



ONGC TRIPURA POWER COMPANY LIMITED

CONTRACT

FOR

IMPLEMENTATION & MAINTENANCE SERVICES

IMPLEMENTATION OF

E-PROCUREMENT SYSTEM

AT

DELHI OFFICE AND PALATANA PLANT

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Project: Implementation of E-Procurement System at OTPC

CONTRACT FOR IMPLEMENTATION & MAINTENANCE OF E-PROCUREMENT SYSTEM AT DELHI OFFICE AND PALATANA PLANT

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CONTRACT FOR IMPLEMENTATION & MAINTENANCE SERVICES FOR E-PROCUREMENT SYSTEM AT DELHI OFFICE AND PALATANA PLANT

This contract for implementation and maintenance services for e-procurement system at Delhi Office and Palatana Plant ("**Contract**") is signed on the [•] day of [•], by and between:

ONGC Tripura Power Company Limited, a public limited company incorporated under the Indian Companies Act, 2013 and having its registered office at Udaipur-Kakraban Road, P.O. Palatana, District Gomati, Tripura - 799105 (India) and one of its offices at 10th Floor, Core 4 and Central, SCOPE Minar, Laxmi Nagar, Delhi - 110092 (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 implementing e-procurement system at Delhi Office and Palatana Plant, which is about 60 (sixty) km from capital city Agartala in the State of Tripura (the "**Project**").
2. The Owner, based on a transparent bidding process, has selected the Contractor as the successful bidder for Contract (as defined hereinafter) required for implementing e-procurement system.
3. The Contractor represents that it has the necessary specialized knowledge, expertise and infrastructure for Scope of Work and to perform its obligations under this Contract.
4. The Owner desires to engage the Contractor to provide services required for implementing e-procurement system in accordance with the terms and conditions specified in this Contract.
5. The Contractor is willing and has agreed to provide services required for implementing e-procurement system for the Contract Price in accordance with the terms and conditions specified in this Contract.
6. The Owner and the Contractor desire to enter into this Contract pursuant to which the Contractor shall perform, and the Owner shall engage the Contractor to provide 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 obligations under this Contract for a continuous period of 1 (one) day i.e. 24 (twenty-four) continuous hours and which cessation is not excused under this Contract.

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

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

- (i) owns or Controls such Person;
- (ii) is owned or Controlled by such Person; or
- (iii) is under common ownership or Control with such Person.

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

1.5 **"Arbitral Award"** shall have the meaning ascribed to it in Clause 43.4.4.

1.6 **"Arbitration Act"** shall have the meaning ascribed to it in Clause 43.4.1.

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

1.8 **"Change in Law"** means, to the extent any of the following events occur and/or become effective after the Effective Date, (i) the enactment, issuance, promulgation, bringing into effect or adoption of any new Applicable Law; (ii) the amendment, extension, exclusion, repeal or authoritative change in interpretation or application of any Applicable Law; (iii) any attachment or change of conditions to any Governmental Authorization; or (iv) any denial or delay in granting or renewing, or the expiration or revocation or cancellation of, any Permit or Governmental Authorization for reasons not attributable to OTPC or Contractor, their respective employees, agents or Subcontractors.

For the purpose of this definition reference to Applicable Law does not include reference to any taxation laws.

1.9 **"Change in Law Request Date"** shall have the meaning ascribed to it in Clause 44.2.

- 1.10 **"Claim"** shall have the meaning ascribed to it in Clause 26.1.
- 1.11 **"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.
- 1.12 **"Commissioning"** means Completion of EPS as defined in Clause 1.14
- 1.13 **"Commissioning Tests"** shall have the meaning ascribed to it in Clause 23.1.1
- 1.14 **"Completion of EPS"** shall have the meaning ascribed to it in Clause 23.2
- 1.15 **"Confidential Information"** shall have the meaning ascribed to it in Clause 47.1.
- 1.16 **"Contract Price"** shall have the meaning ascribed to it in Clause 6.1.1.
- 1.17 **"Contractor Indemnified Parties"** shall have the meaning ascribed to it in Clause 12.2.1.
- 1.18 **"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 Scope of Work and working at the Site, and any other personnel notified to the Owner by the Contractor as the Contractor's personnel.
- 1.19 **"Contractor's Event of Default"** shall have the meaning ascribed to it in Clause 41.1.1.
- 1.20 **"Control"** means, with respect to any Person, (i) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person whether through the ownership of voting securities, by agreement or otherwise or the power to elect more than one-half of the directors of such Person; or (ii) the possession, directly or indirectly, of a voting interest of more than 50% (fifty percent); or (iii) the power to veto decisions of such Person, whether through ownership of voting securities, by contract, or otherwise.
- 1.21 **"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.

- 1.22 **"Cost of Completion"** shall have the meaning ascribed to it in Clause 41.6.1.
- 1.23 **"Directive"** means any directive issued by a Government Agency.
- 1.24 **"Direct Tax"** shall have meaning ascribed to it in Clause 8.1.
- 1.25 **"Effective Date"** means the date of Letter of Award.
- 1.26 **"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 EPS 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.
- 1.27 **"EPS"** means E-Procurement System being implemented for OTPC having its corporate office at Delhi and 2 x 363.3 MW gas based combined cycle power plant at Palatana, Tripura.
- 1.28 **"Force Majeure"** shall have the meaning ascribed to it in Clause 19.1.
- 1.29 **"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.
- 1.30 **"Good Software Design & Engineering Practices"** means the exercise of that degree of skill, diligence, prudence, foresight, and engineering & design practice taking into account Indian conditions, generally followed internationally by highly qualified, prudent professionals in similar industry including in the design, engineering, procurement, implementation, testing, commissioning etc in relation thereto; which in any such case should have been expected to accomplish the desired result at the lowest cost, consistent with licensing and regulatory considerations, environmental considerations, reliability, safety and expedition. Good Software Design & Engineering Practices is not intended to be limited to the optimum practice, method or act, to the exclusion of all others, but rather to be a spectrum of possible practices, methods or acts employed by owners and contractors.
- 1.31 **"Go-Live of EPS "** means successfully conducting first end-to-end e-procurement event in production server.
- 1.32 **"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.

- 1.33 **"Governmental Authorizations"** means all approvals, authorizations, permits, licenses, consents, clearances, etc., received or required to be received from Government Agency for the Plant.
- 1.34 **"GST"** means Goods & Services Tax.
- 1.35 **"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.
- 1.36 **"HES Policy"** means the health, environment and safety policy of the Owner.
- 1.37 **"Indirect Taxes"** shall have the meaning ascribed to it in Clause 8.2.
- 1.38 **"INR"** or **"Rs"** or **"Indian Rupees"** means the legal currency of the Republic of India.
- 1.39 **"Lenders"** means any and all lenders and institutions providing credit, including interim and long-term financing (including any leveraged lease or any other refinancing thereof) in respect of the development, design, engineering, construction, and operation of the Plant including EPS, and their respective successors and assigns, including any trustee, agent or designee acting on their behalf.
- 1.40 **"Letter of Award" or "LOA"** means the letter dated [●] issued by the Owner in favour of the Contractor.
- 1.41 **"Loan Agreements"** means the loan agreements entered into by the Owner with the Lenders pursuant to which the Lenders have agreed to provide debt financing to the Owner for developing, constructing and operating the Plant.
- 1.42 **"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.

- 1.43 **"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.
- 1.44 **"Operating Fee"** shall have the meaning ascribed to it in Clause 6.3.1.
- 1.45 **"Operating Year"** means every consecutive 12 (twelve) month period starting from 00:00 hours of the date of Go-Live of EPS.
- 1.46 **"Operational Phase"** means the period starting from the date of Go-Live of EPS by Owner till the expiry or termination of this Contract.
- 1.47 **"Owner's Event of Default"** shall have the meaning ascribed to it in Clause 41.2.1.
- 1.48 **"Owner Indemnified Parties"** shall have the meaning ascribed to it in Clause 12.1.1.
- 1.49 **"Owner's Staff"** means employees of the Owner employed by the Owner for the construction, operation and maintenance of the Plant including EPS.
- 1.50 **"Performance Bank Guarantee"** shall have the meaning ascribed to it in Clause 22.1.
- 1.51 **"Permits"** means any and all formal authorization, approval, decision, license, ruling, permits, certification, exemption, registration or visas required to be obtained and maintained in connection with the Project.
- 1.52 **"Person"** means, unless specified otherwise, a natural person, corporation, society, partnership, joint venture, unincorporated association or other entity.
- 1.53 **"Plant"** means 2 x 363.3 MW gas based combined cycle power plant at Palatana, Tripura including EPS.
- 1.54 **"Project"** shall have the meaning ascribed to it in Recital 1.
- 1.55 **"Project Manager"** means the project manager appointed by the Owner pursuant to Clause 5.2.1.
- 1.56 **"Promoters"** means ONGC, GAIL, IDFC and Government of Tripura.
- 1.57 **"Scheduled Outages "** means planned outages of EPS.
- 1.58 **"Site"** means the land over which the e-procurement services are to be provided.
- 1.59 **"Scope of Services"** means all forms of services and shall have the meaning ascribed to it in Clause 3.0

- 1.60 **"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.
- 1.61 **"Subcontractor"** means any Person carrying out any of the responsibilities or obligations of the Contractor under this Contract under or pursuant to a Subcontract.
- 1.62 **"Subsidiary"** shall have the meaning ascribed to it in Section 4 of the Companies Act, 2013.
- 1.63 **"Technical Specifications"** means the specifications for performing the obligations under this Contract and as set out in Annexure 3 (Technical Specifications).
- 1.64 **"Term"** shall have the meaning ascribed to it in Clause 4.1.1.
- 1.65 **"Termination Date"** means the date upon which termination pursuant to Clause 41.5.1 takes effect.
- 1.66 **"Time for Completion"** shall have the meaning ascribed to it in Clause 9.2.
- 1.67 **"Warranty"** shall have the meaning ascribed to it in Clause 21.1.
- 1.68 **"Warranty Period"** shall have the meaning ascribed to it in Clause 21.2.
- 1.69 **"Willful Misconduct"** means, with respect to any Party or Person an intentional or reckless, disregard by such Party or Person, of Applicable Law, any common duty of care, any provision of this Contract, any other document prepared pursuant to this Contract or of Prudent Utility Practice, and relating to the performance by such Party of its obligations there under, but shall not include any error of judgment or mistake made in good faith.
- 1.70 **"Yearly Operating Fee"** shall have the meaning ascribed to it in Clause 6.3.1.
- 1.71 **Rules of Interpretation**
- In the interpretation of this Contract, unless the context otherwise requires:
- 1.71.1 the singular includes the plural and vice versa and in particular (but without limiting the generality of the foregoing) any word or expression defined in the singular has the corresponding meaning used in the plural and vice versa;
- 1.71.2 a reference to any gender includes the other genders;
- 1.71.3 a reference to a Clause, Article, Annexure or Recital is a reference to a Clause, Article, Annexure or Recital in this Contract;
- 1.71.4 the Annexures to this Contract form part of this Contract and will be of full force and effect as though they were expressly set out in the body of this Contract. The provisions of this Contract and the Annexures hereto shall be interpreted harmoniously and only if the provisions of this Contract cannot be interpreted harmoniously with the Annexures or *vice-versa* on account of inconsistencies or ambiguities then the provisions of this Contract shall prevail over the Annexures;

- 1.71.5 in case of any discrepancy between words and figures, the words shall prevail over the figures;
- 1.71.6 a reference to a statute shall be construed as including all statutory provisions consolidating, amending, modifying, supplementing or replacing the statute referred to;
- 1.71.7 a reference to "writing" includes printing, typing, lithography and other means of reproducing words in a visible form;
- 1.71.8 any date of any period set forth in this Contract shall be such date or period as may be adjusted pursuant to the terms and conditions of this Contract;
- 1.71.9 titles or captions of Clauses or Articles contained in this Contract are inserted as a matter of convenience only, and in no way define, limit, extend, describe or otherwise affect the interpretation, meaning or intent of this Contract or the interpretation, meaning or intent of any term or provision contained herein;
- 1.71.10 the rule of construction, if any, that a contract should be interpreted against the Party responsible for the drafting and preparation thereof, shall not apply; and
- 1.71.11 reference to any agreement, deed, document, instrument, or the like shall mean a reference to the same as may have been duly amended, modified or replaced. For the avoidance of doubt, it is clarified that a document shall be construed as amended, modified or replaced only if such amendment, modification or replacement is executed in compliance with the provisions of such document(s).

2.0 **EFFECTIVE DATE OF CONTRACT**

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

3.0 **SCOPE OF WORK / SCOPE OF SERVICES**

- 3.1 The Contractor shall provide all the services required for successful and uninterrupted implementation, operation, maintenance, repair, update and upgrade of the E-Procurement System in conformity with this Contract and Applicable Laws, including but not limited to:
 - 3.1.1 Contractor shall implement web based comprehensive dedicated end-to-end e-procurement system for Owner for buying goods and services through quotations (RFP / RFQ), and tenders / bids {limited, open (eg. domestic, global)};
 - 3.1.2 operating and maintaining the E-Procurement System;
 - 3.1.3 preparing, discussing and finalizing various documents including Administration Manual, User Manuals, Operation and Maintenance Manual, Standard Operation Procedure, Standard Maintenance Procedure, etc for E-Procurement System;

3.1.4 providing required reports documenting the operation and maintenance of the E-Procurement System, including but not limited to the Daily Reports, Monthly Reports and Annual Report;

as set out in further detail in the Technical Specifications (such services, the "**Services**")

3.2 Scope of Services shall also include all associated work required for implementation of e-procurement system at OTPC Delhi and Palatana, Tripura;

3.3 The Contractor expressly agrees that the scope of work 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 required for the successful fulfilment of Contractor's obligation under this Contract as per Good Software Design and Engineering Practices 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 5 (five) years from the Go-Live of EPS ("**Term**").

4.1.2 Prior to the expiration of the Term, the Owner and the Contractor may agree to extend the Term for the time period to be mutually agreed. However, such extension shall be solely based on the performance of Contractor and at the sole discretion of the Owner. Any such extension must be agreed at least 6 (six) months prior to the end of Term.

4.1.3 If the Owner decides to extend the Term pursuant to Clause 4.1.2 and the Parties cannot agree the revised price for the extension of this Contract by 6 (six) months prior to the end of the Term, then the Parties expressly agree that the Operating Fees to the extended term shall be the Operating Fees payable for the immediately preceding year escalated by 5% (five percent).

4.2 **Authorization to Proceed**

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

5.0 **STAFFING AND AUTHORITY**

5.1 **Contractor's Staff**

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

- 5.1.2 All personnel engaged in the performance of the services shall be qualified to perform, licensed to the extent required by Applicable Law and sufficiently trained & experienced in the duties to which they are assigned and shall satisfy the standards of performance provided in this Contract. Contractor shall demonstrate that the personnel provided under this Contract are properly trained, competent to perform the work assigned and are aware of the HES Policy.
- 5.1.3 Contractor shall provide experienced and qualified operation and maintenance personnel required during Commissioning Tests and Completion of EPS.
- 5.1.4 The Contractor shall be responsible for maintaining strict discipline and good order amongst its personnel and those of its Subcontractors at all times.
- 5.1.5 Contractor shall bear the entire responsibility, liability and risk relating to coverage of Contractor Staff under Applicable Law including but not limited to Workmen's Compensation Act, 1923, Industrial Disputes Act, 1947, Maternity Benefits Act, 1961, Employees' Provident Funds and Miscellaneous Provisions Act, 1952, Contract Labour (Regulation and Abolition) Act, 1970, Employees State Insurance Act, 1948, Factories Act, 1948 and any other relevant act/regulations as will be applicable during the Term.
- 5.1.6 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.
- 5.1.7 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.
- 5.1.8 It shall be responsibility of Contractor to take care of the boarding, lodging, travel arrangements, immigration clearance and visas for all Contractor Staff engaged in providing services.
- 5.1.9 Contractor shall arrange local transportation facility for all Contractor Staff.
- 5.1.10 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 project manager (such Person the "**Project Manager**") who shall be assisted by the other Owner's Staff. The Owner may, from time to time, appoint any other Person as the Project Manager in place of the Person previously so appointed, and shall provide not less than 7 (seven) days notice of the name of such other Person to the Resident Project Manager.
- 5.3 **General Personnel Requirement**

- 5.3.1 Contractor shall employ Contractor Staff including labour in sufficient numbers to ensure workmanship of the degree specified in this Contract and to the satisfaction of the Owner. The Contractor shall employ labour in sufficient numbers to maintain the required rate of progress and workmanship of the degree specified in the Contract and to the satisfaction of the Owner.
- 5.3.2 The Contractor is expected to employ only such Persons, for the performance of services, who have requisite experience of particular work.
- 5.3.3 The Contractor shall employ only qualified and medically fit Persons who are not below 18 (eighteen) years of age.
- 5.3.4 No female staff or labour shall be employed for night shifts or after darkness.
- 5.3.5 Contractor's Staff shall wear identification badges at all times while on work at Site.
- 5.3.6 Contractor shall employ local people under unskilled workmen category.
- 5.3.7 Local people shall be given preference by Contractor in employment of staff and skilled workmen wherever local people with requisite skills are available.
- 5.3.8 Contractor shall comply with labour rules, regulations and statutes as specified in Article 16.0 (Applicable Labour Laws).
- 5.3.9 All Contractor Staff shall be considered employees of Contractor only and Owner shall have no relation whatsoever with the Contractor Staff.
- 5.3.10 For smooth functioning, the Contractor shall ensure that requisite number of the Contractor Staff shall be fluent in the local language of India spoken at the Site.
- 5.4 **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 Site. The Owner shall be at liberty to object to the presence of any Contractor Staff at the Site if, in the opinion of the Owner, such Person's conduct is inappropriate or such Person is incompetent or negligent or otherwise undesirable or if there is malfeasance in the conduct of such Person's duties or responsibilities to be performed at Plant or if, in the opinion of the Owner, the presence of such Person poses a threat towards safety & security of the Plant or Project 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 Scope of Work obligations of the Contractor under this Contract, pay to the Contractor, the contract price comprising

of the amounts specified in Part A of Annexure 1 (Contract Price), subject to the terms of this Article 6.0 and Article 7.0 (Payment Terms) below ("**Contract Price**").

6.1.2 The Contract Price is full compensation to Contractor for Scope of Work and faithful and satisfactory performance of all its obligations under this Contract in compliance with all terms and conditions of this Contract. The Contract Price as payable hereunder shall cover all costs, expenses, overheads, etc., to be incurred by the Contractor and profit margin for the performance of all its obligations under this Contract including but not limited to costs and expenses of Scope of Work. No additional claim or payment would be admissible in this regard. Contract Price shall be regulated and paid in the manner described in this Article 6.0 and Article 7.0 (Payment Terms).

6.2 **Implementation Fees**

6.2.1 The Owner shall pay to the Contractor during Implementation Phase, a part of Contract Price specified in Part C of Annexure 1 (Contract Price), as the implementation fees (the "**Implementation Fees**") for performance of its complete scope of Services and obligations during Implementation Phase under this Contract.

6.3 **Operating Fees**

6.3.1 The Owner shall pay to the Contractor during the Operational Phase, a part of Contract Price specified in Part D of Annexure 1 (Contract Price), as operational phase fees (the "**Operating Fees**") for performance of its complete Scope of Work and obligations during operational phase under this Contract. For each Operating Year, the fee payable shall be equivalent to such Operating Fees which is calculated on a pro rata basis based on the number of days in such operating Year (the "**Yearly Operating Fees**")

6.4 **Price Basis**

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

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

6.4.2.1 **Cost of vendor registration fees for participation in the bid and therefore the bidder shall not charge a penny from the vendors of OTPC for vendor registration and participation in EPS.**

6.4.2.2 Cost of providing tools & plants, scaffoldings;

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

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

- 6.4.2.5 Out-of-pocket costs paid or reimbursed for travel and subsistence during said periods of travel of the Contractor Staff;
- 6.4.2.6 Cost of evaluation, selection, employment, relocation, and training of Contractor's Staff;
- 6.4.2.7 All office and administrative expenses (including stationery, telephone, fax, printer, scanner, photocopier, etc.);
- 6.4.2.8 Cost of uniform, personal safety equipment, etc. for Contractor's Staff;
- 6.4.2.9 Premium of insurance policies and deductible amounts for all insurance policies provided by the Contractor, as per Article 11.0 (Insurance);
- 6.4.2.10 All costs and expenses associated with records management, including but not limited to preparation of materials, equipments, reproduction and storage expenses;
- 6.4.2.11 Cost of transporting the systems, equipments, spares, construction materials, tools & plants, etc to the Site;
- 6.4.2.12 Cost to test, evaluate and correct equipment failure;
- 6.4.2.13 Cost of development of procedures and manuals;
- 6.4.2.14 Cost of training Owner's personnel;
- 6.4.2.15 Cost of legal, payroll and accounting services with respect to the Contractor Staff, and accounting and legal matters related to the administration of this Contract; and
- 6.4.2.16 Any and all other costs and expenses for performing services, not specifically set forth herein but incurred by the Contractor for fulfillment of its overall obligation covered under this Contract.
- 6.4.3 The Contract Price shall include mobilization, demobilization and site establishment charge which shall not be subject to adjustment based upon any additions or deletions to the Contract Price.
- 6.4.4 The Contract Price (including the break-up) specified under Annexure 1 (Contract Price), shall apply regardless of when the services are performed, during day or night or a holiday.
- 6.4.5 Contract Price shall include all costs associated with and relating to, performing services in accordance with all Applicable Laws as well as Owner's HES Policy and security regulations.
- 6.4.6 Failure by Contractor to fully assess the Scope of Work, as specified in this Contract shall not be considered as a basis for variations to the Contract Price or any part thereof such as pricing of individual items (unit prices) and time and material rates for changes.

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

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

6.4.9 For the avoidance of doubt, it is clarified that the Contract Price includes any and all direct, indirect and ancillary charges, cess, costs and expenses of whatsoever nature, taxes on the Contractor, applicable indirect taxes under this Contract, all profit, license, royalty and fees, accessories.

7.0 **PAYMENT TERMS**

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

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

7.3 **Payment Term: Implementation Fees**

7.3.1 Eighty percent (80%) of the Implementation Fees shall be released on pro-rata basis as per following billing break-up, after completion of services certified by Owner within 30 days of submission of invoice duly certified by Project Manager:

	<u>Activity</u>	<u>% of Implementation Fees</u>
7.3.1.1	Successful completion of Analysis Phase	10%
7.3.1.2	Successful completion of Design Phase	15%
7.3.1.3	Successful completion of Development Phase	15%
7.3.1.4	Successful completion of Implementation Phase	20%
7.3.1.5	Completion of EPS & Training	20%

7.3.2 Twenty percent (20%) of the Implementation Fees shall be released by the Owner after Go-Live of EPS by Owner and submission of as-implemented documents, test reports & certificates and Operation & Maintenance Manuals within 30 days of submission of Invoice and supporting documents.

7.4 **Payment Term: Operational Phase Fees**

- 7.4.1 Subject to the receipt of the Performance Bank Guarantee by the Owner as provided in Article 22.0 (Performance Bank Guarantee), the Yearly Operating Fee shall be paid monthly calculated on a *pro rata* basis based on the number of days in such month. Each such monthly installment shall be paid within 30 (thirty) days of receipt by the Owner of Invoice.
- 7.5 **Mode of Payment**
- 7.5.1 Payment shall be made either by cheque or in such other manner as the Parties may mutually agree in writing. All bank charges shall be to the account of Contractor.
- 7.5.2 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.
- 7.5.3 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 43.0 (Settlement of Disputes) of this Contract.
- 8.0 **TAXES, DUTIES & LEVIES**
- 8.1 The Contractor shall bear and pay all personal, property and corporate taxes (including withholding tax, if applicable), duties, levies and its related charges assessed on the Contractor (including surcharge on income tax), its Subcontractors (or their contractors) or their employees by a Government Agency in connection with the scope of Works and performance of its obligations under this Contract ("**Direct Tax**"). For the avoidance of any doubt, it is clarified that all Direct Taxes by whatever name called, arising on the income of the Contractor, its Subcontractors (or their contractors) or their employees, shall be borne by the Contractor. The Contractor shall provide the requisite information/documents to the Owner (including its permanent account number), so as to enable the Owner in complying with its obligations as per Applicable Law.
- 8.2 The Contract Price indicated above are after taking all the benefits of GST input tax credit by the Contractor. The Contract Price is inclusive of all indirect taxes, duties, levies, cesses and surcharges as applicable on the Effective Date, the description and rates of which and the corresponding amounts included in the Contract Price are specified in Part B of Annexure 1 (Contract Price) ("**Indirect Taxes**"). Only such Indirect Taxes shall be paid/ reimbursed by Owner to Contractor as part of the Contract Price against documentary evidence of payment by Contractor thereof.
- 8.3 The Contractor acknowledges and agrees that the description, rates and corresponding amounts of Indirect Tax included in the Contract Price, as specified in Part B of Annexure 1 (Contract Price), has been provided by the Contractor on the Effective Date. The Owner's liability to reimburse/pay the Contractor in respect of any Indirect Tax is restricted to the extent such Indirect Tax is indicated in Part B of Annexure 1 (Contract Price). In the event this information is subsequently found to be incomplete, incorrect or misleading, the Owner shall have no liability to reimburse/pay the Contractor the excess amounts with respect to any Indirect Tax, if such amounts are finally levied / imposed / recovered by any Government Agency on / from the Contractor.

- 8.4 Any statutory variation (upward or downward) in Indirect Taxes, as specified in Part B of Annexure 1 (Contract Price) within Time for Completion shall be to the account of the Owner. The Contractor shall submit documentary evidence of above variation along with his invoice. As per section 171 of the Central Goods and Services Tax Act, 2017, "Any reduction in rate of tax on any services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices." Hence, the Contractor shall ensure to pass the benefit of reduced prices to OTPC. Further, price quoted by the Contractor is subject to scrutiny under the above provisions.
- 8.5 Imposition of new Indirect Taxes by the Central or State government within the Time for Completion shall be to the Owner's account. However, any increase in the rates of Indirect Taxes or imposition of new Indirect Taxes, beyond the Time for Completion shall be to the Contractor's account and any benefit of statutory downward revision in Indirect Taxes beyond the Time for Completion shall be passed on by the Contractor to the Owner.
- 8.6 In the event of a change in the law post signing of the contract, Owner and the Contractor agree to renegotiate the Contract Price such that the net impact of the change in law gets factored in the price.
- 8.7 In the event that the Owner is required to pay the income tax/withholding tax applicable on Scope of Work and the performance of obligations under this Contract whether outside India or within India, the Owner shall deduct such taxes from the gross value of the Contractor 's invoice and remit the net amount taking into account such deductions. However, the Owner shall furnish a TDS certificate to this effect in favour of the Contractor so as to enable it to take the tax credit.
- 8.8 All taxes, duties and levies applicable outside India on the performance of obligation under this Contract whether outside India or within India shall be included in the Contract Price. The Owner shall have no liability whatsoever in this regard. In case any credit, refund or other benefit is denied or delayed to OTPC due to any non-compliance by the Contractor (such as failure to upload the details on the GSTN portal, failure to pay GST to the Government) or due to non-furnishing or furnishing of incorrect or incomplete documents by the Contractor, the Contractor would reimburse OTPC the loss to OTPC including the tax loss, interest and penalty.
- 9.0 **TIME FOR COMPLETION OF EPS**
- 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 time for Completion of EPS shall be 60 (sixty) days from the Effective Date ("**Time for Completion**"). Date of completion of Scope of Work shall be the date on which the Owner certifies that the Scope of Work stands complete.
- 9.3 The Contractor shall successfully provide e-procurement services for a continuous period of 60 (sixty) months from the date of Go-Live of E-Procurement System or termination of this Contract.

- 9.4 If the Contractor fails to complete the Scope of Work within the Time for Completion, the Owner may cancel the Contract in part or full at his own discretion and get such balance works executed through an alternative agency at Contractor's risk and cost, in which case the Contractor shall be liable to pay the Owner not only the difference between the price at which works have been actually executed and the price calculated at the unit price set out in the Contract but also any other loss or damage the Owner may suffer.
- 9.5 Provided that the Owner, at its sole discretion, may extend the time period for completion of work, subject to imposition of Liquidated Damages or other terms as may be considered appropriate by the Owner.
- 9.6 The Contractor shall promptly notify the Owner of any event or conditions which might delay the completion of work within Time for Completion and the steps being taken to remedy or mitigate such situation, including on its own initiative and at its own expense, increasing or supplementing the supervision, procurement and manufacturing, transportation, installation and testing, to such an extent so as to restore the lost sequence or progress and provide assurance of compliance with the Time for Completion under this Contract.
- 9.7 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.
- 10.0 **LIQUIDATED DAMAGES**
- 10.1 The Owner and the Contractor agree that, because of the unique nature of the Scope of Work, it is impracticable or infeasible to determine actual damages and loss that would be incurred by the Owner as a result of the Contractor's failure to complete the work within Time for Completion and shortfall in guaranteed performance. It is further understood and agreed by the Parties that any sums which would be payable by Contractor under this Article 10.0, are in the nature of liquidated damages, and not a penalty, and are fair and reasonable estimate of damages and loss which Owner would suffer due to such failure of Contractor.
- 10.2 **Liquidated Damages for Delay in Completion of EPS**
- 10.2.1 In case of failure of Contractor to complete the work within Time for Completion specified in Clause 9.2, the Contractor shall pay to the Owner liquidated damages as follows:
- For every 1 (one) week (or part thereof) delay in completion of work for reasons not attributable to the Owner, 0.5% (zero decimal five percent) of Implementation Fees shall be paid as liquidated damage by the Contractor to the Owner on a *pro rata* basis.
- 10.2.2 The total amount of liquidated damages payable by the Contractor on account of delay in completion of work under Clause 10.2 shall be limited to 10% (ten percent) of the implementation Fees.

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

10.3.1 In case of failure of Contractor to achieve the guaranteed performance for the EPS as set out in Annexure-2 during Operational Phase, the Contractor shall pay to the Owner liquidated damages as follows:

For every 0.1% (zero decimal one percent) (or part thereof) decrease in guaranteed availability of the EPS, 0.5% (zero decimal five percent) of Yearly Operating Fees for the relevant Operating Year shall be paid as liquidated damage by the Contractor to the Owner on a *pro rata* basis.

10.3.2 In case the e-procurement event is cancelled due to any fault, technical fault / failure on the part of the Contractor or for any reason attributable to Contractor, the Contractor shall pay to the Owner liquidated damages as follows:

For every 1 (one) e-procurement event cancellation through EPS, 5% (five percent) of Yearly Operating Fees for the relevant Operating Year shall be paid as liquidated damage by the Contractor to the Owner on a *pro rata* basis.

10.3.3 In case the e-procurement event is delayed due to any fault, technical fault / failure on the part of the Contractor or for any reason attributable to Contractor, the Contractor shall pay to the Owner liquidated damages as follows:

For every 1 (one) week (or part thereof) delay in conducting e-procurement event through EPS, 0.5% (zero decimal five percent) of Yearly Operating Fees for the relevant Operating Year shall be paid as liquidated damage by the Contractor to the Owner on a *pro rata* basis.

10.3.4 The total amount of liquidated damages payable by the Contractor on account of shortfall in guaranteed performance under Clause 10.3 shall be limited to 10% (ten percent) of the Yearly Operating Fees for the relevant Operating Year.

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

10.5 Owner may recover the liquidated damages payable by the Contractor from any amounts due to it or which may subsequently become due to it under this Contract or any other contract. Applicable GST on Liquidated Damages shall have to be borne by the Contractor. Accordingly, the Liquidated Damages shall be recovered from the Contractor along with applicable GST.

10.6 For the avoidance of doubt it is clarified, that the Owner's right to receive liquidated damages in accordance with this Article 10.0 is without prejudice to any other rights the Owner may have under Applicable Law or otherwise in connection with the breach of any other obligations hereunder by the Contractor.

11.0 **INSURANCE**

11.1 The insurances described below in Clause 11.3 shall be obtained and maintained by the Contractor and the insurances described below in Clause 11.2 shall be obtained and maintained by the Owner, with the assistance of the Contractor if so required.

11.2 **Owner's Insurance Obligation**

11.2.1 Without prejudice to its obligations under this Contract or otherwise under Applicable Law, the Owner, at its cost, shall arrange, secure and maintain the following insurance coverage for the Plant and its personnel but excluding EPS during the Term:

11.2.1.1 industrial all risk insurance policy for Plant and machinery breakdown covering the full value of the Plant; and

11.2.1.2 third party liability insurance for an amount as deemed adequate in the opinion of the Owner for a plant having capacity similar to the capacity of the Plant and covering risks of damage to personnel and property.

11.3 **Contractor's Insurance Obligation**

11.3.1 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:

11.3.1.1 **Erection All Risk Insurance Policy**

11.3.1.2 This insurance policy shall protect against all loss or damage to the equipment during handling, transportation, storage, erection, testing, putting into satisfactory operation and all activities to be performed till the successful Completion of EPS and Final Acceptance of EPS by the Owner

11.3.1.3 The perils required to be covered under the erection all risk insurance shall include, but shall not be limited to fire and allied risks, miscellaneous accidents (erection risk), loss or damage in transit, theft, pilferage, riot and strike and malicious damages, civil commotion, weather conditions, accidents of all kinds, risk of terrorism, etc.

11.3.1.4 The sum insured under such insurance policy must be on replacement value basis but in no case less than 110% (one hundred and ten percent) of the full replacement value of the materials installed.

11.3.1.5 **Workmen's Compensation Insurance**

11.3.1.5.1 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.

11.3.1.6 Comprehensive Automobile Insurance

11.3.1.6.1 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 following minimum amounts subject to the Motor Vehicles Act, 1988:

- a. Fatal Injury: Rs 1,000,000 (Rupees One Million only) each Person & Rs 10,000,000 (Rupees Ten Million only) each occurrence.
- b. Property Damage: Rs. 10,000,000 (Rupees Ten Million only) each occurrence.

11.3.1.7 Comprehensive General Liability Insurance

11.3.1.7.1 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 12.0 (Indemnity) of this Contract. This insurance policy shall cover liability for a minimum amount of [Any one accident: Any one year: Rs 10,000,000 (Rupees Ten Million only): Rs 10,000,000 (Rupees Ten Million only)].

11.3.1.8 Group Personnel Accident Policy

11.3.1.8.1 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 [Any one accident: Any one year: Rs 10,000,000 (Rupees Ten Million only): Rs 10,000,000 (Rupees Ten Million only)].

11.3.1.9 Marine Insurance

11.3.1.9.1 This comprehensive cargo and transport insurance policy shall protect the materials during the transportation of the same to the Site against all risks of loss or damage normally insurable including war, strikes, riots and civil commotion from the time materials are ready for being loaded on to the relevant means of transportation at the Loading Point until arrival at the Site (warehouse to warehouse insurance). The sum insured under such insurance policy must be on replacement value basis but in no case less than 110% (one hundred and ten percent) of the full replacement value of the materials transported including freight and insurance charges.

The policy conditions are expected to include:

- (a) institute cargo clause (A);
- (b) institute transit (A) clause;

- (c) strike, riot and civil commotion clause;
- (d) institute classification clause;
- (e) termination of transit clause (terrorism);
- (g) concealed damage clause 180 (one hundred and eighty) days;
- (h) waiver of subrogation in favour of principal;
- (i) cargo concealed damage 50/50 clause;
- (j) loss payee clause in favour of the Owner; and
- (k) payment on account clause.

- 11.3.1.9.2 The Contractor or its Subcontractors shall comply with all warranties stipulated by its insurers in the cargo transit policy.
- 11.3.1.9.3 The insurance shall commence from the time the materials are loaded on to the vehicle and/or provided to a carrier including during loading and shall be effective up to the delivery of such material to the Site, so as to completely insure the Owner from any losses arising during transportation of materials.
- 11.3.1.9.4 Any replacement/repairs due to damage/loss to the materials, during transit shall be carried out by the Contractor at its own cost and expense. Such replacement/repairs will be undertaken by the Contractor irrespective of the raising of and/or settlement of such insurance claims in this regard. In the event of any damage during transit, raising and settlement of insurance claims (including follow-up with insurance company), shall be the sole responsibility of the Contractor, after obtaining a 'no objection certificate' from the Owner in this regard. The insurance claim towards such damage/loss shall be settled by the Contractor directly with the insurance company and the Contractor shall be the beneficiary of the settlement against all such insurance claims.
- 11.3.2 The hazards to be covered will pertain to all the services and the areas where the Contractor and the Contractor Staff have to perform services pursuant to this Contract.
- 11.3.3 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 Engineering & Construction Practices.
- 11.3.4 Any deductibles or claims under recovery from the insurance providers shall be to the account of the Contractor.
- 11.3.5 The form and the limit of such insurance, together with the underwriter in each case should be acceptable to the Owner. However, irrespective of such acceptance the responsibility to maintain adequate insurance coverage at all times during the Term

shall be of the Contractor alone. The Contractor's failure in this regard shall not relieve it of any of its contractual responsibility and obligation. If the Contractor does not maintain the insurance coverage specified in this Clause 11.3, the Owner shall have right, but not the obligation, to provide for such insurance coverage at the Contractor's risk and cost.

11.3.6 At least 15 (fifteen) days prior to procuring the insurance policies, the Contractor shall submit to the Owner for its approval list of the insurance and reinsurance companies from which it intends to procure such policies.

11.3.7 The Contractor shall, promptly after having procured any such policy or policies, provide Owner with a certificate of insurance and shall notify Owner in writing of any changes therein from time to time or, prior to so doing, of the cancellation of any such policy or policies. Contractor shall provide evidence satisfactory to the Owner of payment of the premium under each of these policies.

11.3.8 The Contractor shall ensure that the insurances maintained by the Contractor shall contain a clause to the effect that the insurers have agreed to assign the rights to the Owner and shall provide for 30 (thirty) days written notice to be given to Owner prior to any cancellation, non-renewal or material modification of such policies.

11.3.9 The Contractor shall ensure that all insurance policies to be taken out by the Contractor pursuant to this Clause 11.3 shall contain such terms, provisions and endorsements as may be required by the Lenders.

11.3.10 The insurance covers to be taken by Contractor shall be in the joint names of Owner, Lenders and Contractor. Contractor shall, however, be authorized to deal directly with insurance company or companies and shall be responsible in regard to maintenance of all insurance covers. All insurers's right of subrogation against such co-insured for losses or claims arising out of the performance of the Contract shall be waived under such policies.

11.3.11 The Contractor shall ensure that the Owner and the Lenders, or any other Person designated by the Owner, is named as the first loss payee in all insurance contracts effected by the Contractor pursuant to this Clause 11.3.

11.3.12 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.

12.0 **INDEMNIFICATION**

12.1 **Indemnification by Contractor**

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

12.1.1.1 By reason of Contractor's actual or asserted failure to comply with any Applicable Law or any provision of this Contract. If the Contractor fails to comply with the requirements mentioned above and as a result fines, penalties or other assessments

are imposed upon either the Contractor or the Owner by any Government Agency under any Applicable Law, then the Contractor shall be liable to pay all such fines, penalties or other assessments;

- 12.1.1.2 From actual or asserted violation or infringement of rights in any patent, copyright, proprietary information, trade secret or other property right caused or alleged to be caused by the use of materials, equipment, methods, processes, designs or information furnished by Contractor or its Subcontractors in performance of the services. Should any services provided by Contractor become, or appear likely to become, the subject of a claim of infringement of a patent, copyright or other property right, Contractor shall, at the Owner's option, either procure for the Owner the right to continue using such services, replace same with equivalent, non-infringing services, or modify the services so that the use thereof becomes non-infringing, provided that any such modification or replacement is of equal quality and provides equal performance as provided by the infringing services;
- 12.1.1.3 From injury to or death of any Person (including employees of the Owner, Contractor and Contractor's Subcontractors or any third party) or from damage to or loss of property (including the property of the Owner or a third party) arising directly or indirectly out of this Contract or out of any acts of omission or commissions of Contractor or its Subcontractors. Contractor's indemnity obligations hereunder include claims and damages arising from non-delegable duties of the Owner or arising from use by Contractor of Plant, equipments, tools, scaffolding or facilities furnished to Contractor by the Owner; or
- 12.1.1.4 From present or future Environmental Claims directly or indirectly related to or arising out of the actual or alleged existence, generation, use, collection, treatment, storage, transportation, recovery, removal, discharge or disposal of Hazardous Material at the Plant and/or adjacent areas solely to the extent arising out of the gross negligence or Willful Misconduct of the Contractor, its Subcontractors or sub-vendors in the performance of the services under this Contract; provided, however, that nothing contained herein shall be construed as requiring Contractor to take any corrective action with respect to any Hazardous Material in existence prior to the Effective Date.
- 12.1.2 Contractor's indemnity obligations shall apply regardless of whether the Owner Indemnified Party was concurrently negligent, whether actively or passively, excepting only where the Losses are caused solely by the negligence or Willful Misconduct of, or by defects in design furnished by the Owner Indemnified Party. Contractor's defense and indemnity obligations shall include the duty to reimburse any attorneys' fees and expenses incurred by the Owner Indemnified Party for legal action to enforce Contractor's indemnity obligations.
- 12.1.3 With respect to claims by employees of Contractor or its Subcontractors on the Owner Indemnified Party, the indemnity obligations created under this Clause 12.1 shall not be limited by the fact of, amount, or type of benefits or compensation payable by or for Contractor, its Subcontractors or suppliers under any workers' compensation, disability benefits, or other employee benefits acts or regulations, and Contractor waives any limitation of liability or immunity arising from workers' compensation or such other acts or regulations.

12.1.4 The Owner shall be entitled to retain from payments otherwise due to Contractor such amounts as shall reasonably be considered necessary to satisfy any claims, suits or liens for damages that fall within Contractor's indemnity obligations under this Clause 12.1, until such claims, suits or liens have been settled and satisfactory evidence to that effect has been furnished to the Owner.

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

12.2 **Indemnification by Owner**

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

12.3 **Defense of Claims**

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

12.3.2 Notwithstanding the provisions of Clause 12.3.1, unless and until the indemnifying Party acknowledges in writing its obligation to indemnify the indemnified Party and assumes control of the defense of a claim, suit, action or proceeding in accordance with Clause 12.3.1, the indemnified Party shall have the right, but not the obligation, to contest, defend and litigate, with counsel of its own selection, any claim, action, suit or proceeding by any third party alleged or asserted against such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and the reasonable costs and expenses thereof shall be subject to the indemnification obligations of the indemnifying Party hereunder.

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

without the prior written consent of the other indemnifying Party, the other indemnifying Party shall be excused from any obligation to indemnify the indemnified Party making such settlement or compromise in respect of such settlement or compromise.

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

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

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

13.0 **LIMITATION OF LIABILITY**

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

13.2 With the exception of those provisions of this Contract providing for the payment of liquidated damages, neither the Contractor nor the Owner shall be liable to the other as a result of any action or inaction under this Contract or otherwise for any special, indirect, incidental or consequential losses such as but not limited to loss of profit, loss of revenue, loss of use of the Plant, loss of power, loss of opportunity, loss of goodwill, loss of contracts or cost of capital. It is hereby agreed that this limitation of liability shall not apply in respect of claims for which either Party is indemnified under Article 12.0 (Indemnification) or covered by the insurance under Article 11.0 (Insurance). Nothing in this Article 13.0 shall reduce the Contractor's liability for liquidated damages in accordance with the provisions of this Contract.

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

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

14.0 **SUSPENSION**

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

- 14.2 Upon receiving any such notice of suspension, Contractor shall promptly suspend further performance of this Contract to the extent specified, and during the period of such suspension shall take proper care of and protect all equipments at the Site, inventories in stores, supplies and equipment Contractor has with it for performance of its obligations under this Contract. Upon the request of the Owner, the Contractor shall promptly deliver to the Owner copies of outstanding Subcontracts of Contractor and shall take such action with respect to such Subcontracts as may be directed by the Owner. Contractor shall use its best efforts to mitigate costs associated with suspension. Owner may, at any time, withdraw the suspension of performance of the Contract as to all or part of the suspended obligations by written notice to the Contractor specifying the effective date and scope of withdrawal, and Contractor shall resume diligent performance of its obligations for which the suspension is withdrawn on the specified effective date of withdrawal.
- 14.3 The Time for Completion shall be extended for a period equal to the duration of the suspension provided the suspension is not due to some default on the part of Contractor.
- 14.4 If such suspension continues for a continuous period of 180 (one hundred and eighty) days, at the end of such period, Contractor or Owner may, by a further 30 (thirty) days prior written notice, terminate the Contract and in such case Owner shall pay to the Contractor costs in accordance with Clause 41.6 of this Contract as if such termination was a termination under Clause 41.4 of this Contract.
- 15.0 **CHANGE IN CONTROL**
- 15.1 From the Effective Date no change in Control of the Contractor shall be permitted without the prior written consent of the Owner.
- 16.0 **APPLICABLE LABOUR LAWS**
- 16.1 The Contractor shall comply with all the rules and regulations under the Applicable Law during the performance of its obligations under this Contract.
- 16.2 The Contractor shall comply with all Applicable Laws with respect to employment of labour (issued by the Central Government or the State Government as the case may be).
- 16.3 The Contractor shall *inter alia* comply with the provision of the Payment of Wages Act, 1936, Minimum Wages Act, 1948, Employees Liability Act, 1938, Workmen's Compensation Act, 1923, Industrial Disputes Act, 1947, Maternity Benefits Act, 1961, Employees' Provident Funds and Miscellaneous Provisions Act, 1952, Contract Labour (Regulation and Abolition) Act, 1970, Inter State Migrant Labour Act, 1979 and Employees State Insurance Act, 1948 or any modification thereof or any other law relating thereto and rules made there under from time to time.
- 16.4 The Contractor shall obtain all Permits required under Applicable Law in connection with the Contractor Staff employed by it for performing the services including but not limited to licenses required under Contract Labour (Regulation and Abolition) Act, 1970 and rules made there under; the registration under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and obtaining the Employee

Provident Fund (EPF) Code. All registration and statutory inspection costs and expenses (including payment of fees), if any, in respect of the performance of the Services pursuant to this Contract shall be to the account of the Contractor.

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

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

16.7 The Contractor shall submit to the Owner on the 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.

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

16.9 In the event of the Contractor committing a default or breach of any of the provisions of the Applicable Law as mentioned in this Article 16.0, as amended from time to time, or in furnishing any information or submitting or filling any form, register/slip under the provisions of such Applicable Law, the Owner shall be at liberty to take recourse to any action it may deem fit, under the circumstances, to protect its own interest. Further, all amounts as may become due for payment to the concerned authorities/agencies on account of such defaults or breach shall be settled by the Owner after recovering the same from the Contractor. The Owner shall be entitled to deduct such amounts from the Contract Price payable to the Contractor under this Contract.

17.0 **SUBCONTRACTING**

17.1 Contractor shall not Subcontract any portion of the Contract.

18.0 **LIEN**

18.1 To the full extent permitted by Applicable Law, Contractor hereby waives and releases any and all rights of unpaid seller's lien, all rights of mechanic's lien, and similar rights for payment for goods, service, labor, equipment, or materials furnished by the Contractor in performance of the obligations hereunder and granted by Applicable Law to Persons supplying materials, equipment, goods, performing services and bringing things of value to improve or modify land or structures hereon, and other things, which Contractor may have against the goods supplied, against property belonging to the Owner under this Contract.

- 18.2 Contractor shall at all times promptly pay for all services, materials, equipment and labor used or furnished by Contractor in the performance of the obligations under this Contract and shall, to the fullest extent allowed by Applicable Law, at its expense keep all properties belonging to the Owner, including the materials after the title has been transferred to the Owner, free and clear of any and all of the above mentioned liens and rights of lien arising out of services, labor, goods, equipment or materials furnished by Contractor or its employees, suppliers or Subcontractors in the performance of the obligations under this Contract. If Contractor fails to release and discharge any lien or threatened lien against the property of the Owner arising out of performance of the obligations under this Contract within seven (7) days after receipt of written notice from the Owner to remove such claim of lien, the Owner may, at its option, discharge or release the claim of lien or otherwise deal with the lien claimant, and Contractor shall pay the Owner any and all costs and expenses of the Owner in discharging/releasing such lien, including reasonable attorneys' fees incurred by the Owner.
- 18.3 The Owner shall have lien on all materials and equipments including those of the Contractor brought to the Site for the purpose of construction, erection, testing and commissioning of the EPS. The Owner shall continue to hold the lien on all such equipment throughout the period of Contract. No material brought to the Site shall be removed from the Site by the Contractor and/or its Sub-contractor(s) without the prior written approval of the Owner.
- 19.0 **FORCE MAJEURE**
- 19.1 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:
- 19.1.1 Natural phenomena, including but not limited to floods, droughts, earthquakes, pandemics, epidemics, cyclone, lightning, storm, plague;
- 19.1.2 Lawful strikes and lawful lockouts and other generalized labour action occurring within India (excluding such events which are Site specific and attributable to Contractor);
- 19.1.3 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;
- 19.1.4 Radioactive contamination or ionising radiation or chemical contamination originating from a source in India or resulting from another Force Majeure event;
- 19.1.5 Fire or explosion, except as may be attributable to the Contractor;
- 19.1.6 An act of God;

- 19.1.7 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.
- 19.2 For avoidance of doubt, it is clarified that lack of funds shall not be construed as an event of Force Majeure.
- 19.3 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.
- 19.4 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.
- 19.5 **Obligation to cure Force Majeure Diligently**
- 19.5.1 If either Party claims an event of Force Majeure, then the Party claiming the event shall:
- 19.5.1.1 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 19.0 by giving reasons of such event, expected duration of such event and probable impact of such event on the performance of its obligations hereunder;
- 19.5.1.2 Exercise all reasonable efforts to continue to perform its obligations hereunder;
- 19.5.1.3 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;
- 19.5.1.4 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;
- 19.5.1.5 Furnish weekly reports with respect to its progress in overcoming the adverse affects of such event or circumstances; and
- 19.5.1.6 Provide prompt notice to the other Party of the cessation of the event or condition giving rise to its excuse from performance.
- 19.5.2 The affected Party shall not be obliged, when complying with its obligations under this Clause 19.5, to take any steps which would not be in accordance with Good Engineering & Construction 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.

19.6 So long as the affected Party has at all times since the occurrence of the Force Majeure event complied with the obligations of Clause 19.5 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 19.6 to the extent that such failure or delay would have nevertheless been experienced by the affected Party had the Force Majeure event not occurred.

19.7 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 41.3.2.

20.0 **REPRESENTATIONS AND WARRANTIES**

20.1 The Contractor represents and warrant that:

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

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

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

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

20.1.5 The Contractor has reviewed or examined and has the requisite knowledge and understanding with respect to the Site, the Technical Specifications and all other factors and conditions affecting the performance of the Contractor's obligations under this Contract (including labour conditions in India) and accepts the same and agrees that the Site, the battery limits and such specifications, information,

requirements, obligations, rules and procedures are satisfactory and will not prevent or impair or have any adverse effect on the performance by the Contractor of its obligations under this Contract;

20.1.6 It is fully experienced and properly qualified to perform the services provided for herein, and that it is properly equipped, organized and financed to perform such services;

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

20.2 The Owner represents and warrant that:

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

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

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

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

21.0 **WARRANTY AND WARRANTY PERIOD**

21.1 The Contractor hereby warrants to the Owner that the materials shall be supplied and services shall be performed in a manner consistent with the terms of this Contract, all specifications, drawings and standards referred to in this Contract (including under the Technical Specifications) or thereafter furnished by Owner, in accordance with Prudent Operating & Maintenance Practices and Applicable Law (the "**Warranty**");

21.1.1 using the skill, care and diligence to be expected of appropriately qualified and experienced professional engineers with experience in rendering services of a type,

- nature and complexity similar to the services in the power plant construction industry;
- 21.1.2 using the standards of all workmanship and fabrication which conform in all respects to the standards specified under the Technical Specifications;
- 21.1.3 shall be first-class in every particular aspect and free from defects and deficiencies in workmanship; and
- 21.1.4 using means, methods and techniques required for the performance of the services which are appropriate for the conditions and materials involved.
- 21.2 Contractor shall be liable for defects in workmanship of the Scope of Work for a period of 60 (sixty) months from the date of Completion of EPS and Go-Live of EPS by the Owner (the "**Warranty Period**").
- 21.3 Without limitation of any other rights or remedies of the Owner, if any defect in the materials supplied or services provided under this Contract in violation of the foregoing warranties arises within the Warranty Period, Contractor shall, upon receipt of written notice of such defect, at no cost to the Owner, promptly furnish replacement materials or parts thereof necessary to correct such defect or repair/modify the defective materials, so as to meet the specifications and promptly re-perform such non-conforming portion of the services and/or promptly furnish design and engineering, labour, equipment and materials necessary to correct such defect and cause the services to comply fully with the foregoing warranties.
- 21.4 If any replacement, repair or modification is of such a character which may affect the subsequent performance of the EPS or any part thereof, Owner may within 30 (thirty) days after such replacement, repair or modification give to the Contractor notice requiring that such further tests be conducted in respect of the relevant part as may be necessary to demonstrate the adequacy and efficacy of the replacement, repair or modification.
- 21.5 In the event Contractor shall have been notified of any defects in the services in violation of Contractor's foregoing warranties and shall fail to promptly and adequately correct such defects, Owner shall have the right to correct or to have such defects corrected at the account of Contractor, and Contractor shall promptly pay to the Owner the costs & expenses incurred in correcting such defects.
- 21.6 Contractor shall include, as a minimum, the foregoing Warranty requirements in any Subcontract that it places.
- 21.7 The acceptance of the materials and services, as the case may be, by the Owner shall in no way relieve the Contractor of its obligation under this Clause.
- 21.8 The Contractor shall be responsible for payment of all costs, expenses, taxes (including all indirect taxes) and duties incurred in the course of performance of its obligations under this Article 21.0.
- 22.0 **PERFORMANCE BANK GUARANTEE**

- 22.1 The Contractor shall, within 15 (fifteen) days of the Effective Date, provide to the Owner an unconditional and irrevocable performance bank guarantee of an amount equivalent to 10% (ten percent) of the Contract Price for due performance of its obligations under this Contract, with an initial validity of up to 90 (ninety) Days beyond the Warranty Period, a format of which is attached as Annexure 4 (Form of Performance Bank Guarantee) ("**Performance Bank Guarantee**").
- 22.2 If, at the time of discharge of Performance Bank Guarantee, the Warranty Period has been extended on any part of the services, pursuant to Clause 21.5 or if a dispute has been referred for resolution pursuant to Article 43.0 (Settlement of Disputes), the Contractor shall, on or before 21 (twenty one) days before the expiry of the Performance Bank Guarantee, issue an extension of the existing Performance Bank Guarantee or issue a separate security in the form of an unconditional and irrevocable bank guarantee for an amount proportionate to the Contract Price for such part, valid till the extended Warranty Period pursuant to Clause 21.5 or until final resolution of the dispute and payment of any amount due as a result thereof, as the case may be.
- 22.3 The Performance Bank Guarantee to be submitted by Contractor shall be from an Acceptable Bank and in the form acceptable to the Owner and as prescribed under Annexure 5 (Form of Performance Bank Guarantee).
- 22.4 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.
- 22.5 In the event the credit rating of the Acceptable Bank which has provided the Performance Bank Guarantee falls below AA+ by Credit Rating and Information Services India Limited or below AA by ICRA Limited or below AA+ by Credit Analysis and Research Limited or below BBB by Fitch Ratings, then the Contractor shall provide a fresh Performance Bank Guarantee from an Acceptable Bank which has a credit rating equal to or higher than the credit ratings mentioned in this Clause 22.5.
- 23.0 **COMPLETION AND GO-LIVE OF EPS**
- 23.1 **Commissioning Tests**
- 23.1.1 After successful completion of EPS, Contractor shall notify the same to Owner and seek approval of Owner for proceeding with preliminary acceptance tests specified in Technical Specifications (the "**Commissioning Tests**"). Contractor shall proceed with Commissioning Tests after receipt of approval from Owner.
- 23.1.2 Contractor shall submit to Owner for his approval, at least 15 (fifteen) days before scheduled start of Commissioning Tests, procedures for Commissioning Tests for EPS. Contractor shall proceed with Commissioning Tests of the EPS as per approved procedure for Commissioning Tests.

- 23.1.3 Owner shall inform Contractor about defects and deficiencies observed during Commissioning Tests. Contractor shall rectify such defects and deficiencies and re-perform Commissioning Tests for defective systems.
- 23.1.4 After successful completion of Commissioning Tests of the EPS, test protocols shall be signed jointly by Owner and Contractor.
- 23.2 After successful completion of Commissioning Tests of the EPS and signing of test protocols, Contractor shall notify the Owner about completion of EPS. After satisfying itself about satisfactory completion of EPS, within seven (7) days of receipt of notification from Contractor for successful completion of EPS, Owner shall issue a provisional acceptance certificate to the Contractor (the "**Completion of EPS**").
- 23.3 After successful Completion of EPS, Contractor shall successfully conduct first end-to-end e-procurement event in production server (the "**Go-live of EPS**").
- 23.4 After Go-Live of EPS, Contractor shall become responsible for care, custody, operation and maintenance of EPS and Owner shall issue final acceptance certificate to the Contractor within thirty (30) days of receipt of notice from Contractor (the "**Final Acceptance of EPS**").
- 24.0 **DELETED**
- 25.0 **CHANGE / VARIATION ORDER**
- 25.1 The Scope of Work shall be subject to change by additions, deletions or revisions thereto by Owner. Contractor shall be notified of such changes by providing additional and / or revised drawings, specifications, exhibits or other written notification.
- 25.2 Contractor shall inform Owner, within three (3) days of receipt of notification of change, about impact of notified change on Contract Price and / or Time for Completion. Within 10 days of notifying impact of change, Contractor shall submit to Owner:
- 25.2.1 price of performing change along with material take-off, detailed calculations of price for performing change and supporting documents, for cases requiring amendment of Contract Price; and
- 25.2.2 modified Time for Completion along with necessary justification, for cases requiring amendment of Time for Completion.
- 25.3 Contractor shall not perform changes in the Scope of Work notified in accordance with Clause 25.1 until Owner has approved in writing the price for performing changes and any adjustment in the Time for Completion for performing change, except as set forth in Clause 25.4 and 25.5.
- 25.4 Notwithstanding Clause 45.3, Owner may expressly authorize Contractor in writing to perform the change prior to approval of price for change and / or modification of Time for Completion. Contractor shall not suspend Scope of Work during the review and negotiation of any change, except as may be directed by Owner pursuant to

Article 14.0 (Suspension of Services). In the event Owner and Contractor are unable to reach timely agreement regarding any change, Contractor shall comply with Article 26.0 (Claims).

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

26.0 **CLAIM**

26.1 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 26.2. 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 26.1.

26.2 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 43.0 (Settlement of Disputes). If Contractor decides to proceed pursuant to Article 43.0 (Settlement of Disputes), Contractor agrees to limit its claim to the amount claimed by it in accordance with Clause 26.1. 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.

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

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

26.3.1.1 to achieve compliance with the Contract by Contractor; or

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

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

26.3.3 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.

- 26.4 If Contractor fails to follow the requirements of Clause 26.1, it shall have waived any right to make any claim in respect of the events referred to in Clause 26.1. Contractor's sole remedy in respect of any claim will be as provided in Clause 26.2. No claim by Contractor in relation to events referred to in Clause 26.1 shall be allowed after final payment is made.
- 26.5 Owner shall not be bound to any adjustments in the Contract Price or Time for Completion unless expressly agreed to by Owner in writing.
- 27.0 **BACKCHARGE**
- 27.1 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.
- 27.2 Without limitation and by way of example only, backcharge may result from:
- 27.2.1 Services performed by the Owner, at Contractor's request, which are within Contractor's Scope of Work under this Contract;
- 27.2.2 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
- 27.2.3 Costs incurred by the Owner to fix all defects, deficiencies or errors that may appear in the Scope of Work during the Warranty Period.
- 27.3 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.
- 27.4 A backcharge shall consist of:
- 27.4.1 Labor: at actual cost plus 25 % (twenty-five percent) to cover payroll additives;
- 27.4.2 Materials: at actual supplier and freight invoice cost delivered to jobsite;
- 27.4.3 Equipment: at actual third party rental cost or at Owner's equipment rental rates, whichever may be applicable;
- 27.4.4 Subcontracts: At actual cost;
- 27.4.5 All taxes, levies, duties and assessments attributable to the backcharge work; and
- 27.4.6 25% (twenty-five percent) shall be added to the foregoing for indirect costs, overhead, supervision and administration.
- 27.5 Within 24 (twenty-four) hours after receipt of the backcharge notice, Contractor shall fax back to the Owner a signed copy of the backcharge notice, indicating either acceptance of the backcharge or agreement to perform the described backcharge work within the indicated schedule period for performance, utilizing Contractor's supplied labor, material and equipment, as applicable.

27.6 Contractor will be required to sign the backcharge notice before commencement of the backcharge work by the Owner or others. In the event Contractor refuses to sign, Owner shall, at its option, proceed with the backcharge work and charge the backcharge cost to Contractor's account. 30 (thirty) days after commencement of the backcharge work or on completion of the backcharge work, whichever occurs earlier, Owner will invoice Contractor for the incurred backcharge cost and the Contractor shall forthwith pay the same.

28.0 **CONTRACTOR TO INFORM ITSELF FULLY**

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

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

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

29.0 **DRAWINGS & DOCUMENTS**

29.1 **Drawings & Documents at Site**

29.1.1 The Contractor shall maintain at its office up-to-date copies of all drawings, specifications and other Contract Documents and any other supplementary data complete with all the latest revisions thereto. The Contractor shall also maintain, in addition the continuous record of all changes to the above Contract Documents, drawings, specifications, supplementary data, etc. effected at the field and on completion of its total assignment under the Contract shall incorporate all such

changes on the drawings and other Engineering data to indicate as installed conditions of the equipment furnished and erected under the Contract. Such drawings and Engineering data shall be submitted to the Owner in required number of copies.

29.1.2 Drawings, technical documents and data prepared or developed by Contractor and furnished to the Owner in performance of the Scope of Work, shall be the property of the Owner and may be used by the Owner without restriction.

30.0 **ACCESS TO SITE**

30.1 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.

30.2 The services shall be performed on 24 (twenty-four) hours basis with emergency coverage as necessary. The Contractor shall ensure that the workers get reasonable facilities at the Site for carrying out the services.

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

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

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

31.0 **FIRE PROTECTION**

31.1 The Contractor shall at all times comply with the HES Policy while performing the services during the Term. Without prejudice to the obligation under the preceding sentence, the work procedures that are to be used during the performance of the services shall be those which minimize fire hazards to the extent practicable. The Contractor shall ensure that combustible materials, combustible waste, rubbish and any Hazardous Material shall be collected and removed from the Site at least once each day. Fuel, oils and volatile or flammable materials shall be stored away from the equipment and materials storage areas in safe containers. Untreated canvas, paper, plastic or other flammable flexible materials shall not at all be used at Site for any purpose unless otherwise specified. If any such material is received with any other equipment/material at the Plant, the same shall be removed and replaced with acceptable material before moving into the construction or storage area.

31.2 The Contractor shall ensure that corrugated paper, fabricated cartons, etc. will not be permitted at the Site either for storage or for handling of materials. All such materials used shall be of water proof and flame resistant type. All other materials such as working drawings, plans, etc. which are combustible but are essential for

the services to be performed shall be protected against combustion resulting from welding sparks, cutting flames and other similar fire sources.

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

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

32.0 **SECURITY**

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

33.0 **CONTRACTOR'S AREA LIMITS**

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

34.0 **DELETED**

35.0 **COOPERATION AND COORDINATION AT THE SITE**

35.1 Contractor shall co-operate with Owner's contractors and Owner's Engineer and freely exchange with them such technical information as is necessary to perform the services most efficiently and economically and to avoid unnecessary duplication of efforts. Owner shall be provided with a copy of all correspondence addressed by the Contractor to such other contractors and Owner's Engineer in respect of such exchange of technical information.

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

35.3 The field activities of the contractors working at Site will be coordinated by the Owner and the Owner's decision shall be final in resolving any dispute or conflict between the Contractor and other contractors of the Owner regarding scheduling

and co-ordination of Services. Such decision by the Owner shall not be a cause for extra compensation for the Contractor.

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

35.5 **Meetings**

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

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

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

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

36.2 After the completion of Term, the Contractor shall remove from the Site under the direction and with written permission of the Owner the materials brought by it for performing the services which are not property of the Owner. If the Contractor fails to remove such materials, within 15 (fifteen) days of issue of a notice by the Owner to do so then the Owner shall have the liberty to dispose of such materials and credit the proceeds thereto to the account of the Contractor.

37.0 **DELETED**

38.0 **DELETED**

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

39.1 **Statutory Approvals**

39.1.1 The Contractor shall obtain all clearances, approvals, licenses, permits etc in accordance with applicable rules of Government Agency which are required for performing services including transportation, setting up, charging, operation and

maintenance of EPS. Price for obtaining clearances, approvals, licenses, permits etc including payment of statutory fees is included in Contract Price.

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

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

39.2 **Permits for Performing Services**

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

39.3 **Corrupt / Fraudulent Practices**

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

40.0 **EMERGENCIES**

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

40.2 In the event of occurrence of an Emergency Event, the Contractor shall notify the Owner by telephone as soon as reasonably practicable, and in any case within 8 (eight) hours, and in writing within 24 (twenty four) hours of the occurrence of any Emergency Event, providing details of the Emergency Event and Contractor's actions taken in an effort to prevent any threatened damage, injury or loss to the Plant or EPS or Persons or property located on or in the vicinity of the Plant or EPS. Following such notification, at the request of the Owner, the Parties shall discuss without delay the further actions which should be taken in relation to the Emergency Event.

40.3 If the Owner considers that any Emergency Event has occurred in relation to the Plant, the Owner may give notice (which may be oral notice and confirmed with subsequent written notice) to the Contractor specifying the nature of the Emergency Event which it has identified and the manner in which such Emergency Event should

be rectified. The Contractor shall rectify such defect with all due diligence. If the Contractor fails to comply with such notice promptly, the Owner shall be entitled to take such actions as may be necessary to remedy such breach by the Contractor at Contractor's expense.

41.0 **TERMINATION**

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

41.1.1 Each of the following events, unless occurring solely as a result of breach by the Owner of its obligations under this Contract or a Force Majeure event, shall constitute an event of default and the Owner may terminate this Contract by giving 30 (thirty) days written notice of termination to the Contractor other than in case of Clause 41.1.1.5 where the Owner may terminate this Contract by giving 7 (seven) days written notice ("**Contractor's Event of Default**"):

41.1.1.1 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;

41.1.1.2 Failure of the Contractor to comply with or fulfill its Warranty obligations under Article 21.0 (Warranty and Warranty Period);

41.1.1.3 Abandonment of the Services by the Contractor;

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

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

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

41.1.1.7 Any change in the Control of the Contractor which is not in accordance with Article 15.0 (Change in Control);

41.1.1.8 Any act or omission by the Contractor such that the Owner is or is likely to be or become in breach of any of its obligations under this Contract or constitutes or is likely to give rise to a Owner's event of default as mentioned under Clause 41.2;

41.1.1.9 Contractor ceases to carry on its business;

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

41.1.1.11 Contractor has incurred or is liable for liquidated damages in excess of the amount set out in Clause 10.3;

41.1.1.12 A breach by the Contractor of any of the terms of the contract dated on or about the date of this Contract;

41.1.1.13 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

41.1.1.14 If any of the representations and warranties provided by the Contractor under Clause 20.1 or during the negotiation of this Contract is incorrect, false or misleading.

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

41.2.1 Each of the following events, unless occurring as a result of a breach by the Contractor of its obligations under this Contract or a Force Majeure event, and subject to the conditions defined elsewhere in this Contract shall constitute an event of default and the Contractor may terminate this Contract by giving 30 (thirty) days written notice of termination to the Owner ("**Owner's Event of Default**"):

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

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

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

41.3 **Termination due to Force Majeure Events**

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

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

have the right to terminate this Contract by giving the other Party a 30 (thirty) days written notice of termination.

41.4 **Termination for Convenience by Owner**

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

41.5 **Termination Procedure**

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

41.6 **Payment on Termination**

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

41.6.2 In the event of termination for convenience by Owner as per Clause 41.4, the Contractor shall be paid compensation, equitable and reasonable, dictated by the circumstances prevalent at the time of termination.

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

41.7 **Obligation upon Termination**

41.7.1 Contractor shall discontinue performance of the Scope of Work from the Termination Date.

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

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

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

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

42.0 **GOVERNING LAW AND JURISDICTION**

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

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

43.0 **SETTLEMENT OF DISPUTES**

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

43.2 All unsettled disputes or differences arising out of or in connection with this Contract which cannot be amicably resolved by the Parties shall in the first instance be decided by the Owner in accordance with provisions of Clause 43.3 below.

43.3 **Owner's Decision**

43.3.1 If any dispute or difference of any kind whatsoever shall arise between the Owner and the Contractor, arising out of this Contract whether during the performance of the services or after its completion or whether before or after the termination, Abandonment or breach of this Contract, such dispute or difference cannot be amicably settled by the Parties in accordance with Clause 43.1, it shall, in the first place, be referred to and settled by the Managing Director of the Owner, who, within a period of 30 (thirty) days after being requested to do so, shall give written notice of its decision to the Contractor.

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

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

- 43.3.4 The Owner's decision (or the failure of the Owner to give decision within the time specified in Clause 43.3.1) and issuance of a written notice for arbitration pursuant to Clause 43.3.3 shall be a condition precedent to the right to request arbitration. It is the intent of this Contract that there shall be no delay in the execution of the Services and the decision of the Owner, as rendered, shall be promptly observed.
- 43.3.5 In the event of the Owner failing to notify its decision, as aforesaid, within 30 (thirty) days after being requested, or in the event of a Party being dissatisfied with any such decision, either Party may require that the matters in dispute be referred to arbitration as provided in Clause 43.4.
- 43.4 **Arbitration**
- 43.4.1 All disputes or differences in respect of which the decision, if any, of the Owner has not become final or binding as aforesaid, shall be settled by arbitration, under and in accordance with the provisions of the Indian Arbitration and Conciliation Act, 1996 (the "**Arbitration Act**") or any statutory modification, in the manner hereinafter provided. The Seat and Venue of arbitration shall be New Delhi, India.
- 43.4.2 The arbitration shall be conducted in accordance with the Arbitration Act by 3 (three) arbitrators, (1) one each to be nominated by the Contractor and the Owner and the third to be nominated by the 2 (two) arbitrators nominated by the Parties at the commencement of arbitration proceedings. The 3rd (third) arbitrator so appointed shall act as the presiding arbitrator.
- 43.4.3 If one Party fails to appoint its arbitrator within 30 (thirty) days after the other Party has named its arbitrator, the Party which has named an arbitrator may request the President of the Institution of Engineers to appoint the second arbitrator on behalf of such Party. If the two arbitrators appointed by both Parties do not succeed in appointing a third arbitrator within 30 (thirty) days after the latter of the two arbitrators has been appointed, the third arbitrator shall, at the request of either Party, be appointed by the Chairman of OTPC.
- 43.4.4 The decision of the majority of the arbitrators ("**Arbitral Award**") shall be final and binding upon the Parties. The expense of the arbitration shall be paid as may be determined by the arbitrators. The arbitrators may, from time to time, with the consent of both the Parties increase the time for making the award. In the event of any of the aforesaid arbitrators dying, neglecting, resigning or being unable to act for any reason, it will be lawful for the Party concerned to nominate another arbitrator in place of the outgoing arbitrator.
- 43.4.5 The arbitrators shall have full powers to review and/or revise any decision, opinion, directions, certification or valuation of the Owner in consonance with this Contract, and neither party shall be limited in the proceedings before such arbitrators to the evidence or arguments put before the Owner for the purpose of obtaining the said decision.
- 43.4.6 No decision given by the Owner in accordance with the foregoing provisions shall disqualify it from giving evidence before the arbitrators on any matter whatsoever relevant to the dispute or difference referred to the arbitrators as aforesaid.

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

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

43.7 The provisions of this Article 43.0 shall survive termination of this Contract.

44.0 **CHANGE IN LAW**

44.1 If after the Effective Date, there is a Change in Law which is expected to result in the increase or decrease in the Contract Price by an amount of Rs. 200,000 (Rupees Two Lakh Only) or more, then either Party may request the other for a revision of the Contract Price in accordance with Clause 44.2, 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.

44.2 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.

45.0 **ASSIGNMENT**

45.1 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.

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

45.2.1 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

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

45.3 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:

- 45.3.1 an agreement by the Contractor to allow the holder of such security interest to cure defaults by the Owner;
 - 45.3.2 an acknowledgement by the Contractor that the Owner is not in default under this Contract due to such assignment;
 - 45.3.3 representations and warranties by the Contractor;
 - 45.3.4 a prohibition against amending, assigning or terminating this Contract without the written consent of the holder of such security interest; and
 - 45.3.5 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.
- 45.4 The Contractor acknowledges and agrees that the Lenders and providers of insurance will review this Contract and may require changes there to as a condition for providing financing and/or insurance, and the Contractor agrees to consider any such requirements in good faith and otherwise to co-operate with the Lenders/insurers in executing such amendments to this Contract or providing such other letters of consent and comfort as may be reasonably requested by the Lenders/insurers.

46.0 **RELEASE OF INFORMATION**

46.1 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.

47.0 **CONFIDENTIAL INFORMATION**

47.1 Subject to Clause 47.2, each Party shall keep all documents, data, photographs, technical information or other information provided directly or indirectly by the other Party in connection with this Contract ("**Confidential Information**") private and confidential for a period of 6 (six) years from the Effective Date and shall not, without the consent of the other Party, publish or divulge to any third party, any Confidential Information or any particulars thereof, whether such Confidential Information has been provided prior to, during or following termination of this Contract.

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

47.2.1 was furnished prior to this Contract without restriction;

- 47.2.2 is or becomes available within the public domain (other than by breach of the foregoing obligation of confidentiality);
- 47.2.3 is received by either Party from a third Party without restriction and not in breach of this Contract;
- 47.2.4 is independently developed by either Party;
- 47.2.5 is required to be provided to any contractor/subcontractor, subject to inclusion of terms similar to the provision of this Article 47.0 in the agreement with such contractor/subcontractor;
- 47.2.6 is required to be provided to the Lenders;
- 47.2.7 if and to the extent required to be provided by the rules of a relevant and recognized stock exchange or securities commission;
- 47.2.8 if and to the extent required to be provided under Applicable Law or pursuant to an order of any court of competent jurisdiction provided that the original disclosing Party is given notice and adequate time to seek a protective order applicable to the information, if practicable, before it is disclosed;
- 47.2.9 if and to the extent required to enforce any right or remedies under this Contract;
- 47.2.10 if required to be provided to any insurer under a policy of insurance related to this Contract;
- 47.2.11 if required to be provided to directors, employees and officers of such Party provided that the disclosing Party determines in good faith that the recipient has a legitimate need to see such Confidential Information; and the recipient has been made aware of and has agreed to be bound by the requirements of this Article 47.0;
- 47.2.12 in case of the Owner, if required to be provided to any of its Affiliates; or
- 47.2.13 in case of the Owner, if required to be provided to such other parties to whom the Owner may be reasonably required to disclose such information.

47.3 **Confidentiality of Intellectual Property and Information**

47.3.1 Each Party shall:

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

47.3.1.2 use all reasonable endeavors to make available such materials and documents and data acquired or brought into existence by third parties as the other Party may reasonably request for the purpose referred to in Clause 47.3.1.1 above and as would normally be made available by Persons acting in accordance with Good Engineering & Construction Practices.

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

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

48.0 **INTELLECTUAL PROPERTY**

48.1 **Ownership and License of Intellectual Property**

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

48.1.2 The Owner shall, subject to any applicable third party restrictions, grant the Contractor during the Term a royalty-free, non-exclusive, personal and non-transferable license to use the intellectual property which is owned by or licensed to the Owner by third parties only to the extent necessary to enable the Contractor to perform its obligations under this Contract. Such licenses shall not carry the right to grant sublicenses.

49.0 **PATENT RIGHTS AND ROYALTIES**

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

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

50.0 **WAIVER**

50.1 **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.

50.2 **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.

51.0 **VALIDITY AND SURVIVAL OF PROVISIONS**

51.1 **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.

51.2 **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.

52.0 **LANGUAGE AND MEASURES**

52.1 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.

53.0 **NOTICES**

53.1 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 53.2 and 53.3 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.

53.2 Address for Notice to Owner:

Attn: Managing Director
ONGC Tripura Power Company Limited
10th Floor, Core 4 and Central,
SCOPE Minar, Laxmi Nagar,
Delhi - 110092
Fax: +91-11-22017731, +91-11-22018831
Email: sanil.namboodiripad@otpcindia.in

53.3 Address for Notice to Contractor:

[To be provided by Contractor]
Attn: _____
Address: _____

Fax: _____
Email: _____

53.4 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.

54.0 **CONTRACTUAL RELATIONSHIP**

54.1 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 Scope of Work 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.

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

55.0 **COPIES OF CONTRACT AND COUNTERPARTS**

55.1 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.

55.2 Subsequent to signing of this Contract, the Contractor, at its own cost, shall provide the Owner with at least 2 (two) photocopies of this Contract within 30 (thirty) days after the signing of this Contract.

56.0 **ENTIRE AGREEMENT**

56.1 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.

56.2 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.

56.3 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.

CONTRACT PRICE

Part A

[•]

Part B

[•]

Part C

[•]

Part D

[•]

GUARANTEED PERFORMANCE

Following are the functional guarantees for the EPS:

SI	Parameters	Guaranteed Value
1.0	Availability during Commissioning Test	99.50%
2.0	Availability during 1 st Operating Year	99.50%
3.0	Availability during 2 nd Operating Year	99.50%
4.0	Availability during 3 rd Operating Year	99.50%
5.0	Availability during 4 th Operating Year	99.50%
6.0	Availability during 5 th Operating Year	99.50%

1. Availability shall be calculated as follows:

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

Where,

A = Availability

TSH = Total Service Hour;

TUD = Total Unscheduled Downtime (Hour); and

TEPD = Total Excused Performance Downtime (Hour)

2. Total Service Hour during commissioning test shall be 24 x 3 = 72 Hours
3. Total Service Hour in any operating year shall be 24 x 365 / 366 i.e. 8760 / 8784 Hours
4. Unscheduled downtime shall mean the time when EPS is not available for functional use and which is outside scheduled downtime
5. Scheduled downtime is the planned EPS maintenance downtime jointly agreed by Owner and Contractor in advance.
6. Excused performance downtime is the time when EPS is not available for functional use for reason which is excused in the Contract.
7. If OTPC owned network (LAN, WAN, ILL) is unavailable; during such period, guaranteed performance shall not be applicable.

TECHNICAL SPECIFICATIONS

[To be attached]

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

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 Udaipur-Kakraban Road, P.O. Palatana, District Gomati, Tripura - 799105 (India) and one of its offices at 10th Floor, Core 4 and Central, SCOPE Minar, Laxmi Nagar, Delhi - 110092 (India) (hereinafter referred to as the "Owner", which expression shall, unless inconsistent with the context or meaning thereof, include its successors and assigns) having awarded the work for implementation & maintenance services for e-procurement system at Delhi Office and Palatana Plant under reference no. _____ dated _____ to the Contractor (as amended, supplemented or modified from time to time in accordance with the terms thereof, hereinafter referred to as the "**Contract**") and the Contractor having agreed to provide a contract performance guarantee to the Owner for the full and faithful performance of each of Contractor's payment and other obligations under the Contract in an amount equal to **Rs** _____ [Rupees _____] (as such, amount may change pursuant to terms of the Contract, hereinafter "**Aggregate Maximum Amount**"),

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

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

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

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

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

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

Dated this ___ day of _____, 20__ at _____

WITNESS

(Signature) _____

(Signature) _____

(Name) -----

(Name) -----

(Official Address)

(Designation with Bank stamp)

Attorney as per Power of Attorney
No.
Dated

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

LIST OF ACCEPTABLE BANKS**Foreign banks**

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

Indian banks

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

Annexure-6

SAFETY CODE

- 1.0 Suitable scaffolds shall be provided for workmen for all work that cannot be safely done from the ground, or from solid construction except such short period work as can be done safely from ladders. When a ladder is used an extra labour shall be engaged for holding the ladder and if the ladder is used for carrying materials as well, suitable footholds and hand-holds shall be provided on the ladder and the ladder shall be given an inclination not steeper than 1/4 to 1 (1/4 horizontal and 1 vertical).
- 2.0 Scaffolding or staging more than 3.25 (three decimal two five) meters above the ground or floor, swing or suspended from an overhead support or erected with stationary support, shall have a guard rail properly attached, bolted, braced and otherwise secured at least 1 (one) meter high above the floor or platform of such scaffolding or staging and extending along the entire length of the outside and ends thereof with only such openings as may be necessary for the delivery of materials. Such scaffolding or staging shall be so fastened as to prevent it from swaying from the building or structure.
- 3.0 Working platforms, gangways, and stairways shall be so constructed that they do not sag unduly or unequally and, if the height of a platform or gangway or stairway is more than 3.25 (three decimal two five) meters above ground level or floor level, it shall be closely boarded, have adequate width and be suitably fenced, as described in para 2 above.
- 4.0 Every opening in the floor of a building or in a working platform shall be provided with suitable means to prevent fall of Persons or materials by providing suitable fencing or railing with a minimum height of 1 (one) meter.
- 5.0 Safe means of access shall be provided to all working platforms and other working places. Every ladder shall be securely fixed. No portable single ladder shall be over 9 (nine) meters in length. Width between side rails in a rung ladder shall in no case be less than 30 (thirty) cm for ladders up to and including 3 (three) meters in length. For longer ladders this width shall be increased at least 6 (six) mm. for each additional 30 (thirty) cm. of length. Uniform step spacing shall not exceed 30 (thirty) cm.
- 6.0 Adequate precautions shall be taken to prevent danger from electrical equipment. No material on any of the locations at the Plant shall be so stacked or placed as to cause danger or inconvenience to any Person or the public. The Contractor shall provide all necessary fencing and lights to protect public from accidents and shall be bound to bear expenses of defense of every suit action or other proceedings at law that may be brought by any Person for injury sustained owing to neglect of the above precautions and to pay any damage and cost which may be awarded in any such suit, action or proceeding to any such Person or which may, with the consent of the Owner, be paid to compromise any claim by any such Person.
- 7.0 **Excavation and Trenching:** All trenches, 1.5 (one decimal five) meters or more in depth, shall at all times be supplied with at least 1 (one) ladder for each 20 (twenty) meter length or fraction thereof. The ladder shall be extended from bottom of trench

to at least 1 (one) meter above surface of the ground. Sides of a trench which is 1.5 (one decimal five) meters or more in depth shall be stepped back to give suitable slope or securely held by timber bracing, so as to avoid the danger of sides collapsing. Excavated material shall not be placed within 1.5 (one decimal five) meters of edge of trench or half of depth of trench, whichever is more. Cutting shall be done from top to bottom. Under no circumstances shall undermining or undercutting be done.

- 8.0 **Demolition:** Before any demolition work is commenced and also during the process of the work :-
- 8.1 All roads and open areas adjacent to the work Site shall either be closed or suitably protected.
- 8.2 No electric cable or apparatus which is liable to be a source of danger or a cable or apparatus used by operator shall remain electrically charged.
- 8.3 All practical steps shall be taken to prevent danger to Persons employed, from risk or fire or explosion, or collapse, or flooding. No floor, roof, or other part of a building shall be so overloaded with debris or materials as to render it unsafe.
- 9.0 All necessary personal safety gear/equipment, as considered adequate by the Owner, shall be made available by Contractor for use of Persons employed on the Site and maintained in a condition suitable for immediate use; and the Contractor shall take adequate steps to ensure proper use of equipment by those concerned. Such safety gear/equipment shall include, but not be limited to as under:-
- 9.1 Workers employed on mixing asphaltic materials, cement and lime mortars/concrete shall be provided with protective footwear and protective goggles.
- 9.2 Those engaged in handling any material which is injurious to eyes shall be provided with protective goggles.
- 9.3 Those engaged in welding works shall be provided with welder's protective eye-shields.
- 9.4 Stone breakers shall be provided with protective goggles and protective clothing and seated at sufficiently safe intervals.
- 10.0 When workers are employed in sewers and manholes, which are in use, the Contractor shall ensure that manhole covers are opened and manholes are ventilated at least for an hour before workers are allowed to get into them. Manholes so opened shall be cordoned off with suitable railing and provided with warning signals or boards to prevent accident to public.
- 11.0 The Contractor shall not employ men below the age of 18 (eighteen) and women on the work of painting with products containing lead in any form. Whenever men above the age of 18 (eighteen) are employed on the work of lead painting, the following precautions shall be taken:
- 11.1 No paint containing lead or lead products shall be used except in the form of paste or readymade paint.

- 11.2 Suitable face masks shall be supplied for use by workers when paint is applied in the form of spray or a surface having lead paint dry rubbed and scrapped.
- 11.3 Overalls shall be supplied by the Contractor to workmen and adequate facilities shall be provided to enable working painters to wash during and on cessation of work.
- 12.0 When work is done near any place where there is risk of drowning, all necessary equipment shall be provided and kept ready for use and all necessary steps taken for prompt rescue of any Person in danger and adequate provision made for prompt first aid treatment for all injuries likely to be sustained during the course of the work.
- 13.0 Use of hoisting machines and tackle including their attachments, anchorages and supports shall conform to the following:-
- 13.1 These shall be of good mechanical construction, sound material and adequate strength and free from patent defects and shall be kept in good working order and properly maintained.
- 13.2 Every rope used in hoisting or lowering materials or as a means of suspension shall be of durable quality and adequate strength, and free from patent defects.
- 14.0 Every crane driver or hoisting appliance operator shall be properly qualified and no Person under the age of 21 (twenty one) years shall be in charge of any hoisting machine including any scaffold or give signals to operator.
- 15.0 In case of every hoisting machine and of every chain ring hook, shackle swivel and pulley block used in hoisting or lowering or as means of suspension, safe working load shall be ascertained by adequate means. Every hoisting machine and all gear referred to above shall be plainly marked with safe working load in English as well in the vernacular language of the area. In case of a hoisting machine a variable safe working load, each safe working load and the conditions under which it is applicable shall be clearly indicated. No part of any machine or of any gear referred to above in the paragraph shall be loaded beyond safe working load except for the purpose of testing.
- 16.0 In case of machine provided by the Owner, safe working load shall be notified by the Owner. As regards Contractor's machines the Contractor shall notify safe working load of each machine to the Owner whenever it brings such machines to Site of work and get the same verified by the Owner.
- 17.0 Motors gearing, transmission, electric wiring and other dangerous parts of hoisting appliance shall be provided with efficient safeguards. Hoisting appliances shall be provided with such means as will reduce to the minimum, the risk of accidental descent of load. Adequate precautions shall be taken to reduce to the minimum, the risk of accidental descent of load. Adequate precautions shall be taken to reduce to the minimum, the risk of any part of a suspended load becoming accidentally displaced. When workers are employed on electrical installations which are already energized, insulating mats, working apparel such as gloves, sleeves and boots, as may be necessary, shall be provided. Workers shall not wear any rings, watches and carry keys or other materials which are good conductors of electricity.

- 18.0 All scaffolds, ladders and other safety devices mentioned or described herein shall be maintained in a safe condition and no scaffold, ladder or equipment shall be altered or removed while it is in use. Adequate washing facilities shall be provided at or near places of work.
- 19.0 These safety provisions shall be brought to the notice of all concerned by display, in English, Hindi as well as in the vernacular language of the area, on a notice board at a prominent place at the work spot. Persons responsible for ensuring compliance with the Safety Code shall be named therein by the Contractor.
- 20.0 To ensure effective enforcement of the rules and regulations relating to safety precautions, arrangements made by the Contractor shall be open to inspection by the Owner and the Inspecting Officers as defined in the Contractor's Labour Regulation.
- 21.0 No toxic materials or any other chemicals, which in the opinion of the Owner are harmful to human subsistence or local vegetation, shall be used in the Plant without specific permission for their use by the Owner.
- 22.0 Notwithstanding the above conditions 1 to 21, the Contractor is not exempted from the operation of any other Act or Rule in force.