or liens for damages that fall within Contractor's indemnity obligations under this clause 11.1, until such claims, suits or liens have been settled and satisfactory evidence to that effect has been furnished to the Owner.

11.1.3 Contractor acknowledges that specific payment has been incorporated into the Contract Price as legal consideration for Contractor's indemnity obligations as may be provided in this Contract.

11.2 **Indemnification by Owner**

11.2.1 Owner agrees to defend, indemnify and hold harmless the Contractor, its Affiliates, and all of their directors, officers, employees, agents and representatives ("Contractor Indemnified Parties") from and against any and all Losses arising out of or resulting from claims of third parties for any damage to or destruction of property of, or death of or bodily injury to, any Person due to any gross negligence or Willful Misconduct of the Owner in the course of performance of its obligations under this Contract; provided that the foregoing obligations shall not apply to the extent the Contractor Indemnified Parties are negligent or to the extent such Losses are caused by the acts of omission or commissions of the Contractor Indemnified Parties.

11.3 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.

11.4 Provision of this Article 11.0 shall survive termination or expiry of this Contract.

12.0 **LIMITATION OF LIABILITY**

12.1 Both Owner and Contractor understand and agree that there shall be absolutely no personal liability on the part of any of the members, shareholders, officers, employees, directors, agents, authorized representatives or Affiliates of the Owner or Contractor for the payment of any amounts due hereunder, or performance of any obligations hereunder.

12.2 With the exception of those provisions of this Contract providing for the payment of charges for default in Services, neither the Contractor nor the Owner shall be liable to the other as a result of any action or inaction under this Contract or otherwise for any special, indirect, incidental or consequential losses such as but not limited to loss of profit, loss of revenue, loss of use of the Plant, loss of power, loss of opportunity, loss of goodwill, loss of contracts or cost of capital. It is hereby agreed that this limitation of liability shall not apply in respect of claims

for which either Party is indemnified under Article 11.0 (Indemnification) or covered by the insurance under Article 10.0 (Insurance). Nothing in this Article 12.0 shall reduce the Contractor's liability for charges for default in Services in accordance with the provisions of this Contract.

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

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

13.0 SUSPENSION OF SERVICES

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

13.2 Owner may, at any time, withdraw the suspension of performance of the Services as to all or part of the suspended Services by written notice to the Contractor specifying the effective date and scope of withdrawal, and Contractor shall resume diligent performance of the Services for which the suspension is withdrawn on the specified effective date of withdrawal.

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

13.4 If such suspension continues for a continuous period of 45 (Forty-Five) days, at the end of such period, Contractor or Owner may, by a further 30 (thirty) days prior written notice, terminate the Contract and in such case Owner shall pay to the Contractor costs in accordance with clause 33.6 as if such a termination was a termination under clause 33.3.

14.0 APPLICABLE LABOUR LAWS

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

14.2 The Contractor shall comply with all Applicable Laws with respect to employment of labour (issued by the Central Government or the State Government as the case may be).

14.3 The Contractor shall *inter alia* comply with the provision of the Payment of Wages Act, 1936, Minimum Wages Act, 1948, Employees Liability Act, 1938, Workmen's Compensation Act, 1923, Industrial Disputes Act, 1947, Maternity Benefits Act, 1961, Employees' Provident Funds and Miscellaneous Provisions Act, 1952, Contract Labour (Regulation and Abolition) Act, 1970, Inter State Migrant Labour Act, 1979 and Employees State Insurance Act, 1948 or any modification thereof or any other law relating thereto and rules made there under from time to time.

14.4 The Contractor shall obtain all Permits required under Applicable Law in connection with the Contractor Staff employed by it for performing the Services including but not limited to licenses required under Contract Labour (Regulation and Abolition) Act, 1970 and rules made there under; the registration under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and obtaining the Employee Provident Fund (EPF) Code. All registration and statutory inspection costs and expenses (including payment of fees), if any, in respect of the performance of the Services pursuant to this Contract shall be to the account of the Contractor.

14.5 The Contractor shall pay to the labour, employed by it, either directly or through Subcontractors, wages in accordance with the provisions of the Minimum Wages Act, 1948 and the Contract Labour (Regulation and Abolition) Act, 1970 as prevalent in Tripura.

14.6 The Contractor shall cover contract labourers to be engaged by them during the Term for the purpose of provident fund benefits as per rules under the Contract Labour (Regulation and Abolition) Act, 1970 and the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

14.7 The Contractor shall submit to the Owner on the 10th (tenth) day of every month a return on the prescribed form for the payment of wages under the provisions of the Minimum Wages Act, 1948 and the Contract Labour (Regulation and Abolition) Act, 1970 as prevalent in Tripura. Failure of the Contractor to submit such a form shall be considered as breach of this Contract.

14.8 If Owner as "Principal Employer" is held liable to pay contribution, etc. under any Applicable Law or court decision in respect of any Contractor Staff, then Contractor would reimburse the amount of contribution so paid by the Owner and in addition the Contractor shall keep the Owner fully indemnified in this regard.

14.9 The Contractor shall comply to all statutory requirements under Motor Vehicle Act, 1988 and Motor Vehicle Act 2016 and all other applicable Acts shall be complied by the Contractor.

14.10 In the event of the Contractor committing a default or breach of any of the provisions of the Applicable Law as mentioned in this Article 14.0, as amended from time to time, or in furnishing any information or submitting or filling any form, register/slip under the provisions of such Applicable Law, the Owner shall be at liberty to take recourse to any action it may deem fit, under the circumstances, to protect its own interest. Further, all amounts as may become due for payment to the concerned authorities/agencies on account of such defaults or breach shall be settled by the Owner after recovering the same from the Contractor. The Owner shall be entitled to deduct such amounts from the Contract Price payable to the Contractor under this Contract.

15.0 **SUBCONTRACTING**

15.1 Contractor shall not subcontract any part of the Services.

16.0 **LIEN**

16.1 To the full extent permitted by Applicable Law, Contractor hereby waives and releases any and all rights of mechanic's lien and similar rights for payment for

services, labor, Vehicle, equipment or materials bought by the Contractor for performance of the Services and granted by law to Persons performing services, which Contractor may have against property belonging to the Owner.

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

16.3 The Owner shall have lien on all materials and equipments including those of the Contractor brought to the Site for providing satisfactory Services. The Owner shall continue to hold the lien on all such equipment throughout the period of Contract. The Contractor and/or its Sub-contractor without the prior written approval of the Owner shall remove no material brought to the Site from the Site.

17.0 **FORCE MAJEURE**

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

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

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

17.1.3 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;

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

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

17.1.6 An act of God;

17.1.7 Any act, failure to act, restraint or regulation, of any Government Agency (excluding actions that constitute remedies or sanctions lawfully exercised as a result of breach by the affected Party of any Applicable Law which is not discriminatory in nature);

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

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

17.3 Contractor shall not be entitled to, and hereby expressly waives recovery of, any damages suffered by reason of delays of any nature and extension of time shall constitute the sole remedy of the Contractor for delays under this clause.

17.4 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.

17.5 **Obligation to cure Force Majeure Diligently**

17.5.1 If either Party claims an event of Force Majeure, then the Party claiming the event shall:

17.5.1.1 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 17.0 by giving reasons of such event, expected duration of such event and probable impact of such event on the performance of its obligations hereunder;

17.5.1.2 Exercise all reasonable efforts to continue to perform its obligations hereunder;

17.5.1.3 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;

17.5.1.4 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;

17.5.1.5 Furnish weekly reports with respect to its progress in overcoming the adverse affects of such event or circumstances; and

17.5.1.6 Provide prompt notice to the other Party of the cessation of the event or condition giving rise to its excuse from performance.

17.5.2 The affected Party shall not be obliged, when complying with its obligations under this clause 17.5, to take any steps which would not be in accordance with Good Service Practices or to take any steps beyond its reasonable control. The suspension of the obligations hereunder of the affected Party shall be of no greater scope and no longer duration than is reasonably necessitated by the Force Majeure event.

17.6 So long as the affected Party has at all times since the occurrence of the Force Majeure event complied with the obligations of clause 17.5 and continues to so comply then, the affected Party shall not be liable for any failure or delay in

performing its obligations (other than an obligation to make a payment) under or pursuant to this Contract during the existence of a Force Majeure event; provided, however, that no relief shall be granted to the affected Party pursuant to this clause 17.6 to the extent that such failure or delay would have nevertheless been experienced by the affected Party had the Force Majeure event not occurred.

17.7 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 33.2

18.0 **PERFORMANCE BANK GUARANTEE**

18.1 The Contractor shall, within 15 (fifteen) days of the Effective Date, provide to the Owner an unconditional and irrevocable performance bank guarantee of an amount equivalent to 10% (ten percent) of the Contract Price for due performance of its obligations under this Contract, with an initial validity of up to 90 (ninety) Days beyond the Term, a format of which is attached as Annexure 4 (Form of Performance Bank Guarantee) ("**Performance Bank Guarantee**").

18.2 If, at the time of discharge of Performance Bank Guarantee, a dispute has been referred for resolution pursuant to Article 35.0 (Settlement of Disputes), the Contractor shall, on or before 21 (twenty one) days before the expiry of the Performance Bank Guarantee, issue an extension of the existing Performance Bank Guarantee or issue a separate security in the form of an unconditional and irrevocable bank guarantee for an amount proportionate to the Contract Price for such part, valid till final resolution of the dispute and payment of any amount due as a result thereof, as the case may be.

18.3 The Performance Bank Guarantee to be submitted by Contractor shall be from an Acceptable Bank and in the form acceptable to the Owner and as prescribed under Annexure 4 (Form of Performance Bank Guarantee).

18.4 The Contractor acknowledges and agrees that the Performance Bank Guarantee shall be held by the Owner as security for the satisfactory completion of the obligations of the Contractor in accordance with this Contract, including recovery of any amounts due to the Owner from the Contractor. The Owner shall have the unconditional option under the Performance Bank Guarantee to invoke and encash the same and shall be entitled to recover from the Performance Bank Guarantee, any amounts which may become due to the Owner from the Contractor.

19.0 **SERVICE QUALITY ASSURANCE AND INSPECTIONS**

19.1 To ensure the conformance of the Services, performed at the Site by Contractor with the provisions of this Contract Owner or its representative(s) shall have the right to inspect and/or to test the Services to check their conformity with the provisions of this Contract.

19.2 Inspection and acceptance of the Services by the Owner and / or their representative shall not limit the liabilities and responsibilities of the Contractor

in any manner and shall not prejudice the right of the Owner to reject the Services if it is found to be defective subsequently

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

20.1 Following amenities at Site shall be provided by Owner:

20.1.1 Vehicle Parking Area inside the Plant, shall be provided to Contractor by Owner.

20.2 Following amenities at Site shall be provided by Contractor:

20.2.1 The Contractor shall provide all vehicles along with the equipment, tools, tackles, Jack, stepney etc required for performing Services and maintaining the vehicles under the Contract and all other requirements specified in the Technical Specification. Price for deploying these items is included in the Contract Price. It shall submit a list of all such items to the Owner before the commencement of Services at Site.

20.2.2 The Contractor shall keep the vehicle interiors clean and free from rubbish, debris, etc. at all times during the Term. The Contractor shall employ adequate number of special personnel to thoroughly clean its vehicles, at least twice in a day.

21.0 **CHANGE / VARIATION ORDER**

21.1 The scope of Services shall be subject to change by additions, deletions or revisions thereto by Owner. Contractor shall be notified of such changes by providing written notification.

21.2 Contractor shall perform only such changes in the Services which have been notified in writing. If any oral notice or instruction received from Owner involves change in the Contract Price or Time for Completion, Contractor shall forthwith ask Owner to notify such instructions in writing. Any costs incurred by Contractor in performing such changes not notified in writing shall be to Contractor's account. Contractor waives any and all rights to claim compensation from Owner for performing such changes in Services not notified in writing by Owner.

21.3 Bill of Quantity and Unit Prices for performing Services shall be as specified in Annexure -2.

22.0 **CLAIM**

22.1 If, for any reason, Contractor considers that an event has occurred pursuant to which it has a right to claim compensation from Owner or an extension of Time for Completion, Contractor shall notify Owner in writing of the existence of such claim (the **"Claim"**) within three (3) days of occurrence of such event and within ten (10) days of notifying Claim, Contractor shall submit to Owner details of Claim as per provisions of clause 22.2. Contractor shall substantiate its Claim with payroll documents, paid invoices, receipts, records of performance and other documents satisfactory to Owner and subject to its verification. Owner shall not be liable for, and Contractor hereby waives, any claim or potential claim which have not been notified by Contractor in accordance with provisions of this clause 22.1.

22.2 After examining Claim submitted by Contractor, Owner shall determine admissibility of the Claim and the extent, if any, to which the Contract Price and Time for Completion is to be changed and outcome shall be informed to Contractor. If Contractor disputes Owner's decision and notifies Owner within five (5) working days of receiving Owner's Decision, Contractor may seek to resolve the dispute in accordance with Article 35.0 (Settlement of Disputes). If Contractor decides to proceed pursuant to Article 35.0 (Settlement of Disputes), Contractor agrees to limit its claim to the amount claimed by it in accordance with clause 22.1. In no event shall any work be halted, whether or not the claim can be resolved to Contractor's satisfaction, and Contractor shall be bound by the terms and conditions of this Contract to perform the Services without delay till its successful completion.

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

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

22.3.1.1 to achieve compliance with the Contract by Contractor; or

22.3.1.2 to correct errors, omissions, poor Service, or other failure of the Contractor to comply with the Contract;

22.3.2 Delay in the performance of Contractor's work or any additional work caused by Contractor.

22.3.3 Any work performed by Contractor arising out of Owner's comments on Contractor's submittals to the extent that such comments are consistent with the Contract.

22.4 If Contractor fails to follow the requirements of clause 22.1, it shall have waived any right to make any claim in respect of the events referred to in clause 22.1. Contractor's sole remedy in respect of any claim will be as provided in clause 22.2. No claim by Contractor in relation to events referred to in clause 22.1 shall be allowed after final payment is made.

22.5 Owner shall not be bound to any adjustments in the Contract Price or Time for Completion unless expressly agreed to by Owner in writing.

23.0 **BACKCHARGE**

23.1 A backcharge is a cost sustained by Owner and chargeable to Contractor for the Owner's performance of Services that is the responsibility of Contractor to provide in the specified time.

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

23.2.1 Services performed by the Owner, at Contractor's request, which are within Contractor's scope of Services under this Contract;

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

23.3 Upon identification by the Owner of an actual or anticipated backcharge, the Owner will issue a backcharge notice to Contractor. This notice shall describe the

backcharge work to be performed, the schedule period for performance, the cost to be charged by the Owner to Contractor for the backcharge and other terms.

23.4 A backcharge shall consist of:

23.4.1 Actual cost of hiring a vehicle;

23.4.2 All taxes, levies, duties and assessments attributable to the backcharge work; and

23.4.3 25% (twenty-five percent) shall be added to the foregoing for indirect costs, overhead, supervision and administration.

23.5 Charges on Contractor for non-compliance of Service or terms & conditions as per this contract, including technical specifications, shall be as per clause no. 8.0: Charges for Default in Services and clause no. 10.0: Special Terms & Conditions of Technical Specifications attached with this contract.

24.0 CONTRACTOR TO INFORM ITSELF FULLY

24.1 Contractor shall be deemed to have carefully examined the Technical Specifications, the Site location, the Plant, Roads in Tripura including documentation required for obtaining license, permits etc. and fully acquainted itself with Site conditions and all other conditions relevant to the Services, and its surroundings, including for the mobilization of resources to the Site and transportation of the vehicles required for the performance of the Services. Contractor shall be deemed to have assumed the risk of such conditions and will, regardless of such conditions, expenses, and difficulty of performing the Services, or negligence of the Owner, if any, fully complete the Services for the Contract Price without further recourse to the Owner. Information on the Site and local conditions at such Site furnished by the Owner in specifications, or otherwise is not guaranteed by the Owner and is furnished only for the convenience of the Contractor.

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

25.0 MEASUREMENT OF WORK

25.1 The Owner shall, except as otherwise stated, ascertain and determine by measurement the value of the work done in accordance with Contract.

25.1.1 Log book shall be only measurement book for calculating the total run in Kilometer.

25.1.2 Log book kept in the vehicle and the movement of the vehicle is recorded correctly with time details of vehicle movement. Signature of the User/company representative, confirming the information entered each day shall be taken on a daily basis.

25.1.2.1 The total Kilometers travelled with opening and closing meter (both odometer and GPS device) reading shall be certified by Project Manager.

25.1.3 All items having a financial value shall be entered in Measurement Book, Log Book, etc. prescribed by the Owner so that a complete record is obtained of all work performed under the Contract.

25.1.4 Measurement shall be taken jointly by the Owner and by the Contractor. It is the responsibility of the Contractor to provide log book and other things necessary for measurements.

25.1.5 Measurement record shall be signed by both parties immediately after completion of measurement.

25.2 Log book should be maintained with vehicle by the Driver reflecting journey undertaken daily which will invariably get filled up by the user himself in all cases affixing his signature and the same duly certified by the person(s) deputed for this work. The daily trip / run details for billing shall be prepared on the basis of this.

25.3 OTPC reserves the right to check the Mileage Meter (KM Indicator Meter) and may get it calibrated.

25.4 Mileage Meter (KM Indicator Meter) reading should be in properly working condition/sealed. If KM Indicator of any car is found tampered at any point of time, OTPC reserves the right to reject the party without any notice.

25.5 GPS shall be installed in all vehicles. The actual kilometers travelled should tally with the GPS totalizer and should be attached along with the GPS screenshot/print along with the invoice. Payment shall be released after physical verification of KM reading through both vehicle odometer and GPS metering device. Maximum variation of 2% shall be allowed between the two readings. In case of more deviation, the lower of 2 readings shall be considered as for payment processing.

26.0 ACCESS TO SITE

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

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

27.0 SECURITY

27.1 Contractor shall be solely responsible for all materails in its custody in the vehicle, loose or semi-assembled. The Contractor shall ensure protection of all materials provided by Owner from theft, fire, pilferage and any other damage and loss. All vehicles of the Contractor shall enter and leave the project site only with the written permission of the Owner.

28.0 **COOPERATION AND COORDINATION AT THE SITE**

28.1 In case where the performance of the Services by the Contractor affects the operation of the Plant, such Services of the Contractor shall be scheduled to be performed only in the manner stipulated by the Owner and the same shall be acceptable at all times by the Contractor. The Owner may impose such restrictions on the facilities provided to the Contractor as it may think fit in the interest of the Owner and the Contractor shall strictly adhere to such restrictions and co-operate with the Owner. Such decision by the Owner shall not be a cause for extra compensation for the Contractor.

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

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

29.2 The Contractor shall be fully responsible for the transportation and insurance of all the vehicles to the Site, including for the payment of all transportation and handling costs and expenses. It is acknowledged by the Contractor that the responsibilities for transportation are included in the Contract Price.

29.3 All the vehicles, which shall be used by the Contractor for performance of the Services under this Contract, arriving at the Site shall be parked in the allotted parking area only.

29.4 Contractor shall be solely responsible for any damage in handling, maintaining and/or in parking and use of the vehicles at the Site or in Tripura.

29.5 After the completion of Term, the Contractor shall remove the vehicles from the Site under the direction and with written permission of the Owner, brought by it for performing the Services which are not property of the Owner.

30.0 **PROTECTION OF MATERIALS, PROPERTY AND PERSONNEL**

30.1 The Contractor shall protect existing infrastructure existing at or in the vicinity of the Site from any loss or damage while performing Services. Contractor shall make good at his own cost all loss or damage to such infrastructures existing at or in the vicinity of the Site.

30.2 The Contractor shall ensure provision of necessary safety equipment in the vehicles as specified in the Technical Specification including but not limited to fire extinguisher, first aid box, seat belts, air bags, fog lights, horn, spark arrester etc., to provide adequate protection to persons and property.

30.3 The Owner shall not be responsible or held liable for any damage to vehicles, Person or property consequent upon the use, misuse or failure of any parts used by the Contractor Staff. The use of vehicle by Contractor Staff shall be construed to mean that the Contractor accepts all responsibility for and agrees to indemnify and hold the Owner harmless from any and all claims for damages resulting from use, misuse or failure of such parts.

31.0 **SAFETY**

31.1 The Contractor shall at all times comply with the HES Policy while performing the Services. In addition, the Contractor shall ensure proper safety of all the workmen, materials, plant and equipment belonging to it or to the Owner or to others working at the Site. The Contractor shall also be responsible for provision of safety equipment required both under Applicable Law and any additionally required by the Owner.

31.2 All vehicles and materials used in performing Services by the Contractor shall meet the prescribed Indian/international standards and where such standards do not exist, the Contractor shall ensure these to be absolutely safe/best industry standards. All vehicles shall be strictly operated and maintained by the Contractor in accordance with manufacturer's operation manual and safety instructions and as per procedures/guidelines/rules of the Owner in this regard.

31.3 Periodical examinations and all tests for all vehicles shall be carried out in accordance with the relevant provisions of Applicable Laws (such as Motor Vehicle Act, 1988 and Motor Vehicle Act 2016). A register of such examinations and tests shall be properly maintained by the Contractor and will be promptly produced as and when required by Owner or by Owner's representative.

31.4 The Contractor shall provide suitable safety equipment of prescribed standard in the vehicles according to the need, as may be directed by Owner who will also have right to examine these safety equipment to determine their suitability, reliability, acceptability and adaptability.

31.5 In case any accident occurs during the performance of the Services, thereby causing any minor or major or fatal injury to Contractor's employees due to any reason, whatsoever, it shall be responsibility of the Contractor to promptly inform the same to the Owner, in prescribed form, and also to all the authorities envisaged under the Applicable Laws.

31.6 The Owner shall have the right, at its sole discretion, to stop the vehicles, if in its opinion the vehicle is being run in such a way that it may cause accidents and/or endanger the safety of the Person(s) and/or property and/or equipment. In such cases, the Contractor shall be informed in writing about the nature of hazards and possible injury/accident and it shall comply to remove the shortcomings promptly.

31.7 The Contractor shall not be entitled to any damages/compensation for stoppage of vehicle due to safety reasons as provided in clause 31.6 above.

31.8 The Contractor shall follow and comply with all safety rules, prescribed by the Owner, relevant provisions of Applicable Laws pertaining to the safety of workmen, employees, plant and equipment and road safety as may be prescribed from time to time without any demur, protest or contest or reservation. In case of any discrepancy between the statutory requirements and

the prescribed safety rules referred above, the more stringent provisions shall be applicable and binding upon the Contractor.

31.9 The Contractor acknowledges that providing safe vehicles at the Plant and/or on the road in Tripura is the requirement of the HES Policy and this Contract. If the Contractor fails in providing safe vehicles as per the provisions of clause 31.8 above or continues the work even after being instructed to stop the vehicles as provided in clause 31.6 above, then it would be a breach of the HES Policy and this Contract. In case of such a breach, the Contractor shall promptly pay to the Owner, on demand, compensation at the rate of Rs. 10,000/- (Rupees ten thousand only) per day or part thereof till the instructions are complied with and so certified by the Owner. However, in case of accident taking place causing injury, to any individual, the provisions contained in clause 31.9 shall also apply in addition to compensation mentioned in this clause 31.10.

31.10 The Contractor acknowledges that having a zero fatality rate at the Plant and/or on the roads in Tripura is important for the Owner and a material requirement of the HES Policy and Road Safety as per Motor Vehicle act, 1988 & Motor Vehicle Act 2016. If the Contractor or its drivers does not take all safety precautions and/or fails to comply with the HES Policy and/or Road Safety requirements as per Motor Vehicles Act 2016, the prescribed safety rules or Applicable Laws for the road safety which cause injury to its own staff, or employees of the Owner or any other Person who may be present at Plant or adjacent thereto, the Contractor shall be responsible for payment of compensation to the Owner as per the following schedule:

a.	Fatal injury or accident causing death:	Rs. 1,000,000/- (Rupees One Million only) per Person.	These are applicable for death/injury to any Person whatsoever.
b.	Major injuries or accident causing 25% (twenty five percent) or more permanent disablement to workmen or employees:	Rs. 250,000/- (Rupees Two Hundred Fifty Thousand only) per Person.	

Permanent disability shall have the same meaning as indicated in Workmen's Compensation Act, 1923. The compensation mentioned above shall be in addition to the compensation payable to the workmen/employees under the relevant provisions of the Workmen's Compensation Act, 1923 and rules framed there under or any other Applicable Laws as applicable from time to time. In case the Owner is made to pay such compensation then the Contractor shall be liable to pay to the Owner such amount in addition to the compensation indicated above.

The amounts paid to the Owner by the Contractor pursuant to clause 31.9 and/or clause 31.10 shall be deposited by the Owner in a labour welfare fund which will be utilized by the Owner for the welfare of the labour.

32.0 STATUTORY APPROVALS, PERMITS AND FRAUDULENT PRACTICES

32.1 Statutory Approvals

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

32.2 **Corrupt / Fraudulent Practices**

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

33.0 **TERMINATION**

33.1 **Termination by Owner for Contractor's Event of Default**

33.1.1 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 7 (seven) days written notice of termination to the Contractor ("**Contractor's Event of Default**"):

33.1.1.1 Contractor refuses or neglects to comply with any reasonable order given to it in writing by the Owner in connection with the Services to be provided under this Contract;

33.1.1.2 Abandonment of the Services by the Contractor;

33.1.1.3 Contractor indulging in Corrupt Practices or Coercive Practices or Fraudulent Practices or Obstructive Practices during the signing of this Contract or during the Term in the opinion of the Owner;

33.1.1.4 Transfer or charge by the Contractor of any of its rights or obligations under this Contract without prior written consent of the Owner;

33.1.1.5 Any act or omission by the Contractor such that the Owner is or is likely to be or become in breach of any of its obligations under this Contract or constitutes or is likely to give rise to a Owner's event of default;

33.1.1.6 Contractor ceases to carry on its business;

33.1.1.7 Failure of the Contractor to comply with an Arbitral Award within 30 (thirty) days of the Arbitral Award or within such time as prescribed under such award, whichever is earlier;

33.1.1.8 Contractor has incurred or is liable for charges against default in Service in excess of the amount set out in clause 6.1.1;

33.1.1.9 Deleted.

33.1.1.10 Failure by the Contractor to perform any obligation under this Contract with due diligence and expedition including any breach of Applicable Laws and such failure continues after written notice is provided to the Contractor by the Owner; provided, that the Contractor shall have up to fifteen (15) days after such notice is given to cure such default or to diligently commence and continue in good faith to cure such default prior to any such termination (provided that in no event shall such cure period exceed sixty (60) days including the fifteen (15) days of notice period); or

33.2 **Termination due to Force Majeure Events**

33.2.1 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.

33.3 **Termination for Convenience by Owner**

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

33.4 **Termination Procedure**

33.4.1 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.

33.5 **Payment on Termination**

33.5.1 Owner shall not be liable to make any further payments to the Contractor until the costs of execution and all other expenses incurred by the Owner in completing the Services have been ascertained (the **"Cost of Completion"**). If the Cost of Completion when added to the total amounts already paid to Contractor as at the date of termination exceeds the total amount which would have been payable to the Contractor for performing the Services, the Contractor shall upon demand, pay to the Owner the amount of such excess. Any such excess shall be deemed a debt due by the Contractor to the Owner and shall be recoverable accordingly. If there is no such excess the Contractor shall be entitled to be paid the difference (if any) between the value of the Works ascertained and the total of all payments received by the Contractor as on the date of termination.

33.5.2 In the event of termination for convenience by Owner as per clause 33.3, the Contractor shall be paid compensation, equitable and reasonable, dictated by the circumstances prevalent at the time of termination.

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

33.6 **Obligation upon Termination**

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

33.6.2 Contractor shall preserve and protect facilities on Site, materials purchased for or committed to the Services (whether delivered to the Site or on order), Services in progress and Services completed till receipt of Owner's instructions and if requested by Owner, handover the same to Owner, including title to said materials, plant and equipment, or dispose of same in accordance with Owner's instructions

33.6.3 Contractor shall advise Owner of its outstanding subcontracts pertaining to performance of the terminated Services and, upon request, furnish Owner with complete copies.

33.6.4 Contractor shall place no further subcontracts except as may be necessary for completion of such portion of the Services which is not terminated.

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

34.0 **GOVERNING LAW AND JURISDICTION**

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

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

35.0 **SETTLEMENT OF DISPUTES**

35.1 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 35.2 below.

35.2 **Owner's Decision**

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

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

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

35.2.4 The Owner's decision (or the failure of the Owner to give decision within the time specified in clause 35.2.1) and issuance of a written notice for arbitration pursuant to clause 35.2.3 shall be a condition precedent to the right to request arbitration. It is the intent of this Contract that there shall be no delay in the

execution of the Services and the decision of the Owner, as rendered, shall be promptly observed.

35.2.5 In the event of the Owner failing to notify its decision, as aforesaid, within 30 (thirty) days after being requested, or in the event of a Party being dissatisfied with any such decision, either Party may require that the matters in dispute be referred to arbitration as provided in clause 35.3.

35.3 **Arbitration**

35.3.1 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, seat and venue of arbitration shall be New Delhi, India.

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

35.3.3 If one Party fails to appoint its arbitrator within 30 (thirty) days after the other Party has named its arbitrator, the Party which has named an arbitrator may request the President of the Institution of Engineers to appoint the second arbitrator on behalf of such Party. If the two arbitrators appointed by both Parties do not succeed in appointing a third arbitrator within 30 (thirty) days after the latter of the two arbitrators has been appointed, the third arbitrator shall, at the request of either Party, be appointed by the Chairman of OTPC.

35.3.4 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.

35.3.5 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.

35.3.6 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.

35.4 During settlement of disputes including arbitration proceedings, both Parties shall be obliged to carry out their respective obligations under this Contract.

35.5 Parties agree that neither Party to this Contract shall be entitled for any interest on the amount of award.

35.6 The provisions of this Article 35.0 shall survive termination of this Contract.

36.0 **CHANGE IN LAW**

36.1 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, then either Party may request the other for a revision of the Contract Price in accordance with clause 36.2, 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.

36.2 In case of a Change in Law affecting the Contract Price, the Contractor or the Owner, as the case may be, shall provide notice to the other, of such request, setting forth the proposed amount of, and the relevant details and calculations relating to, such increase or decrease in the Contract Price. Promptly upon, and in any event within 7 (seven) days of, the Contractor or the Owner, as the case may be, receiving such request (such date of receipt the "**Change in Law Request Date**"), the Parties shall discuss such proposed increase or decrease, in good faith and within 60 (sixty) days of the Change in Law Request Date, mutually agree upon a revised Contract Price.

37.0 **ASSIGNMENT**

37.1 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.

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

37.2.1 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

37.2.2 The Owner may assign this Contract or its rights or obligations here under to any Subsidiary or Affiliate of the Owner.

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

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

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

37.3.3 representations and warranties by the Contractor;

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

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

38.0 **RELEASE OF INFORMATION**

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

39.0 **CONFIDENTIAL INFORMATION**

39.1 Subject to clause 39.2, Contractor shall keep all documents, data, photographs, technical information or other information provided directly or indirectly by the Owner 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.

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

39.2.1 was furnished prior to this Contract without restriction;

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

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

39.2.4 is independently developed by either Party;

39.2.5 is required to be provided to any contractors/subcontractor, subject to inclusion of terms similar to the provision of this Article 39.0 in the agreement with such contractor/subcontractor;

39.2.6 is required to be provided to the Lenders;

39.2.7 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;

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

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

39.2.10 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;

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

39.2.12 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.

40.0 Deleted

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 Contractor**

No sum paid on account by the Owner shall affect or prejudice the rights of the Owner against the Contractor or relieve the Contractor of its obligations for the due performance of the Services or be interpreted as approval of the Services done.

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, correspondence, operating and maintenance instructions, drawings or any other document shall be written in English language. The metric system of measurement shall be used exclusively in this Contract.

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
Core-4 and Central,
10th Floor, Scope Minar, Laxmi Nagar
New Delhi – 110092
Email: _____

44.3 Address for Notice to Contractor:

[*To be provided by Contractor*]
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 Contractor shall act as an independent contractor performing this Contract. This Contract does not create any agency, partnership, joint ventures or joint relationship between the Parties. Subject to the compliance of this Contract, Contractor shall be solely responsible for the manner in which Services are performed. All employees, representatives or Subcontractors engaged by the Contractor in performing this Contract shall be under the complete control of the Contractor and shall not be deemed to be employees of the Owner and nothing contained in this Contract or in any Subcontract awarded by the Contractor shall

be construed to create any contractual relationship between any such employees or representative or Subcontractors and the Owner. Contractor shall be responsible for its acts, defaults or negligence and acts, defaults or negligence of its agencies, servant, Contractor's staff, workmen or Subcontractor.

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

46.0 **COPIES OF CONTRACT AND COUNTERPARTS**

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

46.2 Subsequent to signing of this Contract, the Contractor, at its own cost, shall provide the Owner with at least 3 (three) 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 Contractor 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

VEHICLE MOBILIZATION PLAN

Sl. No.	Make & Model of Vehicle	Name of Owner of the Vehicle	Registration No. of Vehicles proposed to be deployed at OTPC	Proposed time of deployment
1				
2				
3				

A. Contractor Staff: Supervisory/Drivers

a.
b.
c.
d.
e.
f.
g.
h.

Total: Supervisory **__ Nos.**

Annexure-2

Part-A : CONTRACT PRICE

Sl. No.	Description	PRICE IN FIGURES (INR)
I	**VEHICLE HIRING SERVICES PRICE** **1st Year (12 Months from Effective Date)**	
IA	Price for Vehicle Hiring Services for a period of 12 Months from Effective Date at 2 x 363.3 MW gas based combined cycle power plant at Palatana, Tripura as defined in Bidding Document	
IB	All applicable taxes, duties and levies on IA above.	
IC	**Total Price for 1st Year**: Vehicle Hiring Services Price including Taxes, Duties and Levies (IA + IB) (in Figures & Words) INR	
II	**VEHICLE HIRING SERVICES PRICE** **2nd Year (13th Month to 24th Month)**	
IIA	Price for Vehicle Hiring Services **(13th Month to 24th Month)** at 2 x 363.3 MW gas based combined cycle power plant at Palatana, Tripura as defined in Bidding Document	
IIB	All applicable taxes, duties and levies on IIA above.	
IIC	**Total Price for 2nd Year:** Vehicle Hiring Services Price including Taxes, Duties and Levies (IIA + IIB) (in Figures & Words) INR	
IC + IIC	**TOTAL PRICE FOR PROVIDING** Vehicle Hiring Services **FOR 24 MONTHS (In figures and Words) (IC+IIC)**	

Part-D : Taxes & Duties

Sl.	Description	Vehicle Hiring Services at Sl. IA (1st Year)	Vehicle Hiring Services at Sl. IIA (2nd Year)
D	**Goods & Services Tax (GST)**		
D.1	Amount on which applicable (INR)		
D.2	Rate (%)		
	Total – taxes, duties & levies (INR) (D.1 + D.2))	*Should match with figures in IB*	*Should match with figures in IIB*

VEHICHLE HIRING SERVICES AT 2 X 363.3 MW GAS BASED COMBINED CYCLE POWER PLANT AT PALATANA, TRIPURA PART-B (BILL OF QUANTITIES)								
Sl. No.	**Make and Model of Vehicles**	**Fuel and Mileage**	**Qty**	**Monthly Rental Price for 1st Year of Vehicle Hiring Services**		**Monthly Rental Price for 2nd Year of Vehicle Hiring Services**		
				Unit Price	**Amount**	**Unit Price**	**Amount**	
I	**PACKAGE-1**							
1.	Scorpio - S9 2179CC and above with 8 seater arrangement with back door opening- ***for 24 hours running/day***	Diesel-AC 12 KM / Ltr	1					
2.	Bolero - EX BS – VI (non AC), with 8 seater arrangement with back door opening- ***for 24 hours running/day***	Diesel, Non-AC 13 KM / Ltr	2					
TOTAL								

Annexure-3

TECHNICAL SPECIFICATION

FOR

HIRING OF VEHICLES

Annexure-4

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,
Delhi – 110092
Ph: +91-11-22404700
Fax: +91-11-22017731/22018831

Dear Sirs,

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

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

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

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

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

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

The Bank's liability under this Guarantee is limited to the Aggregate Maximum Amount and it shall remain in force up to and including _____, 202_ (such date as may be extended, the "**End Date**"). The End Date shall be extended from time to time for such period as may be desired by the Owner and accepted by the Contractor on whose behalf this Guarantee has been issued. The Bank hereby agrees to notify the Owner in writing by registered mail not less than 30 (thirty) days prior to any expiration or other cancellation of this Guarantee if for any reason this Guarantee will expire according to its terms or will otherwise be cancelled and the validity of this Guarantee has not been extended beyond the then current End Date. This Guarantee shall expire on the End Date whether returned to us or not, but, Owner may raise a claim occurred on or prior to End Date on Bank within 2 (two) months of End Date of this Guarantee and Bank will honour such claim(s), and no claims will be honoured thereafter.

Dated this ___ day of _____, 20___ at _____

WITNESS

(Signature)_____ (Signature)
_____

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

(Official Address)

(Designation with Bank stamp)

Attorney as per Power of Attorney
No.
Dated

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

Annexure-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