

## GENERAL TERMS & CONDITIONS

### 1 Definitions:

**1.1** In construing the Contract, the following words and expressions shall have the meanings hereby assigned to them:

**“Abandon”** means either

(i) Contractor substantially ceases performance of the Services for a period of 10 Business Days or longer for any reason other than:

- the occurrence of an event of Force Majeure; or

- the issuance of instructions by Company to suspend performance of the Services pursuant to Clause 13.

(ii) a failure by Contractor to resume performance of the Services within 10 Business Days after:

- receipt of Notice pursuant to Clause 13 instructing Contractor to resume Services suspended by Company; or

the termination or cessation of an event of Force Majeure; or

(iii) a failure by Contractor to achieve any Milestone within 10 Days following the applicable Milestone Date;

**“Advance Payment”** shall mean the Payment to be made before the commencement of Works will be entitled to deduct twenty percent (20%) or such other amount as may be specified in the Special Terms of the Contract from all amounts otherwise payable to Contractor under this Contract until such time as Company has recovered the entire Advance Payment OR an advance bank guarantee to be furnished by the Contractor to the Owner towards the amount of advance payments made to the Contractor.

**“Affiliate”** means, with respect to any Person, such other Person as controls, is controlled by or is under common control with (whether directly or indirectly or through one or more intermediaries), such Person. For purposes of this definition, “control” means, with respect to any Person, the power (a) to direct or cause the direction of the management of such

Person, directly or indirectly, whether by contract, any voting arrangements or otherwise, or (b) to vote ten percent (10%) or more of the securities or beneficial ownership interests having ordinary voting power [for the election of directors or managing general partners.

**“Applicable Law”** or **“Law”** means (i) all laws, statutes, codes, treaties, ordinances, rules, regulations, legislations, by-laws; (ii) judgments, decrees, award, determination, ruling, injunctions, writs and orders of any court, arbitrator or Government Authority having jurisdiction over performance of the Works (including any Supplies and Services); (iii) any regulatory policy, ruling, circular, notification, interpretation of guideline of any Government Authority; and (iv) any Applicable Permit, as may be in effect at the time of performance of the Works (including any Supplies and Services) by the Contractor.

**“Applicable Permit”** shall mean any consent, registration, licence, approval, permit or other authorisation of whatsoever nature which is required to be granted by any Governmental Authority, for such matters as may be necessary in connection with the work, Services and /or to be maintained in connection with construction of the site for Project, installation, fabrication and erection, the performance of the Works (including any Supplies and Services) by the Contractor’s and/or the Owner’s obligations under this Contract.

**“Claims”** shall mean any and all claims, demands, liens, judgments, awards, remedies, debts, liabilities, damages, injuries, costs, losses, legal and other expenses, or causes of action of whatsoever nature, including, without limitation, those claims made or enjoyed by dependants, heirs, claimants, executors, administrators, successors or

assigns, in whatever jurisdiction the foregoing may arise.

**“Commencement Date”** shall mean the required date for commencement of the Works at the Site. The Contractor shall ensure that it is in position ready to commence the Contracted Works no later than the Commencement Date.

**“Commissioning”** shall mean successful commercial operation of the Facility (including fully functional equipment), and demonstration of performance guarantees as defined in Schedule ... - Technical Specifications, which includes but is not limited to the activities to be satisfactorily completed under the Facilities Scope for commissioning of the Facilities including the performance test run, if any and/or any other requirements under this Contract and Scope of Work (Schedule ...), during the period of time following completion of the Services, Mechanical Completion of the Facilities and the Contractor demonstrates the laid down performance standards in accordance with this Contract and a Commissioning Certificate is issued by the Company to the Contractor as documentary evidence of successful commissioning.

**“Commissioning Certificate”** will mean certificate issued by the Owner to the Contractor upon successful Commissioning of the entire Project.

**“Completeness”** shall mean any scope of Work(s) which may or may not be specifically mentioned in this Contract but is required for the completion of the Project/Facility and/or safe, trouble free, normal operation, shall be done free of cost to the Owner/Company, unless expressly excluded in this Contract.

**“Completion Date”** shall mean the required date for completion of the Work, i.e. ... months from the Commencement Date.

**“Conditions”** shall mean these General Terms and Conditions as provided under this document.

**“Contingency Plan”** shall mean and refer to the execution process as laid down in Schedule ... (HSE Policy)

**“Contract”** means this agreement as of date hereof, including recitals, Schedules, these Conditions and attachments hereto as may be amended, supplemented or modified in accordance with the provisions hereof, together with any and all , appendices, schedules, addendums and amendments hereto, signed by the authorized representative of the Parties shall be deemed to be read as an integral part of this Contract.

**“Contract Price”** shall mean the sum stated in Schedule .... (Compensation Schedule) hereto as the all-inclusive, lumpsum and fixed sum of the amounts payable to the Contractor for the execution of the Works (including any Supplies and Services).

**“Contractor”** shall mean [•].

**“Contractor Group”** shall mean and include Contractor, its Affiliates and its and their sub-contractors and contractors of any tier and its and their respective Affiliates and shareholders, officers, directors, employees, agents, consultants, servants and insurers, of the foregoing.

**“Contractor’s Documents”** shall mean and include, whether in digital format or in hardcopy, all documents relating to the Works, Supplies and Services, calculations, computer software (programs), computer media, samples, patterns, models, and design documents (including documents provided by the Contractor) and other manuals as well as, all other data and information to be submitted by the Contractor and shall include without limitation, data sheets, test results, plans, bills of materials and estimates.

**“Contractor’s Equipment”** shall mean all plant, equipment (including, if applicable, marine vessels), materials and supplies provided by the Contractor Group (whether owned, leased or hired) in connection with the performance of the Work (including, without limitation, those referred to in the Scope of Works (including any Scope of Supplies and Scope of Services) and whether or not for incorporation in the Project.

**“Data”** means all reports, studies, designs and other information, documentation and

materials as may be prepared, created or developed by the Contractor as a result of the Work or in accordance with this Contract.

**“Deleterious Material”**, in the context of supply of Materials, shall mean any element, compound, grade or such other material or make and/or type of the goods which is not part of standard Specification as per the Contract and which is likely to cause or may in general probability cause harm or damage to the operations of the Owner and also restricts or affects performance of the goods as per the desired / industry / specified standards.

**“Demobilisation”** means:

(i) with respect to Scope of Work, the actions to be taken by Contractor following the completion of the Scope of Work (Schedule ...), including the removal of all Contractor Items and personnel from the Site, the performance of any necessary Site restoration, and the completion of any necessary formalities for the export from India of any Contractor Items, all to the satisfaction of the Company’s Representative. The date of completion of Demobilisation with respect to the Scope shall be the date on which the Company agrees that such Demobilisation has been completed;

(ii) with respect to the Facilities Scope, the actions to be taken by Contractor following the completion of the Facilities Scope as described in Schedule ... – Scope of Work, including the performance of any necessary Site restoration, and the completion of any necessary formalities for the export from India of the Contractor Items, all to the satisfaction of the Company’s Representative. The date of completion of Demobilisation with respect to the Facilities Scope shall be the date on which the Company agrees that such Demobilisation has been completed;

**“Defect”** means any non-compliance with the requirements of this Contract including those specified in the Scope of Work including but not limited to those listed in Schedule ... - (Scope of Work).

**“Effective Date”** shall mean the date of the Contract;

**“Environmental Damage”** includes soil erosion; removal of vegetation, unless the

same is carried out under a permit; destruction of wildlife; pollution of groundwater or surface water; land contamination; air pollution; noise pollution; bush fire; disruption to water supplies or to natural drainage or natural flow of rivers or streams; and damage to archaeological, paleontological or cultural sites and includes any damage or injury to, or destruction of, soil or water in their physical aspects together with vegetation associated therewith, aquatic or terrestrial mammals, fish, avi-fauna or any plant or animal life whether in the sea or in any other water or on, in or under land or any other damage under Applicable Law;

**“Facilities Scope”** or **“Integrated Facilities Scope”** means those elements of the Services set out in Schedule ... - Scope of Work that relate to the engineering, design, procurement, construction and Commission and Completeness of Facilities;

**“Good and Workmanlike Manner”** means supplies, services and works performed in a manner deemed proficient by those with the special skill, knowledge, training, and experience concerning services similar in nature to the Supplies, Services and the Works and will include Good Industry Practices;

**“Good Industry Practice”** shall mean the exercise of that degree of skill, diligence and prudence which would reasonably and ordinarily be expected from a skilled and experienced Contractor applying the standards generally adopted by reputed international/national Contractors, equipment manufacturers and operators in the construction or operation of the Facility or the manufacture of equipment therefore, except insofar as (i) necessary to comply with any Applicable Law and/or Applicable Permits or (ii) reasonably appropriate to take account of the location of or meteorological conditions affecting the Site or conditions.

**“Governmental Authority”** shall mean any governmental department, state or local authority, commission, board, bureau, agency, regulatory authority, instrumentality, court or other judicial or administrative body, central, state, provincial or local having jurisdiction over the matter or matters in question.

**“GST”** means Goods and Services Tax leviable on the supply of goods and/or services and includes Central Goods and Services Tax, State/ Union Territory Goods and Services Tax, Integrated Goods and Services Tax, State Compensation Cess, payable under the Applicable Law.

**“Key Personnel”** means any member of the Contractor’s Personnel who, in the reasonable opinion of the Company, performs an important role in the performance of the Work and shall include, without limitation, any project manager, supervisory staff, project engineer or lead discipline engineer.

**“Material”** shall mean the goods, equipment, or products (or parts thereof) to be purchased or to be supplied in accordance with this Contract and as required for Completeness.

**“Mechanical Completion”** shall mean that all equipment has been erected on their respective foundations including electrical, piping and instrumentation/ structural items etc., and load trial/testing has been completed and the Facility is ready for commissioning in accordance with Schedule [•].

**“Milestones”** means the key stages set out in Schedule ...;

**“Milestone Date”** means the date by which Contractor guarantees that it will achieve a Milestone as set out in Schedule ... – Milestones, Milestone Dates and Liquidated Damages;

**“Mobilisation”** means the actions to be taken by Contractor to mobilise all Personnels, workmen, employees, other Contractor Items, subcontractors (its personnel, workmen and employees) and other matters necessary for Contractor to perform the Services and the Works and will include the obtaining of all necessary Applicable Permits (other than Applicable Permits for which Company is responsible pursuant to this Contract) and the completion of system installation and calibration, instrument tests, and other pre-operation tests to the satisfaction of the Company Representative such that Contractor is ready to commence performance of the Services and Works in accordance with this Contract. The date of completion of

Mobilisation shall be as certified in writing by the Company’s Representative;

**“Performance Acceptance”** means the acceptance by the Owner of final Performance of the Project pursuant to the conditions set out hereof and more particularly specified in Schedule [•].

**“Performance Guarantees”** means the guaranteed levels of performance of the Project with respect to net output as set out in Schedule ... - (Technical Specifications)

**“Performance Guarantee Tests”** shall mean the tests to be conducted so as to establish Performance Guarantees in the manner hereto.

**“Personnel”** shall mean any personnel provided by Contractor and/or Sub-contractor and utilized to complete Works at the specified / agreed location.

**“Pre-Commissioning”** shall mean the testing, checking and other requirements specified in Schedule ...- Scope of Work that is to be carried out by the Contractor in preparation for Mechanical Completion and thereafter successful Commissioning as provided in this Contract;

**“Project / Facility”** Building and bringing into commercial operation a ... with an annual capacity of ... successfully commissioned with demonstration of related performance guarantees and utilities at ...

**“Provisional Completion”** shall mean the successful completion of the Reliability Run as defined in Schedule ... (Technical Specifications).

**“Owner”** or **“Company”** shall mean [•]

**“Owner Group”** shall mean and include Owner and its Affiliates.

**“Representative”** in respect of the Owner and the Contractor to include the persons so identified on the Contract as their representative or such other person(s) notified by the Owner or the Contractor in writing to the other from time to time, which will include amongst others consultants engaged by the Party or any Affiliate of the Contractor having commonality of interest with the Contractor.



**"Scope of Work"** shall mean the scope of work set out in Schedule .... and any amendment thereto made in accordance with the terms of the Contract.

**"Services"** means the Personnel to be provided by Contractor and the work to be carried out as specified in the Contract and more specifically identified in Schedule [•]. Provided however, that the same shall not include purchase / sale of Material.

**"Site"** shall mean the actual place or places, provided or made available by the Owner where Owner wants the Contractor to supply the Material and/or plant and/or equipment and/or provide the Services. For the purpose of this Contract, the Site shall be "....."

**"Specification"** includes the scope or technical parameters of the Material and/or Services and/or Works and/or those requirements regarding the standard of Contractor's Equipment and the level of Services required, as set out in the Contract.

**"Sub-Contractor"** shall mean any Person to whom the Contractor has sub-let any part of the Work, with due permission of the Owner.

**"Supplies"** shall mean and include all supplies, equipment's, materials, consumables, spare parts, which are to be supplied by the Contractor under the Contract for the completion of Works.

**"Taking Over"** means the taking over of care custody and control of the Facility by the Owner pursuant to Clause 35 hereof.

**"Tax"** or **"Taxes"** shall include all taxes, including income tax, withholding tax, dividend distribution tax, capital gains tax, fringe benefit tax, GST, customs duty, wealth tax, gift tax, franchise, property, use, employment, license, occupation tax, governmental charges, fees, cesses, levies or assessments or other taxes, levies, fees, stamp duties, statutory gratuity and provident fund payments or other employment benefit plan contributions, withholding obligations and similar charges levied under Applicable Law and shall include any interest, fines, and penalties related thereto and, with respect to such taxes, any estimated tax, interest and

penalties or additions to tax and interest on such penalties and additions to tax together with any other statutory charges which may be payable by the Contractor, its Sub-Contractors and any of their employees, levied under the Applicable Law.

**"Technical Specifications"** means the document, so entitled, appearing in Schedule .... hereto, setting out a description of the Works and detailed specifications.

**"Term"** for the Contract shall mean the period commencing from the Effective Date and expiring upon completion of all obligations specified herein.

**"Trade Usage"** refers to generally accepted practice or norms in relation to expected standards, permissible deviation, internationally accepted scientific data, foreseeable consequences attributable to deviation beyond permissible deviation established over a period of time in course of commercial dealing between the parties to this Contract or their associates.

**"Works"** shall mean all work to be performed by the Contractor as provided for under the Contract, including, without limitation, the provision of all materials, Supplies, Services, equipment, erection, installation, and successful commissioning thereof to the satisfaction of the Owner and as required in accordance with the Contract.

## **1.2 Interpretation:**

In this Contract:

**1.2.1** Headings are for convenience only and shall not govern or affect the interpretation of the Contract;

**1.2.2** Except where the context otherwise requires, references to one gender include all genders and the singular includes the plural and vice versa;

**1.2.3** Except where the context otherwise requires, references to any enactment shall include references to such enactment as re-enacted, amended or extended and any subordinate legislation made under it;

**1.2.4** References to persons include companies, corporations, partnerships, associations, and other organizations whether or not having a separate legal personality;

**1.2.5** Except where otherwise indicated, reference to clauses, sub-clauses, recitals and

Schedules shall be to the clauses, sub-clauses, recitals and Schedules of this Contract;

**1.2.6** "including" means "including without limitation";

**1.2.7** If the day on which any act, matter or thing is to be done under or pursuant to this Contract is not a business day as per Trade Usage, that act, matter or thing shall be done on the preceding business day.

**1.2.8** Unless specifically provided otherwise, the words 'herein', 'hereof', 'hereto', 'hereinafter' and 'hereunder', and words of similar import, refer to this Contract as a whole, and not only to the specific provision in which such words are set forth.

**1.2.9** In the event of any inconsistency or discrepancy between these General Terms & Conditions as provided under this document and any other Schedule(s) forming part of the Contract, then Parties shall first endeavour to harmoniously construe these Conditions and in case, such harmonious construction is not feasible in the opinion of Owner, then the terms of the main agreement shall prevail.

**1.2.10** The Contract is the result of negotiations between the Parties, and has been reviewed by the Parties and their respective counsel. Accordingly, the Contract shall be deemed to be the product of the Parties, and there shall be no presumption that an ambiguity should be construed in favor of or against any Party solely as a result of such Party's actual or alleged role in the drafting of the Contract.

**1.2.11** The recitals set forth in the Contract are and for all purposes shall be interpreted as being an integral part of this Agreement, constituting acknowledgments and agreements by and between the parties hereto, and are incorporated in this Contract by this reference. Recitals shall have the same contractual and legal significance as any other language in this Contract.

## **2. REPRESENTATION & WARRANTIES**

**2.1** The Contractor represents and warrants that:

(i) It is a duly organized Company/business entity validly existing under the laws where it is incorporated/established, and has experience, expertise, ability and skills as required to supply Materials and perform the

Services as detailed in Schedule ... - Scope of Work and as may be necessary to perform its obligations hereunder in a professional manner.

(ii) It has all the requisite power, authority and approvals required to enter into this Contract and will have all the requisite power, authority to perform fully each and every obligation under this Contract.

(iii) This Contract has been duly executed and delivered by its duly authorized representatives and constitutes its legal, valid and binding obligation enforceable against it in accordance with its terms.

(iv) The execution, delivery and performance of this Contract and all instruments or addenda required hereunder by it does not contravene, violate or constitute a default of or require any consent under the provisions of any other agreement or instrument to which it is bound, including the constitutional documents thereof, or any order, judgment, decree or injunction of any court of law.

(v) No order has been made or petition presented for the bankruptcy protection, winding up (including any petition for voluntary winding up) or dissolution thereof against it, or its affiliates.

(vi) It shall maintain high professional standards to ensure performance of this Contract as per best business practices and in full compliance with statutory obligations.

(vii) It has absolute right, title and interest in and to all registered or unregistered patents, copyrights, trade names, trademarks, service marks, logos symbols and other proprietary marks (IPR) (including limited right of use of those owned by any of its vendors, affiliates or subcontractors) which it provides to the Owner, for use related to the Supplies, and that any IPR provided by the Contractor shall not infringe the IPR of any third party;

(viii) No sums, in cash or kind, have been paid or will be paid, by the Contractor or on its behalf, to any person by way of fees, commission or otherwise for securing the contract or for influencing or attempting to influence any officer(s)/employee.

(ix) The Contractor shall comply with the

procedures as stipulated in Technical specification, project timelines, standard operating procedures and any other stipulations, conditions in connection with the execution of the Project as provided under Schedule ... of this Contract and failure to adhere will be a material breach of the Contract.

(x) All the information/documents submitted by the Contractor, or relied on by it to establish its qualifications for being able to effectively manage the Project, during the bidding stage are accurate and sufficient in all respects.

(xi) it is not, entitled to claim any immunity whatsoever for itself or any of its properties, assets or rights to receive income from any contract, suit, or from the jurisdiction of any court, from execution of a judgment suit, execution, attachment or other legal process in any proceeding in relation to the Contract.

(xii) The Contract constitutes the entire agreement between the Owner and Contractor and supersedes all communications, negotiations and agreements (whether written or oral) of Parties with respect thereto made prior to the date of Contract, except to the extent any such communications, negotiations and agreement are specifically made a part of the Contract.

**2.2 Contractor warrants and guarantees that all Services shall be performed in a manner that:**

(i) is in accordance with the provisions of the Contract, the Applicable Laws and Applicable Permits and with generally accepted industry standards, Good Industry Practice and the performance and/or functionality and are free from Defects (including any latent Defects) [and in a Good and Workmanlike Manner;

(iii) so as to achieve each Milestone by the applicable Milestone Date;

(iv) in accordance with the requirements of this Contract, the policies of the Company and the HSE Requirements under Schedule ...;

(v) in accordance with the instructions of Company Representative (or alternate) as to results to be obtained from the Services and the Works;

(vi) in strict compliance with the terms of any Applicable Laws pertaining to labour and employment;

(vii) it is experienced in the type of Services and Works to be performed hereunder and has the capability (both technical and financial), expertise, manpower and technical and financial resources to perform the Services and Works in accordance with the terms of this Contract;

(viii) all Contractor Items will be in good working order, fit for their intended purpose, and conform to the requirements of Good Industry Practice, Applicable Law and this Contract;

(ix) it has the right to use the Equipment and all other Contractor Items for the performance of the Works free and clear from any other contractual obligations, liens, charges or encumbrances of whatever kind that could affect the Works;

(x) all personnel of Contractor and its Subcontractors will be fully-trained and competent to perform the Works and to operate the equipment and all other machinery used for the performance of the Works;

(xi) the general specification of painting and colour code in respect of Plant and Equipment, structures, pipelines etc. shall be as per Good Industry Practices; and

(xii) it has the right to carry on its business and operations in India.

## **2.3 Sufficiency of Information**

**2.3.1** Contractor has satisfied itself, regarding the nature and scope of the Services and with all matters that may affect the Services, including:

(i) all necessary Permits (other than Permits for which Contractor is responsible pursuant to this Contract) and the completion of system installation and calibration, instrument tests, and other pre-operation tests such that Contractor is ready to commence performance of the Services in accordance with this Contract;

(ii) the geographic, climatic, weather, and cultural conditions prevailing in the Site;

- (iii) the Milestones, Milestone Dates and Programme;
- (iv) the conditions of access to the Site;
- (v) third-party services, labour, and facilities; and
- (vi) Applicable Laws, including all Permits required for the performance of the Works (including any Supplies and Services).

**2.3.2** Contractor shall identify and plan the access to Site(s) as may be required for execution of the Works and performance of the Works. Provision of any approach roads (temporary/permanent), if required, to access the Sites for the purpose of movement of Contractor Items and Personnel shall be included in the Works. Contractor shall also be responsible for repair, restoration, up-gradation of access ways/roads, as required, to enable the movement of Contractor Items and Personnel for execution of the Works. Depending upon the location and traffic movement on the existing infrastructure, Contractor may have to provide by-pass, widening of roads, shoulder repairing/strengthening etc. as applicable at its sole cost and expense. Contractor shall indemnify, defend and hold harmless Company from and against any and all Claims arising out of the above mentioned activities, which includes but not limited to any disputes, grievances before any local / statutory authorities.

**2.3.3** Contractor shall make a Site visit to familiarise itself with the Site conditions. Contractor shall estimate and generate any additional information required for the execution of the Works. The requirements for all such surveys and investigations shall be assessed by Contractor and performance of all such activities shall be included in the Works. Contractor shall check, verify the plot plan and limits from concerned authorities and update the survey documents/drawings, as required. Contractor shall prepare the survey specifications, if required, for approval by Company for performance of surveys; mobilization of survey Subcontractors and performance of surveys. The survey specification shall be prepared for pre-construction, post-construction, and as-built surveys as required. Contractor shall perform post-construction surveys after successful

installation and testing of the Facilities (including fully functional equipment) and execution of associated works. Contractor shall perform as-built surveys for preparation and submission of as-built drawings and documents.

**2.3.4** Failure of Contractor to familiarize itself with any of the matters described in Clauses 2.3.1, 2.3.2 and 2.3.3 will not relieve Contractor in whole or in part from its obligations under this Contract. In entering into and performing this Contract, Contractor has relied, and will rely, entirely upon its own investigation of such matters and has not relied, and will not rely, on any information provided by Company including any Confidential Information.

**2.3.5** Notwithstanding the provisions of this Contract, the Contractor shall be deemed to have satisfied itself in respect of all relevant matters pertaining to the Works, including, but not limited to, the Scope of Works, the nature of the Works, access to the Site, local facilities, climatic, sea, other water and weather conditions, working hygiene and working environment conditions and all other matters which may affect the performance of the Work. Any failure by the Contractor to take into account any of the aforementioned matters shall not relieve or excuse the Contractor from any of its responsibilities, liabilities or obligations hereunder or entitle the Contractor to any extra payment.

## **2.4 Subcontractor Warranties**

**2.4.1** Company shall be entitled to the benefit of any warranties provided by any Subcontractors that are more favorable than those provided in this Contract. If any warranties provided by any Subcontractor last longer than the applicable Defects Liability Period (as extended), Contractor shall assign the same to the Company upon the expiration of the applicable Defects Liability Period, together with an assignment of any bond or other security with respect thereto, and the Contractor shall thereafter act if and as requested by the Company as liaison for the Company with such Subcontractors in prosecuting any warranty claims. The Contractor shall ensure to take necessary steps (to the satisfaction of the Company) to assign all the warranties of the Subcontractor at the earlier of termination of this Contract,



Commissioning or the receipt of instruction from the Company.

**2.4.2** Notwithstanding anything contained in this Contract or the documents executed with the Subcontractor, the Contractor shall have primary liability and responsibility with respect to all warranties set forth in this Contract.

### **3. STATUTORY REQUIREMENTS**

#### **3.1 Compliance with Applicable Law**

The Contractor shall ensure that its performance of the Contract and the carrying out of the Works ascertains and complies with the Applicable Law. The Contractor shall release, indemnify, defend and hold harmless the Owner and the Owner's Affiliates against losses, Claims and liabilities, for non-compliance or breach of Applicable Law including but not limited to any sanctions and penalties payable to any Governmental Authority, together with any legal expenses incurred in connection therewith, to the extent arising out of any failure of the Contractor or any Sub-Contractor to comply in the performance of the Contract.

#### **3.2 Divergences from Statutory Requirements**

If the Contractor finds any divergence between the Applicable Law and the Performance Guarantees or the Technical Specifications (other than Change in Law) it shall immediately give to the Owner a written notice specifying the divergence. The Contractor shall promptly, upon becoming aware of the same, inform the Owner in writing of its proposed amendment for removing the divergence, and with the Owner's consent the Contractor shall entirely at its own cost and expense complete the Works in accordance with the amendment.

#### **3.3. Compliance with Factories Act**

For any Safety violation and non-compliance of the statutory acts and rules prescribed respectively under Factories Act, 1948 and Tamil Nadu Factories Rules, 1950 made there under the contractor is solely liable for the imposition of penalty. It is to be clearly understood by the contractor that as per the section 101 of the Factories Act, where the

Occupier and/or the Manager of Sterlite Copper is charged by the officials of the factories inspectorate with offence punishable under the Factories Act, 1948 and Tamil Nadu Factories Rules, 1950 for any safety violation by the contractor and his workmen while working, the concerned contractor shall be charged as the actual offender and brought before the concerned Court/s at the time appointed for hearing the charge and shall be convicted of the offence and the Occupier and/or the Manager of Sterlite Copper will be discharged from liability under the Factories Act, 1948 and Tamil Nadu Factories Rules, 1950, in respect of such offence.

### **4. PROJECT SCHEDULING, INFORMATION AND PROGRESS REPORTS**

#### **4.1 Project Scheduling**

The Contractor shall, within a period of 30 (thirty) days of the Effective Date, prepare and submit a detailed project schedule/PERT for approval of the Owner. The Contractor shall perform the Works in accordance with the project schedule / PERT approved by the Company ("**Project Schedule**"). The Project Schedule will also provide for 'Milestones' and 'Milestone Dates', and these have to be strictly adhered to, failing which damages, foreseeable or otherwise, shall be levied against the contractor in accordance with the decided levy rates.

#### **4.2 Extension of Time**

**4.2.1** If the Contractor is delayed in performing the Works under this Contract solely as a result of:

- (i) an event of Force Majeure; or
- (ii) suspension of the Works by the Owner pursuant to Clause 13.1 (Suspension Without Cause); or
- (iii) the Owner's failure to carry out its obligations under this Contract which directly impacts and delays Contractors performance of Works under this Contract and such delay cannot be mitigated by the Contractor;

then the Contractor shall, subject to taking necessary steps mitigate such delays, be

entitled to an equivalent extension of time for performance of the affected part of the Work and shall request a Variation Order in accordance with the provisions of Clause .... (Variations).

**4.2.2** Provided that, in case the performance of Work is getting delayed due to Clause 4.2.1 (i), the Contractor shall bring the same to the notice of the Owner, by means of a written communication, within a period of 3 days failing which no extension of time would be granted under this clause.

**4.2.3** Company/Owner will have the option to extend the Term on the same terms and conditions as specified in this Contract (as elected by Company) through the delivery of Notice, in writing, to Contractor no later than 30 days before the expiry of the Term. Provided that there shall be no change in price payable by the Company to the Contractor in terms of this Contract.

**4.2.4** The Term will be further extended to the extent required for Contractor at the discretion of the Company/Owner to complete any Works being carried out during the expiry of the Term, without prejudice to any rights of the Company/Owner under this Contract for delay in delivery of Works.

### **4.3 Progress Reports**

**4.3.1** The Contractor shall at monthly intervals or such intervals as required by the Owner, prepare formal written and quantitative reports for the Owner on the progress of the Works by reference to the Project Schedule in a format approved by the Owner and in sufficient detail to permit the Owner to assess performance, plan witness dates and evaluate forecasts, including reports on key sub-contracts (as applicable). Monthly progress reports shall include the following:

- (i) executive summary;
- (ii) description of the Works, Supplies and Services performed during the preceding month;
- (iii) updated Project Schedule showing progress to the end of month or such other period as may be required by the Owner (as percentages complete of the Contractor's activities broken down into significant elements of the Works) and the current

schedule of activities and the targets for the next month; and the analysis of critical path and ways & means to overcome the difficulties in the critical path

(iv) updated billing schedule showing the payment become due to the end of next month;

(v) identification of areas with foreseeable problems relating to scope, claims for adjustments to the Contract Price, or changes in the Project Schedule;

(vi) details of any disputes/accidents;

(vii) photographs of the status/progress at the Site;

(viii) details of any inspections / tests conducted;

(ix) details of personnel and equipment at the Site; and

(x) such other information and supporting documentation as the Owner may request.

**4.3.2** The Owner shall have the right to depute his representative at the premises of the Works of the Contractor or any of its Sub-Contractors to ascertain the progress of the Works. The Contractor shall as and when required by the Owner provide the Owner access to all scheduling information prepared by the Contractor in respect of the Works and shall permit the Owner's Representative to attend and fully participate in scheduling and progress meetings.

**4.3.3** All monthly progress review meetings shall be held at the Owner's office nearest to Site or, other place as advised by the Owner.

### **4.4 Expediting of Progress**

Subject to Clause 4.2 above, the rate of progress of the Facility or any other part of the Works is at any time in the reasonable opinion of the Owner too slow to ensure that the Works will be completed in accordance with the Milestone Dates in relation thereto and the Project Schedule, the Owner may so notify the Contractor in writing. The Contractor shall respond within 10 (ten) working days with its plan (including but not limited to re-planning task sequences, increasing labour or other resources of the Contractor or any Sub-Contractor employed on the Works or the addition of Sub-Contractors) to accelerate the

progress of the Works so as to complete the Works as per the scheduled Milestone Date and to achieve the scheduled Project Schedule. The Contractor shall not be entitled to any additional payment for taking such steps. If the Contractor does not mobilise additional resources to increase the rate of progress so as to complete the Facility as per the Project Schedule, the Owner has the right to get it done through other resources at the risk and cost of the Contractor.

#### **4.5. Project Management Committee**

**4.5.1** Within 14 Days following the Effective Date, the Parties will form a joint committee to be known as the “**Project Management Committee**”.

**4.5.2** The Project Management Committee will perform the functions specified in Schedule ...

**4.5.3** The membership of the Project Management Committee will consist of the Company Representative, the Contractor Representative, and such other representatives of Company and Contractor as the Parties may agree. The Company Representative (or, in his absence, his designee) will chair the Project Management Committee.

**4.5.4** In the event of any failure by the members of the Project Management Committee to agree on any matter brought before them, the Company Representative (or his designee) will set forth the Company’s recommendation for resolving such matter, and Contractor will adopt, endorse and implement such recommendation.

### **5. SUBMISSIONS OF DRAWINGS AND DOCUMENTS**

#### **5.1 Drawings and Documents for Approval**

**5.1.1** The Contractor shall supply, for the Facility as finally constructed, as-built drawings and other documents and manuals as may be specified in the Technical Specifications. As-built drawings, documents and manuals shall be provided to the Owner in the numbers specified in the Technical Specifications and together with the computer diskettes/CDs containing such drawings, documents and manuals.

**5.1.2** The Contractor shall carry out, and be responsible for all designs related to the Contract and such designs shall be prepared

with adequate design margin by qualified designers who are engineers or other professionals having the experience and capability necessary to perform their respective duties.

**5.1.3** The Contractor shall prepare all Contractor’s Documents and shall also prepare any other documents necessary to instruct its Personnel. The Owner shall have right to inspect the preparation of all such documents, wherever they are being prepared.

**5.1.4** The Contractor undertakes that the design, the Contractor’s Documents, the execution and the completion of the Facility will be in accordance with the Applicable Laws, Scope & Technical Specification as specified in Schedules .... and encompassing good international engineering standard/practices for such works including Owner standards specified in Schedules ...

**5.1.5** The Contractor shall submit to the Owner and/or Owner’s Representatives drawings and documents in such copies/numbers for approval/information as referred to in the lists set out in the Technical Specifications (Schedule ...) to enable the Owner to review, approve, disapprove or raise comments or queries on such drawings and documents and to permit the resolution of such comments or queries prior to the commencement of the work described in such drawing and document and without impeding the performance of the Contractor’s other obligations under the Contract. The Contractor shall provide to the Owner within 30 (thirty) days of the signing of the Contract, a submittal schedule setting out the anticipated dates of issue of all drawings and documents referred to in the Technical specifications, sufficient to enable the Owner to plan its review of the documentation.

**5.1.6** If errors, omissions, ambiguities, inconsistencies, inadequacies or other defects are found in the Contractor’s Documents, designs and drawings and other documents required to be provided by the Contractor in terms of this Contract then the Owner will inform to the Contractor about their rejection/modification or acceptance for such designs, drawings and other documents within two weeks from the date of receipt of documents and the Facility shall be corrected/rectified by the Contractor at their

own costs and expenses, notwithstanding any consent or approval by the Owner or otherwise in terms of this Contract.

**5.1.7** Throughout the design and execution of the Facility and as long thereafter as is necessary to fulfil the Contractor's obligations, the Contractor shall provide all necessary superintendence to plan, arrange, direct, manage, inspect and test the Facility.

## **5.2 Owner's Approval**

**5.2.1** Except as otherwise provided in the Contract, within 14 (fourteen) days of receipt of any drawing or document required to be submitted to him for approval under the Contract, the Owner shall either return one copy thereof to the Contractor's Representative with its approval endorsed thereon or shall notify the Contractor of its disapproval thereof along with any comments or queries for such disapproval, provided, however, that the Contractor shall be entitled to proceed with such portion of the scope of work which is not related to the disapproved portion of the design document.

**5.2.2** The Contractor shall, within 14 (fourteen) days of the Owner's notification of disapproval thereof along with any comments or queries on any drawing and document, amend such drawing or document or otherwise take account of or respond to the Owner's comments or queries and re-submit such drawing or document for approval. In case the Contractor is required to re-submit any drawing, design and document the procedure laid down in clause 5.1 shall be adopted and in such re-submission of any drawing, design and document shall continue unless otherwise provided in this Contract till the Owner is fully satisfied with such drawing, design and document re-submission of which was required. It is hereby clarified that the Contractor shall not be entitled to additional time or amendments to the Performance Schedule due to any delays attributable to the Contractor in getting the drawings, designs and documents approved in accordance with the terms hereof.

**5.2.3** The Contractor shall submit to the Owner for information, from time to time as they are issued, drawings and documents for information referred to in the Technical Specification. Any Works carried out prior to approval of the relevant Contractor's drawings

or documents shall be at Contractor's own risk and expense.

## **5.3 Contractor not to Deviate**

The Contractor shall execute the Works and ensure that the complete Project is fabricated and erected in accordance with drawings and documents approved by the Owner. If the Contractor deviates from any drawings or documents previously submitted to the Owner (whether for approval or for information) it shall submit an amended drawing or document to the Owner and, in the case of a material deviation from a drawing or document originally submitted for approval, shall first obtain the Owner's approval thereof. The Owner shall use all reasonable endeavours to give or refuse such approval within 14 (fourteen) days.

## **5.4 Owner's Right to Examine**

The Owner shall have the right, at any time on reasonable notice and at the premises of the Contractor or its Sub-Contractors, to examine drawings or documents which have been or are being prepared by the Contractor or its Sub-Contractors for the purposes of the Contract (and which, in the case of manufacturing drawings of items not manufactured exclusively for the purpose of the Works, are normally intended for disclosure to Owners). Such drawings or documents shall include in any event those listed in the Technical Specifications.

## **5.5 Effects of Submissions and Approval**

Neither the submission of any drawing or document nor its approval or disapproval, nor the raising of queries, or the making of comments, suggestions or recommendations on the same by the Owner shall restrict, prejudice, affect, dilute any of the Contractor's obligations under this Contract. It is further clarified that notwithstanding any approval granted by the Owner to any drawings, designs or documents, Contractor shall be liable to fulfil its obligations under the Contract and the Contractor shall, in all respect, be liable for any discrepancy, error or omission in specifications, design, drawings or other documents.

## **5.6 Owner's Rights to Copy, Use and Reproduce Drawings and Documents**



The Owner is allowed to copy, use and reproduce all designs, drawings, models, plans, specifications, design details, photographs, CAD materials and any other materials supplied by the Contractor in connection with the Facility for the completion, reconstruction, modification, repair, maintenance and use of the Facility.

## **5.7 Errors and Omissions**

**5.7.1** The Contractor shall be responsible for any discrepancies, errors and omissions in the basic engineering, detailed engineering drawings & documents and data or other information submitted by him, irrespective of whether these have been approved, reviewed or otherwise accepted by the Owner.

**5.7.2** The Contractor shall take all corrective measures arising out of discrepancies, errors and omissions in drawings, documents, data and other information within the time schedule and without extra cost to the Owner.

## **6. INSPECTION AND TESTING**

**6.1** The Owner or Owner's Representatives and the independent engineer appointed by the Owner's lenders ("**Lender's Engineer**"), jointly and severally, shall at any time have access to the site for the purpose of inspection, reviewing and checking the work in Progress as per approved Quality Assurance Plan (QAP) (Schedule ...).

**6.2** The costs for all the agreed tests shall be borne by the Contractor himself. Where special tests in addition to agreed tests in the QAP are required by the Owner (Before acceptance of the Works), the Contractor shall bear the cost of the testing only if such special test proves that the Works are not in accordance with the Technical Specifications. However, if such special tests are necessary based on the result of the agreed test, then cost of all such special tests shall be to the account of the Contractor. In the event that the Contractor fails to meet the requirements of inspection and testing as per the QAP agreed, the Company shall have the right to require Contractor to undertake those tests and undertake inspections at the cost and risk of the Contractor, till the time the Owner is satisfied with the results. For avoidance of doubt, the Contractor shall not be entitled to any extension of time for conducting such retests or delayed tests.

**6.3** The Contractor shall render the inspecting personnels all necessary assistance and shall make available free of charge all necessary instruments and appliances and test beds and tools and other materials necessary for the performance of the inspection so as to enable the inspectors to work properly in accordance with the QAP.

**6.4** The readiness for carrying out the inspection and testing must be notified to Owner in writing 3 days before the anticipated date of inspection. Inspection call should contain internal inspection and test reports, if required as per QAP. Should the Owner waive the inspection and testing, the Contractor will be notified accordingly and shall execute the inspection and testing by himself deemed as in Owner's Representative's presence and the Contractor shall forthwith forward to the Owner the inspection and test reports in triplicate.

**6.5** The carrying out of the inspection and testing by the Owner, or any waiver thereof, shall in no manner relieve the Contractor from discharging any of his contractual obligations.

**6.6** The Contractor undertakes that any deficiencies or defects resulting from his fault and discovered during the inspection and testing shall forthwith be remedied/repared/replaced by the Contractor prior to the agreed delivery date at his own cost. Each test certificate, as applicable, in accordance with Technical Specifications, shall be approved by the Owner's Representative. The Contractor shall submit approved test certificate in 3 copies at the time of handing over the Contract.

**6.7** Payment made by the Owner against the Completion of Work in stages shall not constitute acceptance of the Work in totality as per this Contract. If rejected, part or complete of Work will be the responsibility of the Contractor for re-works and all charges associated with re- work in that behalf shall be to Contractor's account.

**6.8** The above-mentioned inspection and testing shall be in accordance with the Quality Assurance Plan to be approved by the Owner and the Lender's Engineer (if required) as per provision of Technical specification.

## **7. OBLIGATIONS OF PARTIES**

## **7.1 Contractor's Obligations-General**

### **7.1.1 Contractor's Performance**

(i) Except as otherwise expressly excluded in this Contract, the Contractor shall, in accordance with the provisions of the Contract which including the works specified in Schedules ... (Technical Specifications) hereto carry out such engineering and perform such Works, Supplies and other Services as may be required for the execution of the Works including any works and services for Completeness of Facilities.

(ii) The Contractor shall perform the Work with all due skill, diligence and care and in a safe, competent, Good and Workmanlike Manner, Good Industry Practice, the Applicable Law, Applicable Permits and prudent utility practice.

(iii) Except to the extent that it may be legally or physically impossible or create a hazard to safety, the Contractor shall comply with the Owner's Representative(s) and the Lender's Engineer instructions and directions on all matters relating to the Works.

(iv) The Contractor shall provide all management, supervision, personnel, materials, equipment and supplies (except materials, equipment and supplies specified in the Contract to be provided by the Owner), plant, consumables, facilities and all other things, so far as the necessity for providing the same is specified in or is reasonably to be inferred from the Contract.

**7.2** For the purposes of Clause 12 (Warranty), the "Warranty Period" shall be a period of 12 months from the date of successful completion of Performance Acceptance as certified by the Owner in respect of the whole of the Project or provided that if any rectification is carried out pursuant to Clause 12 (Warranty), then the Warranty Period shall be extended for a further period of 12 months from the date of completion of such rectification.

**7.3** The Contractor shall be required to provide the Owner with an irrevocable and unconditional security deposit cum performance bank guarantee as per the Schedule ... of the Contract from a bank or financial institution acceptable to the Owner (the "**SD cum PBG**"). The SD cum PBG shall be provided by the Contractor promptly following, the earlier of, execution of the

Contract or issuance of any letter of award to the Contractor and shall be valid till 60 (sixty) days from the expiry of the Warranty Period. If requested by the Owner, the Contractor agrees to extend the validity period of the SD cum PBG or to issue a further SD cum PBG in the event that the duration of this Contract / warranties is for any reason extended beyond such validity date / Warranty Period.

### **7.4 Deleterious Material**

The Contractor acknowledges and undertakes to not supply or provide any Deleterious Materials in relation to the performance of the Works.

### **7.5 Environmental Damages**

The Contractor shall undertake the Works in such a manner that there is no Environmental Damage is caused.

## **8. CONTRACTOR'S PERSONNEL**

### **8.1 Contractor's Personnel - General**

**8.1.1** The Contractor shall, at its expense, provide and keep available for the Work, the Contractor's Personnel and shall ensure that the Contractor's Personnel comply with Applicable Law and, where necessary for the performance of the Works, are in possession of valid passports and work permits.

**8.1.2** The Contractor shall ensure that the Contractor's Personnel shall be sufficient in number, experience and quality to carry out the Work in accordance with the terms and conditions of the Contract and will be fluent in the English language.

**8.1.3** In relation to any member of the Contractor's Personnel expected to make, in the Owner's sole opinion, significant technical contribution to the Works, the Contractor shall submit full particulars, in the form of a resume, of the qualifications and experience of such member to the Owner prior to that member of the Contractor's Personnel starting any part of the Works. No such member may start any part of the Works unless the Owner's written approval has been given. The Contractor shall submit resumes of any other member of the Contractor's Personnel assigned to the Works on written request by the Owner.

**8.1.4** No key member of the Contractor's Personnel assigned to the Works may be replaced without the Owner's prior written approval, except in the case of death, serious injury or illness of the key member or their immediate family and/or resignation of such personnel not followed by any hiring back by the Contractor during the term of the Contract. Any replacement shall work with the person to be replaced for a reasonable handover period. For the purposes of this Clause, the term "key member" shall mean any member of the Contractor's Personnel who, in the reasonable opinion of the Owner, performs an important role in the performance of the Work and shall include, without limitation, any project manager, supervisory staff, project engineer or lead discipline engineer.

**8.1.5** The Contractor shall prepare and make available to the Owner from time to time details of the numbers and trades of workmen whom the Contractor proposes to employ (whether directly or through Sub-Contractors) on the Site throughout the periods shown in the Project Schedule.

#### **8.1.6 Project Manager**

The person appointed as the Contractor's Project Manager for the Works shall have full authority to act on behalf of the Contractor for all purposes in connection with the Contract. The Project Manager shall not be engaged in any project other than the Works and shall not be replaced or removed without the prior consent of the Owner. The Contractor shall notify the Owner of the Project Manager's normal place or places of work.

#### **8.1.7 Construction Manager**

The person appointed by the Contractor pursuant to this Clause as the construction manager shall be employed at the Site from the commencement of Works on the Site until Final Completion to supervise all work done on the Site. The construction manager so appointed shall be present at the Site throughout normal working hours except when on leave, sick or absent for reasons connected with the proper performance of the Works. Whenever the construction manager is absent from Site the Contractor shall nominate a suitable person to act as his or her deputy. The Contractor shall obtain the Owner's approval

of the person appointed as construction manager and shall not replace or remove such person without the prior consent of the Owner, which consent shall not be unreasonably withheld or delayed.

#### **8.1.8 Owner's Approval of Key Personnel**

The Contractor shall submit the resumes of the personnel nominated to fill all the key positions including any Key Personnel, to the Owner for review, comment or rejection of the nominations.

#### **8.1.9 Security**

(i) Fencing, Guarding, Lighting, etc.

The Contractor shall arrange suitable security and lightning arranged for protection of the men, material, equipment at the Site during the Project execution up to handing over to the Owner.

(ii) Clearance of Site

(a) On a continuous basis consistent with Good Industry Practice during the progress of the Works, the Contractor shall clear away and remove pursuant to the directions of the Owner from the Site all scrap, debris, other waste materials.

(b) The Contractor shall, leave on the Site for the Owner such temporary works as instructed by the Owner, free of charge.

(c) The Contractor shall at all times and particularly after completion of the Works, keep the Site and the Facility in a clean, safe and workman like condition and shall dispose of all rubbish (other than hazardous materials or other materials which may contaminate ground-water, for which other arrangements shall be made by the Contractor) in a properly prepared landfill site in accordance with Good Industry Practice.

(d) The Contractor shall be responsible for keeping unauthorised persons off the Site and only persons authorised by the Owner and the Contractor or their respective personnel shall be allowed at the Site.

**8.1.10.** The Contractor shall confine his operations to the Site and to any additional areas as may be notified in writing by the Owner. The Contractor shall take all reasonable precautions to keep Plant and Equipment and its authorised personnel within

the Site and these additional areas, and to keep them off adjacent land. The Contractor shall keep the Site free from all unnecessary obstruction

## **8.2 Removal of Personnel**

**8.2.1** The Owner may, at any time after the commencement of the Work, direct the Contractor in writing to remove any member of the Contractor's Personnel from the performance of the Works. The Contractor shall immediately comply with such direction and shall, as soon as reasonably practicable, replace, or procure the replacement of, such person with another person suitably qualified and acceptable to Owner. The Contractor shall bear the costs of any such removal and replacement.

**8.2.2** The Owner reserves the right to reject any member of the Contractor's Personnel, prior to that member commencing any part of the Work.

## **8.3 Working Conditions and Discipline of Contractor Personnel**

**8.3.1** The Contractor shall, at all times, be responsible for the conduct of the Contractor's Personnel and shall ensure that they comply with all Applicable Law and honour and observe Indian standards of morality and behaviour.

**8.3.2** The Contractor shall comply with, and ensure that its sub-contractors comply with, all labour laws, regulations, and standards and practices applicable in respect of the Site including but not limited to any Registration in Contractors' own name under any applicable labour laws.

**8.3.3** Notwithstanding anything contained above or otherwise provided in this Contract, the Contractor shall remain the employer of the Personnel and Personnel deployed by the Contractor shall work solely under the Contractor's control & supervision and Owner shall in no way be responsible for any act, omission or non-compliance either on the part of the Contractor or such Personnel.

**8.3.4** The Contractor shall indemnify, defend and hold harmless the Owner against liability, Claims or any proceedings that may arise in relation to any non-compliance under this

Clause 8.3 of the Contract.

## **8.4 Labor**

The Contractor shall prepare and make available to the Owner from time to time details of the numbers and trades of workmen whom the Contractor proposes to employ (whether directly or through Sub-Contractors) on the Site throughout the periods shown in the Project Schedule.

### **8.4.1 Housing for Labor**

The Contractor shall provide and maintain such temporary accommodation and amenities, in accordance with the Applicable Law and the standard specified by the Owner, as may be reasonably necessary for all its and its Sub-Contractors' staff and labor employed at the Site, including all fencing, water supply (both for drinking and other purposes), electricity supply, sanitation, fire prevention and fire-fighting equipment and other agreed requirements in connection with such accommodation or amenities.

### **8.4.2 Festivals and Religious Customs**

The Contractor shall in all dealings with its and its Sub-Contractors' staff and labor have due regard to all recognized festivals, days of rest and religious or other customs.

### **8.4.3 Disorderly Conduct**

The Contractor shall at all times take all reasonable precautions to prevent any unlawful riotous or disorderly conduct by or amongst its or its Sub-Contractors' staff and labor and for the preservation of peace and protection of persons and property in the neighborhood of the Site against the same.

## **9. REPRESENTATIVES**

### **9.1 Owner's Representative**

**9.1.1** The Owner's Representative(s) shall act in full charge of the Work and shall have full authority to liaise with the Contractor's Representative(s) to resolve all day to day matters which may arise between the Contractor and the Owner.

**9.1.2** The Owner's Representative(s) shall monitor the performance of the Work and shall have the authority necessary to enforce the



provisions of this Contract. Provided that the Owner's Representative shall not be authorized to make any amendments to the Contract.

**9.1.3** The Owner's Representative(s) shall be entitled to inspect the Work, Supplies and Services and all documentation relating thereto at any time.

**9.1.4** The Contractor shall direct all matters relating to the Contract to the Owner's Representative(s) and shall act only in accordance with the instructions of the Owner's Representative(s).

## **9.2 Contractor's Representative**

The Contractor's Representative(s) shall act in full charge of the Work and shall have full authority to liaise with the Owner's Representative(s) to resolve all day to day matters which may arise between the Contractor and the Owner.

## **9.3 Change of Representatives**

**9.3.1** Either Party may:

(i) revoke the appointment of any person appointed as that Party's representative and may appoint another person as representative in his/her place; or

(ii) appoint any person to be an additional representative for a stated purpose.

**9.3.2** No such revocation or appointment shall be effective until notice of it is given to the other Party.

## **9.4 Bases**

**9.4.1** The Owner will maintain an office base in India for the purposes of the Contract.

**9.4.2** Unless otherwise agreed in writing by the Owner, the Contractor will maintain both an office base in India and an operational base at the Site sufficient to manage the Work for the purposes of the Contract.

## **10. RECOURSE OF THE PARTIES**

**10.1** Contractor shall look only to Owner for the due performance of the Contract and nothing therein contained shall impose any liability upon, or entitle Contractor to

commence any proceedings against any third party customer or any person not a party to the Contract.

**10.2** Owner shall be entitled to enforce any Contract on behalf of any third party customer in connection with the Contract as well as for itself and for this purpose, only Owner may commence proceedings against Contractor. The obligations and liabilities of Owner Group issuing the Contract are several and not joint.

**10.3** It is clarified that under no circumstances, by virtue of this Contract, will the employee/workers of the Contractor be deemed to have any privity of contract with the Owner nor would they or any of their heirs, assigns or successors would claim any benefit/ privilege, whatsoever, from the Owner.

## **11. PERFORMANCE TEST**

**11.1** Once the Project has been commissioned and started up and is capable of safe operation as per the operation manual and Good Industry Practices, the Contractor shall be required to perform Performance Guarantee Test in accordance with the test procedure as specified in the Technical Specifications (Schedule ...) and achieve the desired Performance Guarantee Parameters. The Contractor shall be afforded 3 chances to achieve the Performance Guarantee Parameters and the latest result shall be the basis for successful completion of the Performance Guarantee Parameters of the tests specified Technical Specifications. It is hereby clarified that the cost of conducting any retests shall be borne by the Contractor and the Contractor shall not be entitled to any extension of time for completing the Performance Guarantee Tests.

**11.2** The Contractor shall give the Owner at least 15 (Fifteen) day's prior written notice of the date on which the Contractor intends to commence the Performance Guarantee Test. The Owner shall designate and make available qualified and authorized representatives to observe the Performance Guarantee Test.

**11.3** In the event that the Contractor fails to achieve the Performance Guarantee Parameters, then the Contractor shall be liable to pay liquidated damages at the rate of as per Schedule [•]

## 12. WARRANTY

### 12.1 Warranty

The Contractor warrants to the Owner with respect to the performance of Works, Services and completion of Supplies that (“**Warranties**”):

- (a) each item comprising the Works, Services and Supplies are new, unused, undamaged and free from Defects (in design, engineering, materials, workmanship, title or otherwise);
- (b) all workmanship of the Contractor and its Sub-Contractors shall be in full conformity with the Contract, Applicable Law, Applicable Permit, Technical Specifications, Good Industry Practice, Good and Workmanlike Manner and shall be free from Defects (“**Contract Requirements**”);
- (c) the design and engineering of the Works, Services and Supplies shall be free from Defects and deficiencies and each of its constituent parts shall conform in all respects with the Contract Requirements;
- (d) the Works, Services and Supplies are in compliance, and conform in all respects to the Contract Requirements; and
- (e) the Works, Services and Supplies are of high quality, and are, and shall remain fit for its intended purpose.

### 12.2 Notices by Owner

If the Contractor is in breach of the Warranty set out in Clause 12.1 (Warranty), the Owner may notify the Contractor in writing before or the expiry of 60 (sixty) days from the Warranty Period specifying the nature of such breach and requiring the Contractor to rectify such breach. Upon receipt of any such notice, the Contractor shall, at its own expense, immediately commence and thereafter continuously proceed to rectify such breach within 15 days of the receipt of the notification of the notice from the Owner (including, if applicable, re-performance of the relevant part of the Works) to the Owner’s reasonable satisfaction and in accordance with the provisions of this Contract.

### 12.3 Rights of Owner

If the Contractor fails to comply with the provisions of Clause 12.2 (Notice by Owner) or if, in the reasonable opinion of the Owner rectification of such breach by the Contractor would be prejudicial to the Owner’s interests, the Owner shall be entitled to engage a third party to perform (or re-perform) any part of the Works, Services and Supplies not properly performed by the Contractor and shall be entitled to recover from the Contractor any additional costs incurred by the Owner in so doing. The Owner shall also have the right to invoke and make claims on the SD cum PBG.

### 12.4 Claims for Business Loss

Notwithstanding anything to the contrary, if due to any reason whatsoever owing to circumstances attributable to breach of any clauses of this Contract by the Contractor including delayed execution of the Works to the satisfaction of the Owner which may lead to a loss for the Owner, including but not limited to the Owner not being able to avail any tax incentives, failure to meet obligations under any approvals, permits and contracts, then in such an event the Owner shall be rightful to recover such benefit foregone as direct losses for loss of revenue or any other liability including but not limited to any interest, penalties and all other charges/ expenses imposed on the Owner, from the Contractor.

### 12.5 Delay in Remedying Defects

If the Contractor fails to inform the Owner regarding Defects and proceed diligently with the remedy of any such defect within 15 (fifteen) days of receipt of instruction from the Owner, the Owner may proceed to do the repairs or do any other works at the Contractor’s expense provided that it does so in a reasonable manner in accordance with Good Industry Practice, notifies the Contractor of its intention to do so and permits the Contractor to inspect such repaired or replaced Project to ensure that quality standards have been maintained. The reasonable cost so incurred by the Owner shall be deducted from the Contract Price or to be paid by the Contractor to the Owner.

### 12.6 Removal of Defective Work

The Contractor may, with the consent of the Owner, which consent shall not be unreasonably withheld, remove and replace from the Site at his own cost any part of the Project, which is defective, if the nature of the Defect is such that repairs cannot be expeditiously carried out on the Site.

### 12.7 Warranty due to Design Defects

Contractor is responsible for the correctness and accuracy of all designs, specifications, drawings, data and other technical documents relating to the Works that are contained in this Contract (including the Schedules); have otherwise been provided to Contractor prior to the Effective Date; or are prepared or approved by or on behalf of Contractor or any Subcontractor, and any discrepancies, errors or omissions therein, if prepared or furnished by or on behalf of Contractor, any Subcontractor or otherwise, whether or not any of the foregoing have been approved by Company. Contractor shall not be entitled to any adjustment to the Milestones, the Milestone Dates and/or the compensation payable pursuant to **Schedule - Compensation** arising out of discrepancies, errors or omissions within or between the foregoing.

### 12.8 Further Tests

If any replacement, repair or modification is of such a character as may affect the subsequent performance of the Project or any part thereof in accordance with the Performance Guarantees, the Owner may as it may consider necessary may give to the Contractor notice requiring that such further tests be conducted in respect of the relevant part as may be necessary and mutually agreed to demonstrate the adequacy and efficacy of the replacement, repair or modification.

### 12.9 Latent Defects

**12.9.1** If any Defect is of the kind that: (i) significantly affects the operation or output of the Project; or (ii) arises as a result of any act or omission on the part of the Contractor which a highly skilled Contractor acting conscientiously would have foreseen or avoided shall appear in any part of the Project within a period of 4 (four) years after the expiry date of Warranty Period of such part of the Project the same shall be made good by the Contractor by repair, provided that the

Defect was “latent”, i.e. could not have been discovered by a reasonable examination prior to the expiry of the Warranty Period.

**12.9.2** Such Defects shall not include those defects where:

(i) at the time of discovery of the defect, the repair or replacement is already contemplated for such parts under the recommendations contained in the operating and maintenance manuals, or

(ii) if and to the extent that such defect has occurred due to the operation of the Project in a manner other than that advised in the final operation and maintenance manual, or

(iii) the defect arises from normal wear and tear.

### 12.10 Making Good Defects

The contractor shall be responsible for promptly making good by repair and/or modification, as per the instruction of the Owner at its expense, any Defect in any part of the Project which may appear during the Warranty Period in relation thereto and which arises from any failure to comply with the provisions of Clause 12.1 hereof. The warranty for such repair/modification shall be for a period of 12 months from the date of such repair/modification.

## 13. SUSPENSION

### 13.1 Suspension without Cause

The Owner shall have the right, at the Owner's sole discretion, at any time to require the Contractor to suspend the Works (or part thereof) under this Contract on giving notice to the Contractor. Such notice shall include an estimate of the duration of the period of suspension (the “**Suspension Period**”). The Works (or relevant part thereof) shall resume at the end of the Suspension Period or at such other date as the Owner may by notice in writing to the Contractor specify. The Contractor shall continue to perform other Works in terms of the Contract, which the Owner has not suspended.

### 13.2 Suspension Due to Default

**13.2.1** If the Contractor is in breach of any of its obligations under this Contract (including,

without limitation, any breach of Schedule .... (Health Safety and Environment), and Code of Conduct as under Clause 42 of the current Contract, the Owner shall be entitled to immediately suspend the Work (or part thereof) by written notice to the Contractor until such time as such breach has been remedied by the Contractor, in which case no rates or other amounts shall be payable to the Contractor in respect of such period of suspension.

**13.2.2** Except in the case of a breach which in the reasonable opinion of the Owner is likely to endanger the safety of any persons or property, the Owner shall, prior to issuing any suspension notice pursuant to Clause 13.2.1, notify the Contractor of the breach. Following receipt of such notice, if the Contractor fails to immediately commence and thereafter continuously proceed to remedy such breach to the Owner's reasonable satisfaction, the Owner may issue the suspension notice pursuant to Clause 13.2.1.

### **13.3 Procedure following Suspension Notice**

Following receipt of a notice to suspend the Work, the Contractor shall discontinue the Work (or relevant part thereof) and follow any specific requirements of the Owner with regard to the safety of the Work during any suspension period.

## **14. BUSINESS CRITICALITY**

**14.1** Contractor acknowledges that it has read and understood this Contract and acknowledges that its obligations under this Contract are necessary and crucial to the Company's business. Contractor further expressly acknowledges that any breach by Contractor of its covenants set forth in this Contract will cause irreparable injury to the Company for which monetary damage may not be an adequate remedy.

**14.2** Contractor hereby confirms that no other client or customer of Contractor (whether now or at any time prior to the completion of all obligations of Contractor under this Contract) shall receive any precedence over Company in the provision of the Contractor's resources and performance of the Works and Contractor hereby confirms that the timely, successful and effective performance and completion of the Works in accordance with this Contract is, and

will remain, of utmost importance for Contractor. Contractor undertakes to accord priority over deployment of its resources for performance of its obligations under this Contract. Time shall be of the essence and any Service carried out under this Contract shall be in strict accordance with any timelines and Schedules mentioned hereunder.

**14.3** If any conflict of priorities arises between Contractor's commitments to Company under this Contract and any other commitments being undertaken by Contractor, Contractor shall ensure that there is no interruption to the Works under this Contract and shall resolve such conflict in favour of the Works.

**14.4** Contractor shall at all times act in such a way and make recommendations that are in the best interests of the Works under this Contract.

## **15. CHANGE IN LAW**

**15.1** If after the Effective Date of this Contract, there is any change in law which has attained judicial finality that results in a change in the rate of any Tax included in the Contractor's prices or rates or the introduction of a new Tax and such change results in an increase or decrease in the cost to the Contractor of performing this Contract then the Parties shall agree to a revision in pricing to reflect such change provided that:

(i) the Party requesting such revision shall promptly (and in any case prior to submission of the Contractor's final invoice under this Contract) notify the other Party that such change in law has arisen; and

(ii) the Party requesting such revision shall provide the other Party with documentary proof of such change in cost to the reasonable satisfaction of the other Party and has also provided evidences of mitigating any additional liability (including steps specified in Clause 15.2.1 below); and

(iii) the provisions of this Clause 15 (Change in Law) shall not apply to changes in Personal Income tax or Corporate Income tax or to changes in non-Indian Taxes.

### **15.2 Exemption from Duties/Taxes**

**15.2.1** The Contractor and the Subcontractors shall use its best endeavors to obtain any



exemption from payment of taxes/duties in respect of the Contractor's Equipment, which the Owner and/or the Contractor is entitled in accordance with notifications (applying to machinery, plant equipment, materials and supplies imported for use) issued by the Government of India from time to time (the "Notifications"). Without limiting this obligation, the Contractor shall follow the procedures set out below. The Owner shall provide all reasonable assistance to the Contractor in obtaining such exemption(s).

15.2.2 The Contractor shall obtain an essentiality certificate from respective Government Authority, wherever so required, for all Contractor's Equipment for which such a certificate is required. All costs associated with obtaining such a certificate shall be borne by the Contractor.

15.2.3 The documents required to obtain an essentiality certificate include the relevant commercial invoice, CIF value, airway bill/original bill of lading and a technical report on the relevant item of Contractor's Equipment. The Contractor shall provide those documents with such application for an essentiality certificate.

15.2.4 The Contractor shall use its best endeavors to complete re-export of all Contractor's Equipment within 45 days of the date of the expiry or termination of the Contract, and in any event shall complete re-export in accordance with the requirements of the relevant essentiality certificate. All Contractor's Equipment shall be imported exclusively for the Owner and shall be re-exported (except those, which have been consumed in the Work) on completion of the Work or earlier termination of the Contract.

15.2.5 If the Owner is required to provide any statutory license or monetary bond or undertaking required for importing Contractor's Equipment by customs or any Government regulatory body, the Contractor shall, on request, provide a back-to-back bond/undertaking as required by Owner.

## **16. PAYMENT**

### **16.1 Invoices**

**16.1.1** The Contractor shall submit to the Owner on or before the tenth (10th) day of

each month an invoice detailing the amounts payable to the Contractor under this Contract in respect of the preceding month. Each invoice shall, in addition to any requirements under any Schedule,

- (i) be in duplicate;
- (ii) bear the Contract Number stated on the cover sheet to the Contract;
- (iii) state the name, e-mail address, mobile telephone number of the Owner's Representative;
- (iv) be accompanied by supporting evidence and itemised in accordance with the Owner's requirements; and
- (v) be in compliance with Applicable Laws.

**16.1.2** Additionally, the Contractor shall submit the following information/documents to the Owner unless specifically exempted by the Owner representative in writing:

- (i) Latest tax residency certificate of the Contractor as issued by the tax / revenue authorities of Contractor's country of residence, stating specifically that the Contractor is tax resident of country as mentioned in such tax residence certificate.
- (ii) Copy of the Permanent Account Number ('PAN') card issued by the Indian Tax authorities,
- (iii) Copy of registration certificates under applicable Indian tax/other laws including but not limited to GST, import export code etc., as applicable.
- (iv) Copy of the certificate issued by Indian tax authorities, enabling the Owner to make payments to the Contractor after deduction of such taxes as per prescribed rate in the certificate.

**16.1.3** Invoices and mentioned documents in the Contract shall be sent to the address set out in the Contract. Contractor must ensure that all invoices for Works are submitted to the Owner within 90 days of rendition of service or goods delivered, as the case may be. Late submission of Invoices beyond abovementioned period may result into denial of payments to Contractor on the sole discretion of the Owner.

**16.1.4** The Owner shall make payment on satisfaction of all the requirements (if any) of the Reserve Bank of India (FEMA regulations), or any other regulation in relation to payment in foreign currency in relation to the Works provided by the Contractor.

**16.1.5** The Owner shall make payment within 21 days of its receipt of a correct and agreed invoice submitted pursuant to Clause 16.1.1 (Invoices) to the Contractor's nominated bank account as notified in writing to the Owner.

**16.1.6** Notwithstanding any other provisions of the Contract, no payments due to the Contractor by the Owner under the Contract shall be payable by the Owner to the Contractor until the copies of the certificates of insurance referred to in Schedule ... (Insurance) of these General Terms & Condition of Contract and the SD cum PBG have been delivered to the Owner.

**16.1.7** Any invoice not complying with the provisions hereof will be returned by the Owner to the Contractor whereupon the Contractor shall submit a rectifying invoice. The Owner shall make payment of such rectifying invoice in accordance with Clause 16.1 (Invoices).

**16.1.8** No payment made by the Owner shall be construed as acceptance in whole or in part of the performance by the Contractor of any of its obligations under this Contract.

**16.1.9** All items provided by the Contractor under the provisions of Schedule ... (Compensation) or the Scope of Work that are expressly stated therein to be reimbursable by the Owner shall be invoiced to the Owner with detailed supporting documentation. The detailed supporting documentation shall include, without limitation, good quality copies of all relevant receipts and a detailed summary of the use of and reason for such item. All such supporting documentation must be approved and signed by a representative of the Owner prior to the submission of the relevant invoice.

**16.1.10** Unless otherwise specified in Schedule ..., (Compensation) all rates and charges payable by the Owner under this Contract shall be invoiced and paid in INR (Indian Rupees).

## **16.2 Owner's Right to Dispute Invoices**

If the Owner disputes any item on an invoice received pursuant hereto then it shall be entitled to withhold, without payment of interest, the amount in dispute provided that:

(i) the Owner makes payment of any undisputed portion of the invoice and notifies the Contractor in writing of the disputed item(s) within 30 (thirty) days of receipt of the relevant invoice; and

(ii) if the dispute is resolved in favour of the Contractor, the Owner shall pay the disputed amount within 7 (seven) days of the resolution of the dispute.

(iii) if the dispute is resolved in favour of the Owner, the Contractor shall forthwith issue a credit note for the disputed amount.

## **16.3 Report Sheets**

All invoices shall correspond with the daily reports or job tickets (or such other reports as may be required by the Scope of Work or reasonably required by the Owner) previously furnished by the Contractor to the Owner. Where appropriate, a breakdown in time shall be shown to the nearest half hour of the rates applied.

## **16.4 Payments Due to the Contractor**

**16.4.1** The Owner shall be entitled to deduct from any payment due or becoming due to the Contractor under this Contract, all costs, damages or expenses for which the Contractor is liable to the Owner under this Contract.

**16.4.2** The Contractor agrees to furnish to the Owner, promptly on request, a full and complete statement that all the Contractors, subcontractors and vendors have been paid in full for work done or materials furnished in connection with the performance of the Work.

## **16.5 Audit**

The Contractor shall maintain proper and accurate records in relation to this Contract and shall provide copies of the same to the Owner on request. The Owner (or its appointed representative) shall have the right to audit the relevant books and accounts of the Contractor in relation to any reimbursable charges paid for by the Owner under this

Contract. Such audit right shall survive for a period of 3 years following the expiry or termination of the Contract. Any incorrect payments identified by such audit shall be adjusted between the Parties as appropriate.

## **16.6 Liens**

**16.6.1** The Contractor shall not claim any lien, charge or the like on any aspect of the Work/ the Project or on any property of the Owner Group. The Contractor shall defend, indemnify and hold the Owner Group harmless from and against any Claim in connection with any lien, charge or the like created or caused by any member of the Contractor Group arising out of or in connection with the performance of the Contract.

**16.6.2** Without prejudice to the generality of Clause 16.6.1, should any act or omission of the Contractor Group result in any lien, charge or the like existing upon the property of the Owner Group after all payments hereunder have been made, the Contractor agrees to refund to the Owner upon demand all monies that the Owner Group may be compelled to pay to discharge any such lien.

## **16.7 Sub-contracts**

**16.7.1** The Contractor shall ensure that the provisions of the foregoing Clauses 16.5 (Audit) and 16.6 (Liens) are included in all Contracts it shall enter into with any subcontractors who shall supply any labour, equipment or materials to be provided under this Contract.

**16.7.2** The Contractor agrees to furnish to the Owner, promptly on request, a full and complete statement that all the Contractors, subcontractors and vendors have been paid in full for work done or materials furnished in connection with the performance of the Work.

## **16.8 Payment upon Completion**

**16.8.1** Following the expiry or termination of the Contract, the Contractor shall prepare and submit to the Owner within 30 (thirty) days a statement in the form of a final account, specifying the outstanding amounts which the Contractor intends to invoice to the Owner for payments due to the Contractor in accordance with the provisions of this Clause 16 (Payment). The Contractor shall submit to the

Owner its final invoice in respect of such statement within 60 (sixty) days of the date of the expiry or termination of the Contract and shall confirm in writing to the Owner that such invoice constitutes the final demand for all outstanding sums due to the Contractor under the Contract.

Notwithstanding Clause 16.1 (Invoices), the final invoice under this Contract will be paid by the Owner only after completion by the Contractor of all re-export formalities including, without limitation, cancellation of bank guarantees and undertaking letters given to customs department during importation of various re-exportable equipment.

**16.8.2** The Owner shall have the right to withhold from any payment due to the Contractor, such amounts as the Owner deems reasonably necessary or appropriate to protect it on account of any one or more of the following reasons:

- (a) failure to rectify the Defects in any Works (including any Works and Services), which might materially affect the Owner's ability to operate the Project as contemplated herein, attributable to the Contractor or its Sub-Contractors;
- (b) any encumbrance in respect of the Works, Supplies and/or Services (or any portion thereof) for which payments have been made in full;
- (c) the Contractor's failure to deliver SD cum PBG, as the case may be, to the Owner under this Contract;
- (d) the Contractor's failure to make payments to its Sub-Contractors for the Works, Services and Supplies or to any statutory and regulatory authority including amounts withheld by the Contractor because of disputes between the Contractor and such Persons;
- (e) any legal proceedings or inquiries initiated by the third parties and pending against the Contractor or against the Owner but relating to the Works (including any Supplies and Services) or the Contractor's obligations under this Contract;
- (f) the Contractor's failure to complete the relevant Milestone under the Works in

respect of which the payment request has been submitted;

(g) any amounts payable by the Contractor under this Contract; or

(h) any breach of Warranties during the Warranty Period.

**16.8.3** Following the expiry or termination of the Contract, the Owner shall not be required to make payment of any invoice not received in accordance with this Clause 16.8 (Payment upon Completion)

## **17. CONTRACTOR'S INSURANCE**

Please refer to Schedule ... for details regarding the insurance requirements.

The Contractor shall be required to ensure that the Owner and its lenders are designated as additional insured under the insurance policies obtained under the Contract.

The insurance policies shall be subject to the review and confirmation by the insurance advisors appointed by Owner/or any person designated by the Owner.

## **18. TITLE AND RISK**

**18.1** Where any item of the Contractor's Equipment is ultimately intended to become the property of the Owner pursuant through this Contract (whether through incorporation/erection/installation in the Site or otherwise), title to such item shall remain with the Contractor until the date of issue of the completion certificate in respect of the whole of the Work and/or Site in accordance with Schedule [•].

**18.2** Any warranties or guaranteed from Third Party Contractor/Sub-Contractor shall always be in the name of the Owner with due intimation to such Contractor or Sub-Contractor regarding the ultimate user being the Owner under this Contract.

**18.3** The Contractor shall further ensure back to back indemnities from such Contractor or Sub-Contractor in the same form and manner as sought by the Owner.

## **19. PASSING OF OWNERSHIP, RISK, COPYRIGHT, PATENTS AND OTHER PROPRIETARY RIGHTS ETC. ("IPR")**

**19.1** Unless otherwise stated in the Contract, the Project shall remain at the risk of the Contractor until delivered in a deliverable state to the Owner and in the manner specified in the Contract and subject to completion of performance testing by the Owner as per the requirement.

**19.2** Whenever Owner is not the ultimate consumer of the Material, all rights, benefits and remedies conferred upon Owner by the provisions of this Contract, including specifically the benefit of any warranties and transfer of title, shall accrue to and shall be for the express benefit of any third party customer and on whose behalf or for whose benefit the Owner has purchased the Material.

**19.3** Where the Owner rejects any Works (including any Supplies or Services) in accordance with these conditions, such Works shall be deemed to have remained the property and risk of the Contractor at all times.

**19.4** Works handed over by the Owner to the Contractor for servicing or repair shall remain from the time of collection or receipt until re-delivery at the place or places and in the manner instructed by the Owner at the absolute risk of the Contractor in regard to any loss or damage.

## **19.5 Intellectual Property Rights (IPR)**

**19.5.1** If any Works performed or provided under the Contract involves a patent, copyright, trademark, know how or proprietary information, whether registered or unregistered, (IPR), Contractor hereby grants Owner a permanent, irrevocable, worldwide, non-exclusive license to use the same without additional charge. Without prejudice to the above, the proprietary rights in relation to IPR of the Contractor shall continue to vest with the Contractor.

**19.5.2** Owner is the sole owner of IPR in anything developed and delivered under this Contract. Contractor shall provide at Owner's reasonable request any documentation necessary to confirm Owner's interest in such IPR. Contractor shall retain ownership of any IPR vested in Contractor prior to this Contract or created by Contractor outside of its performance of this Contract during the term of this Contract.



**19.5.3** The Contractor shall indemnify, defend and hold harmless the Owner from and against any demands, claims, suits and causes of action and any liability, legal costs, expenses, settlements arising from or incurred by reason of any infringement of letters, patent, registered design, unregistered design right, copyright, trademark or tradename by the use or possession of the same by the Contractor. The Contractor hereby represents to the Owner that, as of the date of signing of the Contract, the Contractor has received no notification of any rightful patent infringement claim, which would prejudice the Owner's right to use or maintain the Plant.

**19.5.4** In the event of any claim being made or action brought against the Owner which is covered by the indemnity set out as given above, the Owner shall promptly notify the Contractor thereof and the Contractor may at its own expense conduct all negotiations for the settlement of the same, and any litigation that may arise therefrom. The conduct by the Contractor of such negotiations or litigation shall be conditional upon the Contractor having first given to the Owner such reasonable security as shall from time to time be required by the Owner to cover the amount ascertained or agreed or estimated, as the case may be, of any compensation, damages, expenses and costs for which the Owner may become liable. The Owner shall not, unless and until the Contractor shall have failed to take over the conduct of the negotiations or litigation, agree to any settlement of such negotiations or litigation or make any admission, which might be prejudicial thereto.

**19.5.5** If, in consequence of any infringement of letters patent, registered design, copyright, trademark or tradename, the Contractor is prevented from executing the Work(s) or the Owner is prevented from using the Facility, the Contractor shall at its own expense:

- (i) procure for the Owner the right to continue using the relevant Plant or part; or
- (ii) replace the relevant Plant or part with a non-infringing Plant or part; or
- (iii) modify the relevant Plant or part so it becomes non-infringing.

## **20. VARIATIONS**

### **20.1 Right of the Owner to Vary the Scope**

**20.1.1** The Owner shall, by Variation Order, have the right during the performance of the Contract to change the scope and/or technical character of the Facility and/or of the supplies and services stipulated in the Contract;

**20.1.2** If any changes are required for completeness of the Works as per Schedules ... of the contract, the Contractor shall not be entitled to any addition in the price or time;

**20.1.3** If the Owner seeks any change or variation in the scope of work as specified in Schedules ..... hereto which is due to any default in the design, drawing or document supplied by the Contractor or due to any misrepresentation relating to warranties of the Contractor, the Contractor shall not be entitled to any addition in the price or time.

**34.2** The Contractor shall not vary or alter any of the Works, except in accordance with a Variation Order from the Owner or as required by a Change in Law and/or Change in Clearances. The Contractor may, however, at any time propose Variation to the Owner for its consideration and approval.

**34.3** In the event a Variation is required which is not as per Clause 20.1.2 and 20.1.3, the Contract Price and/or Completion Schedule shall be adjusted upwards or downwards as the case may be and as shall be mutually agreed to beforehand. The Contractor shall not be entitled to any extension of time unless such changes materially affect the time schedule.

**34.4** The Contractor is encouraged to develop, prepare, and submit value engineering change proposals voluntarily. If there is any decrease in the cost price

## **21. RISK PURCHASE**

**21.1** In the event of any delay or any breach in supply of Supplies and/or Services and/or Works, the Owner shall be at liberty to either (i) continue the Contract with due liquidated damages; or (ii) engage any other agency, parallel to the Contractor, to complete part of the balance supply at the risk and cost of the Contractor; or (iii) cancel the contract and get the balance supply done from any other agency at the sole risk and cost of the Contractor. The additional cost and expenses

so incurred by the Owner in procuring the whole or part of Works shall be liable to be recovered from the charges payable to the Contractor or the SD cum PBG so deposited by the Contractor.

**21.2** In case the already delivered Material cannot be put to intended use in the absence of the undelivered Material, Owner shall have the liberty to buy the entire quantity from any other source at the risk and cost of the Contractor. The additional cost incurred in purchasing the said material from new source, will be recovered from the Contractor besides recovering the cost of material, which has been delivered, by the Contractor and consequential losses incurred by the Owner due to non-supply of balance quantity in time, will also be recovered. However, such Risk Purchase article shall not apply to any part of extension, which would be granted by the Owner under force majeure clause.

## **22. PERMITS, LAWS AND REGULATIONS**

**22.1** Except to the extent that the same have been obtained by the Owner, the Contractor shall, at its own cost, be responsible for obtaining all Applicable Permits required for the performance of the Works and in respect of the Contractor's Equipment and the Contractor's Personnel and for all approvals and permits required for the Contractor to engage in business and provide services of the nature contemplated by this Contract, in India.

**22.2** The Contractor shall at all times ensure compliance with all such Applicable Permits. For the avoidance of doubt, the provisions of this Clause pertain not only to the present legal and Government requirements, but also to the legal and Government requirements for the entire period of the Contract (including any extension thereof).

**22.3** The Contractor shall be responsible for obtaining all import permits and other licences required for the importation of any Plant and Equipment. The Contractor shall be responsible within the Contract Price for obtaining all import permits and other licences required for the importation of Contractor's Equipment or other goods or materials required for the purposes of the Works.

**22.4** The Contractor shall be responsible for obtaining clearances required to re-export all equipment, spares and consumables brought into India, except those which have been consumed in the Work. The Contractor shall make all necessary arrangements to obtain permission of the Reserve Bank of India directly in relation to the re-export, with reasonable assistance from the Owner. In the event of any delay in re-export or non-compliance with any required formalities thereof, the Contractor shall be responsible for any duty, penalty or interest levied or leviable under any relevant legislation or rules in connection therewith.

## **23. INDEMNITY**

**23.1** The Contractor shall defend, indemnify and hold the Owner harmless from and against any and all Claims in connection with any taxes, levies, costs and charges which may be imposed on the Contractor or its sub-contractors by any Government Authority arising out of or in connection with the performance of this Contract.

**23.2** The Contractor shall fully indemnify, hold harmless and defend the Owner Group from and against:

23.1.1 all liabilities, any demands, proceedings, losses, costs and expenses, damages, penalties, fines, claims, actions and suits, including reasonable attorney's fees ("Losses") arising from physical damage to or physical destruction of property, or death of or bodily injury to any person to the extent caused by any act or omission of the Contractor or any of the Sub-Contractors or any of their respective employees, agents, representatives or others under their control (including breach by the Contractor of any of its obligations under this Contract);

23.1.2 any claims of the Sub-Contractor(s) against the Owner for non-payment in connection with the Works, excluding those by a sub-contractor appointed by the Owner or under any Sub-Contract assigned to the Owner and arising after such assignment;

23.1.3 all Losses arising from employers' liability or workers' compensation claims or any other claims of, or filed by, any employees, personnel or agents of the

Contractor or any of the Sub-Contractors in connection with the performance of the Works;

23.1.4 any claims not covered by insurance, which would have been covered by insurance but for the Contractor's failure to obtain and maintain the insurance coverage as required under this Contract;

23.1.5 all Losses arising from the Contractor's failure to comply with Applicable Law (including with respect to any applicable anti-graft or anti-corruption law) or Applicable Permits in connection with its performance of the Works or otherwise;

23.1.6 all Losses arising as a result of the Owner executing any applications or other documents at the Contractor's request in connection with obtaining or maintaining any Applicable Permits other than Losses arising from the Owner's failure to comply with the terms of the Applicable Permits that it is obligated to comply with;

23.1.7 all Losses arising from the Contractor's breach of the confidentiality obligations under this Contract; and

23.1.8 all Losses arising out of or in connection with any Hazardous Materials brought onto the Site or any other locations adjoining the Site by the Contractor or the Sub-Contractors, or anyone else for whom the Contractor is responsible.

**23.2** Contractor shall at all times be responsible for, shall release and shall defend, protect, indemnify and hold the Owner's Group harmless from any Claims, assessments, fines and levies incurred, created, caused or committed by Contractor Group.

**23.4** In the event the Owner is entitled to indemnification and intends to seek indemnification under this Clause, Owner shall promptly give Contractor notice of such Claim or action and the Contractor shall have the right to assume the defence of any such case at its own cost and expense.

**23.5** This indemnity shall be without prejudice to any other rights or remedies, including injunctive or other equitable relief, which the Owner may be entitled to.

**23.6** Owner shall have the right to retain / withhold out of any payment to be made to the Contractor an amount sufficient to indemnify it completely against any such lien, claim, assessment, fine or levy exercised or made and all associated costs.

**23.7** It is the express intention of the Parties hereto that the provisions of this Contract shall exclusively govern the allocation of risks and liabilities of the Parties, it being acknowledged that the Contract reflected herein has been based upon such express understanding. It is acknowledged that the compensation payable to Contractor as specified in this Contract has been based upon the express understanding that risks and liabilities shall be determined in accordance with the provisions of this Contract.

### **23.8 Third Party Liability**

**23.8.1** The Contractor shall be liable for, and shall defend, indemnify and hold the Owner Group harmless from and against any Claim in connection with:

(i) loss of or damage to any Third Party property; and

(ii) death or sickness of or injury to any Third Party;

arising out of or in connection with the performance of this Contract, to the extent caused by any negligence and/or breach of duty (statutory or otherwise) of the Contractor Group. For the purposes of this Clause - Indemnities, the words "Third Party" shall mean any party which is not a member of the Owner Group or the Contractor Group.

**23.10** The Contractor shall be responsible for the care of Project those parts of the Works relating thereto and goods and materials intended for incorporation therein until Taking-Over of Project occurs in accordance with this Contract.

**23.11** In the event of termination of the Contract in accordance with these Conditions, responsibility for the care of such Project, goods and materials shall pass to the Owner upon the effective date of termination or, if later, upon the date on which such goods and materials are delivered to the Owner or the Owner otherwise takes possession of them.

### **23.12 Injury to Persons and Property other than the Works**

Except as otherwise stated in this Clause, the Contractor shall be liable for and shall indemnify, protect, defend and hold harmless the Owner, the Owner's Affiliates and their respective directors, officers, employees and agents (the "Indemnified Party") from and against any and all demands, claims, suits and causes of action and any and all liability, costs, expenses, settlements and judgements incurred in connection therewith (including court costs and reasonable attorney's fees incurred by the Owner if and only if the Contractor fails to address such claim by its own attorney having received notice of the claim) in respect of personal injury to or death of third parties and in respect of loss of or damage to any third party property to the extent that the same arises out of or in consequence of any negligent, reckless or tortuous act or omission (including strict or absolute liability) or any breach of statutory duty of the Contractor, any Sub-Contractor or their respective agents or employees in connection with activities under this Contract.

### **23.13 Claims in Respect of Damage to Persons or Property**

In the event of any claim being made against any Person arising out of the matters referred to in respect of which it appears that the Contractor may be liable to indemnify the Owner's Indemnified Party under this Clause the Contractor shall be promptly notified thereof and may at its own expense conduct all negotiations for the settlement of the same and any litigation that may arise in relation thereto, subject to compliance with the terms of the claims procedures under any applicable insurance policy. The Owner's Indemnified Party shall not, unless and until the Contractor shall have failed to take over the conduct of the negotiations or litigation, agree to any settlement of such negotiations or litigation or make any admission, which might be prejudicial thereto. The Owner's Indemnified Party shall at the request of the Contractor afford all available assistance for any such purpose and shall be repaid all costs reasonably incurred in so doing.

### **23.14 THE INDEMNITIES UNDER THIS CLAUSE WILL APPLY REGARDLESS OF**

THE NEGLIGENCE, GROSS NEGLIGENCE, STRICT LIABILITY, BREACH OF DUTY OR OTHER FAULT OF THE PERSON TO BE INDEMNIFIED AND REGARDLESS OF WHETHER THE LOSS ARISES IN CONTRACT, TORT, BREACH OF DUTY (STATUTORY OR OTHERWISE) OR OTHERWISE AT LAW.

### **23.10 Pollution and Contamination**

**23.10.1** The Contractor shall be liable for, and shall defend, indemnify and hold the Owner Group harmless from and against any Claim resulting from pollution and/or contamination which originates:

- (i) from the property of the Contractor Group (including, but not limited to, the Contractor's Equipment); and/or
- (ii) from spills of fuels, lubricants, motor oils, pipe, dope, paints, solvents and rubbish or other effluent in the care, custody or control of the Contractor Group;
- (iii) arising out of or and in connection with the performance of this Contract, whether or not resulting from or contributed to by any negligence and/or breach of duty (statutory or otherwise) of the Owner Group.

### **23.11 Responsibility for the Project**

Without prejudice to the Contractor's other obligations under the Contract and at law, the Contractor shall be responsible for the Project from the Effective Date until the date of issue of the Completion Certificate in respect of the whole of the Project. In the event of any loss or damage to the Project during such period, the Contractor shall, if instructed by the Owner, reconstruct, repair or replace the same at its own expense and in accordance with the provisions of this Contract.

## **24. LIMITATION OF LIABILITY**

**24.1** Except as may be otherwise provided in this Contract, in no event shall either party be liable to the other, whether arising under contract, tort (including negligence), strict liability or otherwise, for any indirect, consequential, special, punitive, statutory penalties, exemplary or incidental loss or damages of any nature arising at any time from any cause whatsoever, provided that this



exclusion shall not apply to any obligation of either party to pay liquidated damages and/or any other penalties/recovery etc. specifically provided for in the Contract.

**24.2** The limitations of liability and exclusion of warranties as set out in the Contract shall be to the maximum extent permitted by applicable law. Nothing in this Contract purports to limit liability for fraud, death or personal injury, breach of Applicable Law, indemnity obligations under Clause 23 and 19.5 of this Contract, criminal negligence, gross negligence or wilful misconduct.

### **24.3 Schedule Guarantee and Delay Liquidated Damages**

#### **24.3.1 Schedule Guarantee**

Contractor guarantees that it will achieve each Milestone by the relevant Milestone Date.

#### **24.3.2 Delay Liquidated Damages**

(i) Contractor shall within 10 Business Days following receipt of Notice from Company demanding payment, pay to Company the amounts specified in Schedule ... – Milestones, Milestone Dates and Liquidated Damages, together with any applicable GST on such amounts, for each Day of delay (or part thereof) in achieving any Milestone, subject to the limits (if any) specified in Schedule ...– Milestones, Milestone Dates and Liquidated Damages or agreed by the Parties in writing (as applicable).

(ii) The Parties acknowledge that the liquidated damages set forth in Schedule ...– Milestones, Milestone Dates and Liquidated Damages reflect a genuine pre-estimate of the losses that Company may suffer or incur as a result of Contractor's failure to achieve a Milestone by the relevant Milestone Date or otherwise for the matters addressed therein and are not in the nature of a penalty.

(iii) If Contractor fails to pay any liquidated damages when due and owing under Clause 24.3.2(i), Company will be entitled to withdraw the amount owing (together with any applicable GST on such amount) from the Performance Bond or deduct such amounts from any and all amounts otherwise owing to Contractor under this Contract.

(iv) In case the performance guaranteed parameters as per the Schedule - ... (Technical Specifications) is not achieved then Contractor shall be under obligation to rectify the complete system or part thereof on free of cost basis immediately and in case shut down is necessary for such rectification then at first opportunity provided by Owner.

**24.3.3** However, in case, even after such rectification, the performance parameters are not achieved, the Owner shall at its discretion either accept the package subject to reduction in Contract Price or shall be entitled to reject and replace the whole or any portion of the equipment/sub system as the case may be which is defective or fails to fulfil the stipulated acceptance requirement in accordance with Schedule ... (Technical Specifications). However, such rejection/replacement by Owner shall not absolve the Contractor of any of their responsibilities.

**24.3.4** The aforesaid shall be without prejudice to and in addition to the Liquidated Damages as provided for and quantified under Schedule ...– Milestones, Milestone Dates and Liquidated Damages.

## **25. RELATIONSHIP BETWEEN PARTIES**

**25.1** Nothing contained in the Contract is intended to, or shall operate to, create a relationship of partnership or employer-employee or joint venture between the parties. Nothing in the Contract constitutes either party as the agent or legal representative of the other party or creates any fiduciary relationship between the parties. Neither party shall have authority to act in the name or on behalf of or otherwise to bind the other or commit or purport to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power) or pledge the credit of the other party for any purpose.

**25.2** As an independent contractor, Contractor will have complete control, supervision and direction over its equipment and personnel and of its Subcontractors. Company may, from time to time, instruct and direct Contractor as to the results to be obtained from the Works,

but such instructions or directions will not relieve Contractor of its duties and obligations as an independent contractor.

## 26. NOTICE AND COMMUNICATION

Any notice required to be given hereunder shall be given by sending the same by registered post or by hand delivery to the address of the addressee shown in this Contract or to such other address as either party may notify to the other for this purpose in writing. If sending by hand, notice shall be deemed served at the time of dispatch and if sending by post, notice shall be deemed to have been given on the 3rd day on dispatch by post. If notice pertains to any breach of a legal term under the Contract or otherwise, the same should be addressed to Head Legal.

## 27. TAXES

Taxes shall be applicable and payable according to guidelines mentioned in Schedule ... (Taxes).

**27.1** To the extent that the input tax credit is available to the Owner, the applicable GST, if any, shall be paid by the Owner, only upon fulfilment of the following conditions cumulatively:

- a) the Contractor shall submit valid invoice(s) to the Owner, in accordance with the Applicable Law, so as to enable the Owner to claim GST credits, if any, available to the Owner, under the Applicable Law. Such invoice(s) shall *inter alia* reflect, the details of the nature of service(s) provided, the breakup of Contract Price charged along with the applicable GST, if any, payable thereon, and all other details/ particulars/ information required to be furnished in this regard, in terms of the Applicable Law. The Owner shall not be bound to make any other payments except for the Contract Price and GST mentioned therein. Any out-of-pocket expenses shall not be payable by the Owner, unless a valid invoice as per the Applicable Law is issued in this regard.
- b) The Contractor shall discharge the liability of GST to the concerned authorities and upload the relevant details and the GST returns in relation to such payments within

the stipulated timelines prescribed under the Applicable Law.

- c) If at any time the credit of GST, paid by the Contractor, under any invoice issued by the Contractor, is denied to the Owner, or payment is demanded by statutory authorities due to a deficient invoice or incorrect reporting of transactions or inadequate documents or in the event an invoice or other tax documents do not satisfy the requirements under the Applicable Law or due to the Contractor's failure to deposit any tax collected from the Owner, the Contractor undertakes to defend, indemnify and hold the Owner harmless against any demand or denied tax credits as well as any interest, penalties and all other charges/ expenses imposed on the Owner as a result of claiming such tax credit.

- d) the Contractor shall be responsible for ensuring that it is registered under the Applicable Law including relevant GST legislations during the term of this Contract. In case, the registration of the Contractor is cancelled, withdrawn or surrendered during the term of this Contract, or where, for any reason, whatsoever, the Contractor is not required to obtain registration under GST legislations, the Contractor undertakes to intimate the Owner immediately. If at any time, the Contractor fails to intimate the Owner about the de-registration/ cancellation, the Contractor undertakes to defend, indemnify and hold the Owner harmless against any liability including that of any unpaid GST as well as any interest, penalties and any/all other charges/ expenses imposed on the Owner as a result of the same.

**27.2** the Contractor undertakes that it shall pass on the benefits of any tax related exemptions or rebates to the Owner and that it shall provide the Owner with any transaction related documentation/ information that it may require in order to avail any tax credits/ rebates/ deductions/exemptions.

**27.3** the Contractor shall comply with the Anti-Profitteering measures prescribed under the GST legislations.

**27.4** The Owner shall be entitled to retain or withhold any part or whole of the Contract Price including GST, if any, payable thereon, in the event the Contractor breaches any of the material terms of this Contract or is not in compliance with the conditions stipulated under Clause 27.1 above, until the same has been complied with, or the requirements under the Applicable Law in relation to this Contract have been adhered to. Such retention or withholding by the Owner shall not be deemed to constitute a breach of the Owner's obligations under this Contract and the Contractor agrees that it shall not seek any remedy, relief or claim from the Owner in relation thereto.

## **28. TERMINATION**

### **28.1 Termination by Owner without Cause**

The Owner may, at its option, terminate all or any part of the Work or the Contract forthwith without cause at any time by giving written notice to the Contractor, subject to the provisions of Clause 28.2 (Reimbursement to Contractor).

### **28.2 Reimbursement to Contractor**

In the event of termination under the provisions of Clause 28.1 (Termination by Owner without Cause), the Owner's sole liability in respect of such termination shall be to pay to the Contractor (a) all sums properly due to the Contractor under the Contract in respect of the Work (or terminated part thereof) up to the date of termination; and (b) any demobilisation fees or charges specified in the Contract for terminated equipment or personnel.

### **28.3 Contractor's Default**

the Owner may terminate this Contract by giving notice in writing to the Contractor, if the Contractor-

**28.3.1** shall have voluntarily commenced winding up, bankruptcy, insolvency, reorganization, stay, moratorium or similar debtor-relief proceedings, or shall have become insolvent or in unable to pay its debts as they become due, or admits in writing its inability to pay its debts or makes an

assignment for the benefit of its creditors;

**28.3.2** has insolvency, receivership, reorganization or bankruptcy proceedings brought against it and the petition commencing such proceedings is not controverted and the proceedings dismissed or effectively stayed within 60 (sixty) days of such commencement;

**28.3.3** has Abandoned the Contract;

**28.3.4** despite previous warnings in writing from the Company has wrongfully refused or has materially failed or neglected at any time to execute the Contract or is failing to proceed with the Contract with due diligence or is neglecting to carry out its other obligations under the Contract in each case so as to affect materially and adversely the execution of the Contract;

**28.3.5** has failed to achieve Completion of Works within 60 (sixty) days of the completion schedule in accordance with the Contract, due to the reasons attributable to the Contractor. Then the Owner may by notice to the Contractor and without prejudice to any other remedy under the Contract, terminate the Contract and enter the Site and expel the Contractor therefrom but without thereby releasing the Contractor from any of its obligations and/or liabilities which have accrued as at the date of termination of the Contract and without affecting the rights and powers conferred by the Contract on the Owner. Upon such termination the Owner may itself complete the Works or may employ any other Contractor to complete the job at the risk and cost of the Contractor.

**28.3.6** violates any of its obligations under this Contract including any obligations relating to the HSE Policy of the Owner as mentioned in Schedule... (HSE Policy).

**28.3.7** is in breach of any provisions of this Contract; and

**28.3.8** suspension in terms of Clause 13.2 continues for more than [•] days continuously.

### **28.4 Opportunity to Remedy**

The Owner's right to terminate the Contract following the occurrence of the events or circumstances described in Clause 28.3 shall

be subject to the Owner having first given the Contractor 15 (fifteen) days' prior notice of its intention to terminate the Contract, during which period the Contractor shall cure the relevant default.

**28.5** If the Contractor fails to rectify such breach in supply of the Works within the time frame specified in Clause 28.4, the Owner may at its discretion and without prejudice to other rights and remedies under the Contract or otherwise, avail itself of any one or more of the remedies as hereunder:

(i) reject the Works (in whole or in part) which are not in deliverable state as per the conditions of the Contract at the risk and cost of the Contractor and Contractor shall immediately pay to the Owner a full refund for the Works, Services or Supplies so rejected.

(ii) give the Contractor the opportunity at the Contractor's expense either to remedy any defect in the Works (including any Services or Supplies) or to supply substitute Services / Works and carry out any other necessary work to ensure that the terms of the Contract are fulfilled within a reasonable period specified by the Owner;

(iii) refuse to accept any further Supplies, Services and/or Works or subsequent performance of the Supplies, Services and/or Works which the Contractor attempts to make, in each case without any liability to the Owner;

(iv) carry out or procure that some other person carries out at the Contractor's expense any work necessary to make the Works comply with the Contract;

(v) instruct the Contractor to suspend performance of its obligations under this Contract with immediate effect and to take such steps as the Owner may direct in order to remedy such breach at the Contractor's expense;

(vi) claim such damages as may have been sustained due to such breach or breaches of the Contract as per terms and conditions of this Contract or under applicable Trade Usage taking into account the prevailing trade practice or scientific data of potential loss attributable to such Defects in the Works;

(vii) opt to use Works in the event of non-availability of substitute Works or to maintain operations of the Project but without prejudice to its right to claim damages attributable to consequences arising due to such Works;

(viii) obtain substitute Works elsewhere and recover from the Contractor any expenditure reasonably incurred by the Owner in obtaining the Works in substitution from another Contractor.

**28.6** If the Owner exercises its rights under conditions (ii), (iv) and/or (v) above in respect of Works which do not, in the Owner's opinion, meet the requirements specified in the Contract, the Contractor shall grant necessary right to the Owner to utilise the relevant Works until such time as they meet those requirements.

**28.7** Notwithstanding anything to the contrary in this Contract, there shall be no obligation whatsoever on the Owner to accept any defective Works, delayed delivery and/or performance of the Contract and it is expressly agreed by the Parties that acceptance of such defective Works, delayed delivery and/or performance by the Owner in its sole discretion, shall not prejudice any right/claim of the Owner to damages for supply of such defective Works, delayed delivery and/or performance and/or for breach of the Contract. In the foregoing, the Owner shall reasonably determine the amount of damages that shall be leviable upon / payable by the Contractor. Any damages so determined by the Owner shall be paid by the Contractor within fifteen (15) days. The levy of damages/acceptance of performance, as above, shall not prejudice any rights of the Owner as per other terms of this Contract.

**28.8** In the event of breach by the Contractor of its obligations under the Contract, the Owner may terminate the Contract in whole or in part or to rescind the Contract, in each case without any liability to the Contractor.

**28.9** Owner reserves the right to reject the Supplies, Services or Works in case the Contractor fails to remedy the default within the period specified in this Clause.

#### **28.10 Payment after Termination**

**28.10.1** The 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 Works have been ascertained (herein called “**Cost of Completion**”).

**28.10.2** If the Cost of Completion when added to the total amounts already paid to the Contractor as at the date of termination exceeds the total amount which would have been payable to the Contractor for the execution of the Works, 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.

**28.11** In the event of termination under any provision of this Contract, the Contractor shall:

- (i) promptly cease performance of the Work (or relevant part thereof) and, as directed by the Owner, clear all unnecessary Contractor’s Equipment and Contractor’s Personnel from the Site;
- (ii) allow the Owner all necessary rights of access to the Site to take over the Work (or relevant part thereof); and
- (iii) if, and to the extent, requested by the Owner assign any subcontracts or other rights and titles relating to the Work (or relevant part thereof) which the Contractor may have entered into or acquired.

#### **28.12 Saving of Rights**

The termination or expiry of this Contract shall be without prejudice to the rights and obligations of the Parties up to and including the date of such termination or expiry, and shall not affect or prejudice any term of this Contract that is expressly or by implication provided to come into effect on, or continue in effect after, such termination or expiry.

#### **28.13 Survival of Clauses upon Expiry/Termination**

The provisions of the Contract and Clauses

relating to Warranty, Payment, Taxation, Indemnities, Consequential Loss, Termination, Confidentiality and General Legal Provisions – Arbitration & Governing Law and Jurisdiction shall survive the expiry or termination of the Contract and shall remain in full force and effect after such date.

#### **28.14 Termination for Force Majeure**

Should any circumstance of Force Majeure continue for a period equal to or more than 6 (six) consecutive months then the Owner may terminate this Contract with immediate effect by notice in writing to the Contractor, in which case the Owner’s sole liability in respect of such termination shall be to pay to the Contractor all sums properly due to the Contractor under the Contract in respect of the Work up to the date of termination. In such circumstances, no demobilisation or similar fees or charges for equipment or personnel shall be payable by the Owner.

#### **29. NOT USED**

#### **30. NOT USED**

#### **31. FORCE MAJEURE**

**31.1** Neither party shall be liable for any delay or failure in the performance of this Contract due to

- (i) act of God such as fire, flood, earthquake or like natural calamity, and
- (ii) war, riots or civil commotion

if they impede the performance of the Contract or make performance unreasonably onerous, provided that such material and adverse effect could not have been prevented, overcome or remedied by the affected Party through the exercise of diligence and reasonable care (“**Force Majeure Events**”).

**31.2** Force Majeure Events shall specifically not include –

- (i) unavailability, late delivery, or changes in the cost of the machinery, equipment, materials, spare parts or consumables;
- (ii) prevailing weather conditions in the Block, including during monsoon periods;
- (iii) failure or delay in performance by any Subcontractor; and
- (iv) normal wear and tear or flaws in materials and equipment or breakdowns in equipment

**31.3** The party, which is not able to perform its

obligations under this Contract on account of Force Majeure Event(s), shall without any delay, notify in writing the other party on the initiation and cessation of such Force Majeure Event(s) and shall use diligent efforts to end the failure or delay in performance to minimize effects of such Force Majeure Event. In such a situation, the party, which is not able to perform its obligations under this Contract on account of Force Majeure Event(s), shall not be liable to the other party for the default or breach of this Contract for the period of failure or delay.

**31.4** If the Force Majeure Event(s) continues beyond 30 days, the parties shall make efforts to find an amicable solution for future course of action agreeable to both parties in a fair and equitable manner.

**31.5** Both Parties agree to use their respective reasonable efforts to cure any event of Force Majeure to the extent that it is reasonably possible to do so.

## **32. ARBITRATION**

**32.1** Any dispute or difference whatsoever arising between the parties out of or relating to the interpretation, meaning, scope, operation or effect of this Contract or the existence, validity, breach or anticipated breach thereof or determination and enforcement of respective rights, obligations and liabilities of the parties thereto shall be amicably settled by way of mediation. If the dispute is not conclusively settled within a period of twenty-one (21) days from the date of commencement of mediation, the dispute shall be referred to an independent engineer to be appointed mutually by the Parties and the independent engineer shall make all efforts to resolve the dispute within a period of 21 days of the reference of dispute. In the event the independent engineer fails to resolve the dispute within a period of 21 days, the dispute shall be referred to and finally resolved by arbitration under Indian Arbitration and Conciliation Act 1996. The arbitration shall be conducted as follows:

(i) The Arbitration shall be conducted by a forum of three arbitrators with one arbitrator nominated by each Party and the presiding arbitrator selected by the nominated arbitrators.

(ii) The language of the mediation and arbitration proceedings shall be English. The seat of arbitration shall be Chennai, India.

(iii) The award made in pursuance thereof shall be final and binding on the parties.

(iv) The Parties hereto agree that they shall be obliged to carry out their Obligations under the Contract even in the event a dispute is referred to Arbitration. It is further clarified that the Owner shall be entitled to retain any sum or portion of Contract price, which has become due and payable, for any unfinished Works or any subject matter under arbitration.

(v) In case of invocation of the Arbitration by the Contractor, no reference for arbitration shall be maintainable unless the Contractor furnishes an interest free security deposit of a sum determined according to rates agreed as under to the Owner and the sum so deposited shall, on the completion of the arbitration proceedings and pronouncement of Award be adjusted against the cost, if any, awarded by the arbitrator against the Contractor. It is further agreed that the balance amount after such adjustment, if any, shall be refunded to the Contractor within one month from the date of the Award:

<u><b>Amount of Claim</b></u>	<u><b>Rate of Security Deposit</b></u>
For claim above Rs.10 Crores	10% of the amount claimed
For claim between Rs.5 Crores – 10 Crores	12% of the amount claimed
For claim below Rs.5 Crores	15% of the amount claimed

## **33. GOVERNING LAW AND JURISDICTION**

**33.1** This Contract shall be governed by, construed and enforced in accordance with the laws of India.

**33.2** The parties submit to the exclusive jurisdiction of the courts of Thoothukudi, Tamil Nadu, India and any courts that may hear appeals from those courts in respect of any proceedings in connection with this Contract.

## **34. ASSIGNMENT AND SUBCONTRACTING**

### **34.1 Assignment**

The rights and duties under this Clause shall be assigned automatically if the Owner undergoes a merger during the subsistence of this Contract.

**34.1.1** The Contractor shall not assign either the Contract or any part of it or any benefit or interest in or under it without the prior written approval of the Owner.

**34.1.2** The Owner shall be entitled to assign the Contract or any part of it or any benefit or interest in or under it to any co-venturer, its lenders or Affiliate of the Owner. Any assignment by the Owner to any other party shall require the prior written approval of the Contractor, such approval should not to be unreasonably withheld or delayed and shall be provided within seven (7) days of the Owner making a request.

**34.1.3** In the event of an assignment by a Party pursuant to Clause 34.1.1 or 34.1.2 and if requested by that Party, the other Party undertakes to enter into such documentation as is reasonably necessary to transfer the first Party's obligations under the Contract.

### **34.2 Subcontracting**

**34.2.1** The Contractor shall not sub-contract the whole any part of the work to any sub-Contractor for the performance of the Contract without the prior written consent of the Owner.

**34.2.2** The approval granted by the Owner under Clause 34.2.1, shall not discharge the Contractor from any of his contractual obligations.

**34.2.3** The Contractor shall be responsible for the acts, defaults and neglects of all Sub-Contractors, workmen as if they were the acts,

defaults or neglects of the Contractor under the terms of this Contract.

**34.2.4** The Contractor shall ensure that all sub-contracts are made in writing and contains all the obligations specified herein on a back to back basis.

**34.2.5** Subcontracting, shall not in any way diminish or relieve the Contractor from discharging any duties and obligations so subcontracted or discharge, diminish or relieve the Contractor from any of its duties or obligations under the contract.

**34.2.6** In the event of Termination of the Contract, not due to any fault of the Owner, the Contractor shall act in good faith and cooperate with Owner, facilitating sub-contract Contracts directly between the Owner and the Sub-contractors.

**34.2.7** Neither Party shall be deemed by virtue of this Contract to have any contractual obligation to or relationship with any sub-contractor of the other party.

## **35. PROVISIONAL ACCEPTANCE AND TAKING-OVER**

### **35.1 Notice of Provisional Acceptance**

When the Contractor has:

(i) Completed all the works required for Commissioning- Successfully completed the Commissioning and Project made ready for safe operation;

(ii) Imparted training to the Owner's personnel on operation, maintenance and safety aspects of the Project, subject to the Owner providing personnel for such training.

(iii) paid all the liquidated damages and other damages payable under this Contract.

(iii) Provided to the Owner the following documents:

(a) such preliminary operating and maintenance manuals and drawings and other information as may be specified in Schedule ... - Technical Specifications, to be provided prior to Taking-Over of Project or otherwise as may be reasonably required by the Owner for the safe and reliable operation of the Project.

(b) such certification by the Contractor or other written evidence as the Owner may reasonably require that the Contractor has complied with the Applicable Law and directives relating to the operation of the Project and has obtained all Applicable Permits in connection with the design and construction of the Project which it is the Contractor's responsibility to comply with or to obtain.

The Contractor shall so notify the Owner in writing and if such notice was given properly in accordance with the requirements of the Contract the Owner shall, within 7 (seven) days following receipt of the Notice of Provisional Acceptance, either (a) issue a Provisional Acceptance Certificate in the form set out in Provisional Acceptance Certificate hereto or (b) if reasonable cause exists for doing so, notify the Contractor that Provisional Acceptance has not been achieved, stating the reasons thereof.

**35.2** A Provisional Acceptance Certificate issued subject to the contents of the Punch List which is current at the time of issue and may exclude, at the discretion of the Owner, any part of the Work which is not complete and ready for Taking-Over, in which case the provisions of the Clause 35.3 shall apply subsequently and separately to such part upon its completion.

### **35.3 Punch List**

**35.3.1** The Punch list shall mean the list of physically incomplete items, which don't materially interfere with operation of the Project. The Contractor shall, in conjunction with the Owner's Representative, prepare and update on a continuing basis during the period between Power on and Performance Acceptance, Punch Lists of outstanding items requiring completion or rectification, items to be furnished, or Works to be undertaken, corrected or completed by the Contractor in order to complete or correct the Scope of work, before being finally completed (the "Punch List"). In the preparation and updating of such Punch List(s) and the Schedules contained therein, the Parties agree to use all reasonable endeavours to ensure and/or permit the rectification and completion of outstanding items without undue delay.

**35.3.2** The Contractor shall rectify or complete to the standards specified in the Contract and in accordance with the Schedule stated in the Punch List any outstanding items of Works or Project noted as requiring rectification or as incomplete. In the event that the Contractor fails to commence and/or diligently proceed with the execution of any such outstanding item of work in accordance with such Schedule, the Owner may arrange for the outstanding work to be done and the reasonable cost thereof shall be certified by the Owner and deducted from the Contract Price or paid by the Contractor to the Owner.

**35.3.3** The Parties may in any event agree that any outstanding item of work shall be carried out by the Owner or shall otherwise be deleted from the Punch List referred to above, subject to the Contract of an appropriate sum to be paid or allowed by the Contractor to the Owner in respect of such outstanding item.

### **35.4 Partial Taking-Over**

At any time, by giving prior written notice to the Contractor, the Owner shall have the right to use and operate any portion of the Project. In such event, care, custody and control, and risk of loss and damage, for such portion of the Project shall pass to the Owner, effective as of the date of such notice or upon the date of actual use of such portion of the Project, whichever is earlier. Such take-over of a portion of the Project shall not be deemed to be Provisional Acceptance or Performance Acceptance of the Project.

### **35.5 Reliability Run**

Upon successful "Commissioning" of the plant, the various equipment and systems will be observed for their performance in line with the intended design. The period between "Commissioning" and "Performance Test" shall be utilized for further fine tuning of individual equipment / systems in order to demonstrate the capability of Facility to produce as per the intended design and capacity levels.

Should any major failure or interruption occur in any portion of the Facility due to or arising from faulty design, materials, workmanship or omissions or incorrect erection, sufficient to prevent safe and full commercial use of the plant, then the operations may be stopped so



that necessary remedies are put in place.

The Reliability Run shall be deemed to have been achieved,

- i. When Owner is fully satisfied that the Facility has been fully proven with respect to its Quantity, Quality, Process Controls, Safety & Environmental aspects and successful operation of all the equipment and its associated parts for 14 continuous calendar days.
- ii. During this period, The Contractor is allowed with a maximum of XX shutdowns for XXXX and each shutdown not lasting more than a maximum of 36 hours or not more than a cumulative total of 60 shutdown/stoppage hours.
- iii. During this period, The Contractor shall ensure the proper training of Owner operating personnel in all respects.
- b. The Reliability Run shall be completed within the period of 30 continuous calendar days from the date of successful Commissioning.

### **36. FINAL COMPLETION**

Final Completion of the Works shall be deemed to occur subject to fulfilment of the following conditions:

- i. Commissioning shall have occurred and Completeness has been achieved.
- ii. Performance Acceptance Certificates shall have been issued or issuance of suitable certificate by Owner deciding and informing the Contractor not to conduct the Performance Guarantee Test.
- iii. The Contractor shall have provided all outstanding final drawings and documentation in accordance with the requirements of Technical Specifications.
- iv. All warranties of the material used, sub-leases of land acquired etc. shall have been transferred to the exclusive right of the Owner as per the terms of the contract.

### **37. SPECIAL TOOLS & TACKLES**

**37.1** The Contractor shall supply within the Contract Price the special tools, tackles and

appliances for erection and maintenance of the Plant and Equipment.

**37.2** While preparing the list of special tools and tackles, the Contractor shall include such number of sets as he may recommend necessary from his own experience.

**367.3** The Contractor shall provide ordering specification including the names of Contractors and giving sufficient details of such special tools and tackles enable the Owner to procure at a later date when necessary.

### **38. REJECTION OF DEFECTIVE PLANT**

**38.1** For the purpose of this Contract, Minimum Acceptance Criteria is defined in Schedule ... - Technical Specifications hereto.

**38.2** If the completed plant or any portion thereof before it is finally accepted is found to be defective or fails to fulfil the Minimum Acceptance Criteria, the Owner shall give the Contractor notice setting forth particulars of such defects or failure and the Contractor shall forthwith make the defective plant good, or make it comply with the Acceptance Criteria. Should they fail to do so within a period of time as deemed reasonable by the Owner and stated in the said notice, the Owner at its discretion shall have the right to either (a) accept the Facility subject to reduction in Contract Price as may be mutually agreed between the Parties or, (b) in the event the Parties fail to reach such Contract under (a) within 30 (thirty) days, Owner shall be entitled to reject and replace at the cost of the Contractors the whole or any portion of the plant as the case may be which is defective or fails to fulfil the Acceptance Criteria of the Contract. However, such rejection/replacement by the Owner shall not absolve the Contractor of any of their responsibilities for the balance part under this Contract.

**38.3** In the event of such rejection, the Owner shall be entitled to the use of the plant in a reasonable and proper manner for a time reasonably sufficient to enable him to obtain other replacement plant.

### **39. WAIVER AND REMEDIES**

A failure or delay in exercising any right, power or privilege in respect of this Contract will not be presumed to operate as a waiver,

and a single or partial exercise of any right, power or privilege will not be presumed to preclude any subsequent or further exercise, of that right, power or privilege or the exercise of any other right, power or privilege. All waivers under this Contract must be made in writing.

#### **40. SEVERABILITY**

If any Clause or provision of this Contract is prohibited, invalid or unenforceable in any jurisdiction, that provision will, as to that jurisdiction, be ineffective to the extent of the prohibition, invalidity or unenforceability without affecting or invalidating the remaining provisions of this Contract or affecting the validity or enforceability of that provision in any other jurisdiction, unless it materially alters the nature or material terms of this Contract.

#### **41. AMENDMENT**

This Contract may be amended, modified, renewed or extended only by a written instrument signed by each of the parties hereto.

#### **42. ETHICS**

**42.1 GIFTS AND COURTESIES:** The Contractor shall declare any conflicts of interest with the Company including relationship or financial interest of any nature whatsoever with employees, managers, other Contractors, vendors or stakeholders of the Company.

The Contractor shall not use the services of any of the employees of the Company, directly or indirectly or enter into any sort of monetary transaction with the employees of the Company. The Contractor undertakes that he has not given, offered or promised to give directly or indirectly any bribes, commission, gift, consideration, reward, or inducement to any of the employees of the Company or their agent or relatives for showing or agreeing to show favor or disfavor to any person in relation to this Agreement or forbearing to do or for having done or forborne to do any act in relation to the obtaining or execution of the aforesaid undertaking, by the Contractor, or his

partners, agent or servant or any one authorized by him or acting on his behalf. The Contractor undertakes that in the event of use of any corrupt practices by the Contractor, the Company shall be entitled to terminate the Agreement forthwith and recover from the Contractor, the amount of any loss arising from such termination. A decision of the Company or his nominee to this effect that a breach of the undertaking had been committed shall be final and binding on the Contractor.

If at any time during execution or performance of this Agreement the Contractor is faced with any undue demand, request for gratification or favor from any employee of the Company or a person connected with such employee, the Contractor must report the same immediately at [siil.whistleblower@vedanta.co.in](mailto:siil.whistleblower@vedanta.co.in).

#### **42.2 ANTI-BRIBERY & CORRUPTION:**

(i) The Contractor agrees to comply with the provisions of the Company's Contractor Code of Conduct and the Company's Human Rights Policy including Modern Slavery Act and in case of breach thereof, the same shall be treated as a breach of this Agreement.

(ii) The Contractor shall maintain records and provide to the Company upon request such records and evidences, as the Company may reasonably require, confirming the Contractor's compliance with the obligations under Clause 42.2 (i).

(iii) The Contractor shall comply with the Anti-Bribery and Corruption (AB&C) requirements as applicable to them.

(iv) The Company shall have a right to initiate "audit proceedings" against the Contractor during the Term and for a period of three (3) years thereafter, to verify compliance with this Agreement including AB&C requirements. Such audit may be carried out by Company or by a reputed agency to be appointed by Company at the sole discretion of Company. The Contractor shall extend full

cooperation for smooth completion of the audit mentioned herein.

(v) Notwithstanding anything in this agreement, the Company shall have right to terminate the Agreement forthwith in case, it is found that the Contractor has failed to comply with the terms of the Agreement including AB&C requirements.

(vi) The Contractor may submit/report 'Complaints' pertaining to any violation to the Company's ethical business practices as specified in the Company's Code of Conduct Policy available at <https://sterlitecopper.com/pdf/Supplier-code-of-Conduct-Jan-16.pdf>.

External stakeholders such as vendors, customers, business partners etc. have the opportunity to submit 'Complaints'; however, the Company is not obligated to keep 'Complaints' from non-employees confidential or to maintain the anonymity of non-employees. We encourage individuals sending 'Complaints'/raising of any matter to identify themselves instead of sending anonymous 'Complaints' as it will assist in the effective complaint review process.

Post review, if the complaint is found to be have been made with malafide intention, stringent action will be taken against the complainant. We encourage reporting genuine 'Complaints' and those submitted in true faith.

All the 'Complaints' under this policy should be reported to the Group Head-Management Assurance at the following address:

Group Head – Management Assurance,  
Vedanta, 75 Nehru Road  
Vile Parle (E), Mumbai 400 099

'Complaints' can also be sent to the designated e-mail id:  
[siil.whistleblower@vedanta.co.in](mailto:siil.whistleblower@vedanta.co.in)

#### **42.4 HUMAN RIGHTS**

The Contractor undertakes, warrants and represents that:

(a) neither the Contractor nor any of its officers, employees, agents or subcontractors has: (i) committed an offence under the

Modern Slavery Act 2015 (a "MSA Offence"); or (ii) been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015; or (iii) is aware if any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015;

(b) it shall comply with the Modern Slavery Act 2015 and Owner's Human Rights Policy.

(c) it shall notify the Customer immediately in writing if it becomes aware or has reason to believe that it, or any of its officers, employees, agents or subcontractors have, breached or potentially breached any of Contractor's obligations under this Clause. Such notice to set out full details of the circumstances concerning the breach or potential breach of Contractor's obligations.

**42.5** Any breach of this Clause by the Contractor shall be deemed a material breach of the agreement and shall entitle the Customer to terminate the agreement in accordance with Clause.

**42.6** The Contractor is required to maintain detailed reports listing its compliance with all the Acts, Rules, and other requirements mentioned under this clause, and may be required to produce the same on demand of the Owner.

**42.7** Schedule ...- Vedanta's Contractor Code of Conduct to these General Terms & Conditions shall be deemed accepted by Contractor as an integral part of this document.

#### **43. MISTAKE, FRAUD, MISREPRESENTATION ETC.**

No rights shall accrue to the Contractor or any obligation arise for the Owner, if it is discovered at any time that the consent of the Owner was obtained through fraud or misrepresentation or cheating or inducing mistake as to any fact material to such consent by Contractor or any Representative of the Contractor.

#### **44. CONFIDENTIALITY**

**44.1** Each party hereto shall, save as otherwise

provided herein, maintain in strict confidence, and not disclose or use for a purpose other than the purpose set out herein, any confidential and/or proprietary information ("Confidential Information") of any party including this Contract and the terms and conditions hereof. The foregoing covenant shall not restrict a party from disclosing Confidential Information to the extent required in connection with any legal proceeding(s) or required for filing with govt. agencies, courts, stock exchanges or other regulatory agencies under applicable laws and regulations.

**44.2** The parties shall restrict access to the Confidential Information only to its own employees or professional advisers who need to have such access for the purposes of performing the obligations or enforcing the rights under this Contract and who have agreed with such party to abide by the obligations of confidentiality equivalent to those contained herein with such party. The disclosing party shall remain vicariously liable for such disclosure.

**44.3** Unless otherwise agreed, this Clause shall continue to remain in force for a period of 2 years after the expiry or termination of this Contract.

**44.4** For the purposes of this Contract, the term 'Confidential Information' includes such non-public information which is disclosed by either party to the other party, whether or not marked confidential, and which includes inter alia, business policies or practices, business plans, dealings, customer lists or requirements, price lists or pricing structures, technical data, employee or officers' data, product lines, designs, research and development activities and findings, ideas, concepts, know-how, financial statements and other non-generic information whether tangible or intangible, written or oral, relating to any released or unreleased concepts, ideas, projects and services, the marketing or promotion of products and any other information received from any source which would be deemed as confidential or proprietary.

**44.5** Each Party agrees that it will not use the name or logo of the other party, without the prior written consent of the other party(ies) hereto.

## **45. NON-SOLICITATION AND DECLARATION**

The Parties agree that during the term of the Contract and for a period of one year following termination, they shall not without the prior written consent of the other party directly or indirectly solicit for employment, engage, hire, employ or contract with any employee or ex-employee of the other party, who has worked in connection with fulfilment by the such party of its obligations hereunder in a key capacity, within six months of their departure.

## **46. MISCELLANEOUS PROVISIONS**

(i) **Entire Contract:** This Contract along addendums and with all Schedules, if any constitutes the entire Contract and understanding between the parties with respect to its subject matter and overrides and supersedes all previous Contracts, representations, written documents, correspondence and understanding of the parties, whether in writing or otherwise.

(ii) **Counterpart:** This Contract may be executed in one or more counterparts, each of which will be deemed to be an original Contract and all of which, when taken together, will constitute one and the same instrument

(iii) **Validation:** This Contract shall come into effect when authorized representatives of both Owner and Contractor execute and affix their signature hereto in their due capacity, within 3 working days after confirmation of business by Owner and constitutes the entire Contract between the Parties relating to its subject matter. Any alteration, amendment or addition to any of the terms of this Contract shall become binding only when such alteration, amendment or addition is evidenced in writing and is executed by the authorized representatives of the both parties in their due capacity.

(iv) **Costs:** Each Party shall bear its own legal, professional and advisory fees, commissions and other costs and expenses incurred by it in connection with this Contract.



(v) **Language of the Contract:** English shall be the language of the Contract and all documentation prepared in relation to it. All of the parties' management staff engaged in work arising out of or in connection with this Contract shall be fluent in English.

(vi) **Remedies cumulative:** Except as expressly provided in this Contract, all remedies available to the Parties for breach of this Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

[END OF CONDITIONS OF CONTRACT]

☐ This document "General Terms & Conditions" along with the Schedule ... : Contractor Code of Conduct shall be deemed to be an integral part of the Contract. Order Acknowledgement by the Contractor shall cover acknowledging this document and the General Terms and Conditions mentioned herein as well.

☐ These Conditions shall apply and shall be incorporated by reference/deemed incorporated in any Contract issued hereunder and shall prevail at all times between the Parties over any other terms and conditions with respect to the provision of Services or supply of Materials or Services, except as modified, supplemented, or amended either: (i) by formal written amendment of this Contract; or (ii) by incorporation of any special conditions into the Contract. This Contract shall solely and exclusively form the contract between Company and Contractor for the purchase of the Materials or Services to the exclusion of all other terms and conditions (including any terms or conditions which Contractor purports to apply to any confirmation of order, specification, invoice or other document).