

**General Terms & Conditions**

**1.1 Definitions:**

In construing this Agreement, the following words and expressions shall have the meanings hereby assigned to them:

- 1.1.1 **“Abandonment”** means the substantial cessation of the operation and maintenance of any or all of the Services, which cessation is not excused under this Agreement and continues for a period of one (1) day i.e. 24 continuous hours.
- 1.1.2 **“Affected Party”** means the O&M Partner or the Owner whose performance has been affected by an event of Force Majeure.
- 1.1.3 **“Affiliate”** shall mean with respect to any person, any other person that, directly or indirectly, controls, is controlled by or is under common control of such specified person. For the purposes of this definition, “control” means the direct or indirect beneficial ownership of more than fifty percent (50%) of the issued share capital, stock or other participating interest or the legal power to direct or cause the direction of the general management, of the company, partnership or other person in question, and “controlled” shall be construed accordingly;
- 1.1.4 **“Agreement”** shall mean this Agreement, and any Annexures thereto forming part of this Agreement and/or any Purchase Order issued thereunder.
- 1.1.5 **“Claims”** shall mean all claims, liabilities, costs, damages, price adjustment, default penalties for failure to meet guaranteed Performance Parameters, Liquidated Damage, assessment, fine or levy and expenses (including court costs and legal fees) incurred thereto.
- 1.1.6 **“Conditions”** shall mean these General Terms and Conditions as provided under this document.
- 1.1.7 **“Effective Date”** shall mean the date of the Purchase Order;
- 1.1.8 **“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, avifauna 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;
- 1.1.9 **“Goods and Service Tax”** means the Central Goods and Service Tax Act, 2017, the Integrated Goods and Service Tax Act, 2017, the Union Territory Goods and Service Tax Act, 2017, the Goods and Service Tax (Compensation to States) Act 2017, the applicable State Goods and Service Tax Act as passed by the concerned State and all the rules made thereunder, relevant notifications, circulars, clarifications and orders issued thereunder and any amendments made thereto and any reference to Goods and Service Tax payable or cess payable means tax payable under any of the aforementioned laws.
- 1.1.10 **“Governmental Authority”** shall mean any governmental department, 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.
- 1.1.11 **“HSE Policy”** shall mean the policy of the Owner with regard to Health Safety and Environment, as mentioned in this Contract or any part of it herein, or otherwise communicated to the O&M Partner.
- 1.1.12 **“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.
- 1.1.13 **“Operation & Maintenance Partner”** shall mean the O&M Partner and include Contractor/Supplier, its Affiliates and its and their subcontractors and contractors of any tier and its and their respective Affiliates. Such reference to Contractor or Supplier may be used interchangeably for O&M Partner under the Agreement and these GTCs.
- 1.1.14 **“Owner”** shall mean and include Owner/Owner and its Affiliates.
- 1.1.15 **“Party”** means the Owner and the Operation and Maintenance Partner, individually and "Parties" means the Owner and the Operation & Maintenance Partner, collectively.
- 1.1.16 **“Personnel”** shall mean any personnel provided by O&M Partner and utilized to perform the Services at the specified / agreed location.
- 1.1.17 **“Purchase Order/PO”** shall mean (i) the written instruction by Owner issued to O&M Partner for the provision of Services under this Agreement, which shall include the specific requirements with respect to the scope of work, applicable rates and charges and the location of the Site; and (ii) if applicable, the oral instruction under this Agreement which shall be reduced to writing as soon as practicably possible including the specific requirements described above.
- 1.1.18 **“Performance Parameter”** shall mean the

parameters mentioned in this Agreement, or any part of it hereunder, or otherwise communicated to the O&M Partner.

- 1.1.19 **“Representative”** in respect of the Owner and the O&M Partner to include the persons so identified on the Purchase Order as their representative or such other person(s) notified by the Owner or the O&M Partner in writing to the other from time to time, which will include amongst others consultants engaged by the Party or any Affiliate of the O&M Partner having commonality of interest with the O&M Partner.
- 1.1.20 **“Services”** means the tools, equipment, materials, supplies and Personnel to be provided by O&M Partner and the work to be carried out as specified in the Agreement and any Purchase Order.
- 1.1.21 **“Site”** shall mean the location where Owner wishes the O&M Partner to provide the Services.
- 1.1.22 **“Specification”** includes performance parameters and/or the scope or technical parameters of the Services attached to or referred to in this Agreement and/or any Purchase Order.
- 1.1.23 **“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.
- 1.1.24 **“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 Agreement or their associates.

## 1.2 Interpretation:

In this Agreement:

- 1.2.1 Headings are for convenience only and shall not govern or affect the interpretation of the Agreement;
- 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 sub-ordinate 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 annexures shall be to the clauses, sub-clauses, recitals and Annexures of this Agreement;

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 Agreement 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 Only in the event of inconsistency between the Provisions of these Conditions and the Purchase Order(s), these Conditions will prevail, otherwise both Purchase Order(s) and the Conditions shall be harmoniously construed to give effect to both to the extent possible.

1.2.9 The term “Agreement” or “Contract” may be used interchangeably for each other in this document and shall be construed as referring to the same context.

1.2.10 The rule of construction, if any, that a contract should be interpreted against the Party responsible for the drafting and preparation thereof shall not apply.

## 2. Representations & Warranties

2.1 The O&M Partner 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 the Scope of Services above 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 Agreement and will have all the requisite power, authority to perform fully each and every obligation under this Agreement.

(iii) This Agreement 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 Agreement 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 or dissolution thereof against it.
  - (vi) It shall maintain high professional standards to ensure performance of this Agreement as per best business practices and in full compliance with statutory obligations.
  - (vii) It has all necessary statutory and regulatory permissions, approvals and permits for the running and operation of its establishment for the conduct of its business;
  - (viii) It has full right, title and interest in and to all 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 Services, and that any IPR provided by the O&M Partner shall not infringe the IPR of any third party;
- 2.2 Each Party hereby warrants that it has not entered into this Agreement relying on any warranty, representation or undertaking except for any warranty, representation or undertaking expressly set out in this Agreement.
- 2.3 O&M Partner warrants and guarantees that:
- (i) all Services shall be supplied in accordance with the provisions of the Agreement/Purchase Order and with generally accepted industry standards, Trade Usage with regard to quality, Specification, quantity, measurement, performance and/or functionality and are free from defects in material and workmanship;
  - (ii) in the case of Services, be of the best quality and workmanship and shall be free from fault or defect (including latent defect), with such tolerances as stated in the Specification or on the drawings.
  - (iii) The O&M Partner will ensure that all services which may not be specifically mentioned in the scope of work, but which are usual or necessary for successful completion of the work to be done, shall be performed without any extra cost to the Owner.
  - (iv) In case of any damage, loss, pilferage of equipment and materials, the O&M Partner shall arrange prompt replacement for the same without prejudice to Owner's right to claim damages for such loss or pilferage of equipment from the O&M Partner.
  - (v) Time shall be of the essence and any Services performed shall be in strict accordance with any time or schedule specified hereunder.
- 2.4 Obligations of O&M Partner: O&M Partner shall comply with all laws, rules, regulations including but not limited to labour laws, rules, regulations or labour tribunal or conciliation officer or court order or directives of any government authority having jurisdiction over O&M Partner's activities directly or through contract labour whether within or outside the premises of Owner and shall release, defend and indemnify the Owner against any levies, fines and penalties which may be asserted or assessed against the Owner by reason of violation of such laws, rules, regulations or directives by any member of O&M

Partner Group.

2.5 Owner reserves its right to demand adequate security for subsequent transactions as a surety for non-adherence of any statutory laws by the O&M Partner, in case there is a breach (actual, threatened or perceived) of any statutory laws. Provided however that the exercise of any such right to demand surety by the Owner shall not absolve the O&M Partner of any of its obligation / liabilities under this Agreement and / or the law.

2.6 O&M Partner shall provide canteen facility as applicable to his workmen/labourers. O&M Partner shall avail the Canteen facility available in the premises for its workmen/labourers and proportionate subsidy shall be borne by the O&M Partner.

2.7 O&M Partner shall engage only those workers to execute the Services as are deemed medically fit to execute such work. The O&M Partner shall submit the relevant and applicable form, certified by a government doctor/dispensary proving the medical fitness of all the workers engaged by him for the execution of the Contract, at the time of getting gate passes for them.

2.8 The O&M Partner shall ensure that all the workers employed by him shall undergo the PME as scheduled by Owner.

2.9 The O&M Partner shall maintain all relevant records as required under any of the Acts, Rules, Regulations or Laws Applicable to the O&M Partner, or as required by the Owner under this or any other Contract, and shall produce them on demand of statutory authorities or authorized officers of the Owner. Any failure in this regard will be deemed a violation of this Contract, and shall attract penalties.

2.10 The O&M Partner shall ensure that in all the Workmen Compensation Insurance Policies, a clause to the effect "Principal's Interest Protected" is specifically covered.

2.11 The O&M Partner shall not employ any Inter-State Migrant Workmen, as defined under the Inter-State Migrant Workmen Act or otherwise covered within the scope of such Act, for execution of the Contract unless so agreed in writing by Owner.

2.12 The O&M Partner shall get the necessary police verification done before employing workers for the execution of the Contract.

2.13 The O&M Partner shall, on demand of the Owner, present for inspection the original copy of any document asked for.

2.14 Anything contained under Clause 2.4 above shall be without prejudice and will be in addition to, and not in substitution to any other clause under this Agreement including annexures thereof.

## 2.15 Legal Compliance:

2.15.1 The O&M Partner shall ensure that the performance of this Agreement and provision of the

Services complies to all provisions of the relevant legislations, regulations and by-laws of the central/state/local authorities having jurisdiction at site and, shall, unless mentioned otherwise in technical scope of work, arrange for all necessary statutory approvals at his own cost.

2.15.2 The O&M Partner shall give all notices required under the said acts, regulations and/or by-laws and shall indemnify the Owner towards any omission or commission in this regard.

2.15.3 The O&M Partner shall be responsible for observing all statutory laws as applicable including following:

- Mines Act
- Payment of Wages Act and Payment of Bonus Act
- Minimum Wages Act
- Contract Labour (Regulation and Abolition) Act, 1970
- Employees Liability Act
- Factories Act, 1965
- Payment of Gratuity Act, 1972
- Workmen/Employees Compensation Act.
- Apprenticeship Act
- Employee PF & Miscellaneous Provisions Act, 1952
- Family Pension Scheme
- Deposit Linked Insurance
- Modern Slavery Act 2015
- Interstate Migrant Workers' Act 1979

Any other enactments/ rule in force or made applicable from time to time.

2.15.4 The O&M Partner shall take Workmen Compensation Insurance Policy to enable him to discharge various liabilities under Workmen/Employees Compensation Act.

2.15.5 The O&M Partner shall take valid labour license and shall submit the copy of it to the Owner before commencement of the Services.

2.15.6 The O&M Partner shall pay to his workers, minimum wages plus other statutory benefits as per the Minimum Wages Act or as prescribed by Owner for such jobs, whichever is higher. The wages to other semi-skilled & skilled workmen will be proportionally on higher side as applicable.

2.15.7 The O&M Partner shall obtain group insurance policy for the entire contract period for their employees and the same shall be submitted for verification within seven days of awarding the contract.

2.15.8 Anything agreed in the Contract but prohibited under any provision of the Indian Foreign Exchange Management Act, 1999 and amendments thereof, except with the permission of the Government of India and / or the Reserve Bank of India, shall be done only after such permission is granted.

#### 2.16 Conflict of Interest

The parties warrant that, at the date of entering into the contract, no conflict of interest exists or is likely to arise in the performance of their obligations under the contract. If, during the term of the contract, a conflict or risk of conflict of interest arises, the party so conflicted undertakes to notify the other party immediately in writing of that conflict or risk and take any steps that require resolving the conflict or dealing

with the risk including but not limited to termination of this Contract at the option of Owner.

2.17 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 O&M Partner or failure to achieve the specified Performance Parameters under the Contract, which may lead to either, any liability or operational disruption for the Owner, or the Owner not being able to claim input tax credit of the Tax paid to the O&M Partner, or otherwise Owner failing to meet any obligations under any approvals, permits, registrations, tax filings and/or contracts, then in such an event the Owner shall be rightful to recover such loss attributable to aforesaid events including but not limited to any interest, penalties and all other charges/ expenses imposed on the Owner, from the O&M Partner.

2.18 The O&M Partner shall undertake the Scope of Services in such a manner that there is no Environmental Damage is caused.

2.19 The O&M Partner understands that the Scope of Service remains wholly outsourced under this Agreement by the Owner in lieu of undertaking to the Owner by the O&M Partner of meeting the guaranteed Performance Parameters and other obligations as per the Responsibility Matrix or such other document detailing out the responsibilities of the O&M Partner, whether or not the same forms part as an Annexure to this Agreement.

### 3. Invoicing, Taxes, Payment and Insurance

3.1 The O&M Partner shall submit the invoices (both original & duplicate) along with the delivery of the Materials or performance of the Services. The Owner reserves the right to reject the Materials or Services received without the invoices.

3.2 The O&M Partner shall ensure that the invoices submitted in accordance with Clause 3.2 are complete in all respect and shall specify descriptions as required under the Goods and Services Tax and other Applicable Laws.

3.3 The Owner shall not be liable for any tax or levies or duties or charges for any reasons whatsoever, unless specifically mentioned in the invoice issued along with the delivery of the Materials or performance of the Services.

3.4 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:

- i. the O&M Partner 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.

ii. The O&M Partner 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.

iii. If at any time the credit of GST, paid by the O&M Partner, under any invoice issued by the O&M Partner, 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 O&M Partner 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.

iv. the O&M Partner 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 O&M Partner is cancelled, withdrawn or surrendered during the term of this Contract, or where, for any reason, whatsoever, the O&M Partner is not required to obtain registration under GST legislations, the O&M Partner undertakes to intimate the Owner immediately. If at any time, the O&M Partner fails to intimate the Owner about the de-registration/ cancellation, the O&M Partner 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.

3.5 the O&M Partner 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.

3.6 the O&M Partner shall comply with the Anti-Profiteering measures prescribed under the GST legislations.

3.7 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 O&M Partner 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.

3.8 O&M Partner shall submit sufficient supporting document(s) along with its invoice for freight amount paid and consequently claimed by the O&M Partner, if the accepted freight term as "extra to be paid by the Owner".

3.9 Without prejudice to any other right or remedy, the Owner reserves the right to set off any amount owing at any time from

the O&M Partner to the Owner against any amount payable by the Owner to the O&M Partner.

3.10 O&M Partner shall not suspend deliveries for any payment delays on account of genuine disputes.

3.11 In the event of any discrepancy in the invoice submitted by the O&M Partner, the Owner shall give a written notice to the O&M Partner specifying the discrepancy thereof. Such invoices shall be treated as disputed invoice (**Disputed Invoice**).

3.12 Upon receipt of a notice from the Owner notifying any discrepancy in the Disputed Invoice, the O&M Partner shall withdraw the Disputed Invoice and submit a rectified invoice for the undisputed amount and the Owner shall pay the amount set out in such rectified invoice within a reasonable time. The Owner shall not make payment of the amount set out in the Disputed Invoice, if the Owner has notified any discrepancy with respect to certain entries in the Disputed Invoice till such time as the discrepancy is resolved by the Parties. For avoidance of doubt, the Owner and the O&M Partner shall endeavour to settle the disputed amount as quickly as possible through good faith negotiations.

3.13 O&M Partner shall effect and maintain with a reputed insurance company a policy(ies) of insurance providing an adequate level of cover in respect of all risks which may be incurred by the O&M Partner, arising out of the O&M Partner's performance of its obligations under the Agreement, including death or personal injury, loss of or damage to property or any other loss. Such insurance shall be maintained throughout during the subsistence of the Agreement.

3.14 The O&M Partner shall be solely responsible for all equipment and materials installed/used by it for the execution of the Contract, and shall obtain a comprehensive liability insurance cover at its own cost.

### **3.15 Security Deposit**

Owner reserves the right to demand as security for the due, proper and faithful fulfilment of the obligations under the contract which the O&M Partner will furnish within 30 days from the effective date of contract to Owner, security deposit of INR (amount) in the form of Bank Guarantee (in Owner's standard format) from a Bank which is acceptable to Owner. Bank Guarantee should be valid for a period of the contractual completion period with further 6 months as the claim period. In case of termination of contract before the date of expiry, the Bank Guarantee claim period will be 6 months from the date of such termination. If the O&M Partner fails to fulfil any of its obligation under this contract and such failure remains unrectified, the Owner will be entitled to encash the Security Deposit Bank Guarantee to the extent of losses arising out of the said default. In case of delay in completion of the work, the bank guarantee shall be extended suitably by the O&M Partners at its cost.

### **3.16 Audit and Inquiry:**

3.16.1 If Owner has a reasonable basis to believe that O&M Partner or any Related Party has taken or failed to take any action that may subject Owner or its Affiliates to liability under the Anti-Corruption Laws or

any other non-compliances, O&M Partner agrees that Owner shall have the right (but not the obligation) upon written notice to O&M Partner, to make due inquiries from the O&M Partner and its Related Parties to determine to Owner's reasonable satisfaction whether any actions or failures to act on behalf of O&M Partner or its Related Parties may subject Owner to such liability, O&M Partner will cooperate in good faith.

3.16.2 Owner shall have the right of access to O&M Partner's premises with reasonable prior notice to inspect the progress or the performance of Services to otherwise satisfy itself as to compliance of the Agreement and agreed delivery dates. O&M Partner shall procure similar rights of access for Owner at the premises of any subcontractor. Such Inspection shall in no way relieve O&M Partner of its liabilities and obligations under the Agreement or otherwise.

### 3.17 Testing, Inspection and Quality Control

The Owner or such persons as he may appoint for the purpose, may inspect and test the services at all stages and shall have full power to reject all or any portion of the services that may be considered to be defective or inferior in quality, material, workmanship or design to that required in the Contract or otherwise delivery of such services involves any malpractices adopted by the O&M Partner. Without prejudice to Company's other rights under the Contract, any portion of the Services so rejected shall be replaced immediately by the O&M Partner at his risk and expense unless, in the opinion of the Owner, the Services rejected can be so treated and rectified so as to render it acceptable in terms of the Contract, in which case the O&M Partner at his own risk and expense shall cause the said Services to be dealt with in a manner approved by the Owner. Any such Services shall be re-submitted for inspection and test and shall immediately be replaced by the O&M Partner if not to the satisfaction of the Owner. The O&M Partner shall at his risk and expense carry out such tests as are required by the Owner to determine that the Contract is being complied with. Failure by the Owner or his appointee to avail himself of his rights in terms of this clause in regard to any Services rendered shall not be construed as an approval by the Owner of such Services undertaken.

### 4. Post Payment Audit

4.1 The Owner reserves the right to carry out a postpayment audit and/or technical examination of the work, and the final bill, including all supporting voucher abstracts etc., and to enforce recovery, if any, found as a result of such examination, any over payment if discovered in respect of work done and/or alleged to be have been done by the O&M Partner under the Contract, and such recovery will be made by the Owner, using any or all of the methods or modes prescribed herein. If, on the other hand, any under payment is discovered, the amount shall be duly paid to the O&M Partner by the Owner. Further, the Owner reserves the right to make such recoveries and adjustments notwithstanding the fact that the amount of the final bill may be included by one of the parties as an item of dispute. Further, unless the O&M Partner pays and clears the claims of the Owner immediately on demand, the Owner shall at all times be entitled to deduct the sum due from the O&M Partner from its bill, or from the security deposit amount, which may have become payable or will become payable to the O&M Partner under these presents or under any other contract or transaction whatsoever between the O&M

Partner and the Owner.

### 5. Passing of Ownership, Risk, Copyright, Patents and other Proprietary rights etc. ("IPR")

5.1 Unless otherwise stated in the Purchase Order, Services shall remain at the risk and cost of the O&M Partner until delivered in a deliverable state to the Owner in accordance with all the terms and conditions of this Agreement or in the manner specified in the Purchase Order and subject to performance testing by the Owner as per the requirement of the specifications under the Scope of Services;

5.2 (i) If any Services performed or provided under the Agreement and/or Purchase Order involves a patent, copyright, trademark, or proprietary information (IPR), O&M Partner 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 O&M Partner shall continue to vest with the O&M Partner.

(ii) Owner is the sole owner of IPR in anything developed and delivered under this Agreement. O&M Partner shall provide at Owner's reasonable request any documentation necessary to confirm Owner's ownership interest in such IPR. O&M Partner shall retain ownership of any IPR vested in O&M Partner prior to this Agreement or created by O&M Partner outside of its performance of this Agreement during the term of this Agreement.

(iii) O&M Partner shall at all times be responsible for, shall release and shall defend, protect, indemnify, hold harmless and defend Purchasing Group, from and against any Claim by a third party for infringement of any IPR which may arise out of the sale and/or use of the Services performed and/or provided by O&M Partner.

### 6. Events and Consequences of Default

#### A. CONTRACTOR'S EVENT OF DEFAULT

The following shall be considered a "Contractor's Event of Default":

- i) The Contractor commits a material breach of a term of this Contract including but not limited to failure to meet the guaranteed Performance Parameters and such breach continues for 30 days in total after notification of said breach by the Owner.
- ii) The Contractor does not follow the statutory rules and norms resulting in material suspension of mining services for a continuous period of 30 days during the contract term.
- iii) Any order of insolvency, appointment of liquidator (provisional or final), appointment of receiver of any material assets of the Contractor, levy of any order of attachment of the material assets of the Contractor, and order or injunction restraining the Contractor from dealing with or disposing of its assets.
- iv) Any other event of default as specified under the General Terms & Conditions to this Agreement.

## B. CONSEQUENCES OF DEFAULT

6.1 If the O&M Partner breaches any of the warranties or representations under the Contract; or breaches any other provision of the Contract or any of the Services otherwise fail to comply with the provisions of the Contract; the Owner shall notify the O&M Partner of such failure to comply with the Contract, or the breach of warranty, as the case may be.

6.2 If the O&M Partner fails to rectify such breach in supply of the Services under this Contract, which being capable of remedy are not remedied within 14 days of notice of such default, 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 Services (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 O&M Partner and O&M Partner shall immediately pay to the Owner a full refund for the Services so rejected.

(ii) give the O&M Partner the opportunity at the O&M Partner's expense either to remedy any defect in the Services or substitute Services 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 subsequent performance of the Services which the O&M Partner attempts to make, in each case without any liability to the O&M Partner;

(iv) carry out or ensure that some other person carries out, at the O&M Partner's expense, any work necessary to make the Services comply with the Contract (including but not limited to freight, disassembly and reassembly);

(v) instruct the O&M Partner 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 O&M Partner's expense;

(vi) claim such damages foreseeable or otherwise as may have been sustained consequential to such breach or breaches of the Contract as per terms and conditions of Agreement or under applicable Trade Usage taking into account the prevailing trade practice or scientific data of potential loss attributable to usage of such Services;

(vii) opt to use or consume the Services in the event of non-availability of substitute Services or to maintain operations of the plant or to avoid plant shut down but without prejudice to its right to claim damages attributable to consequences arising due to off-spec Services;

(viii) Obtain substitute Services or purchase substitute services elsewhere and recover from the O&M Partner any expenditure reasonably incurred by the Owner in obtaining the Services in substitution from another O&M Partner.

6.3 If the Owner exercises its rights under conditions (ii), (iv) and/or (v) above in respect of Services which do not, in the Owner's opinion, meet the requirements specified in the Contract, the O&M Partner shall grant necessary right to the Owner to utilise the relevant

Services until such time as they meet those requirements.

6.4 Notwithstanding anything to the contrary in this Agreement, there shall be no obligation whatsoever on the Owner to accept any defective or sub-standard quality Service, and/or performance of the Agreement and it is expressly agreed by the Parties that acceptance of such defective or sub-standard quality Service, and/or delayed performance by the Owner in its sole discretion, shall not prejudice any right / claim of the Owner to damages for supply of such defective or sub-standard quality Service, and/or delayed performance and/or for breach of the Agreement. In the foregoing, the Owner shall reasonably determine the amount of damages that shall be leviable upon/payable by the O&M Partner. Any damages so determined by the Owner shall be paid by the O&M Partner 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 Agreement/Purchase order.

6.5 In the event of breach by the O&M Partner of its obligations under the Contract, the Owner may terminate the Contract in whole or in part or to rescind the Purchase Order, in each case without any liability to the O&M Partner.

6.6 If the O&M Partner is in breach of any of its obligations under this Agreement (including, without limitation, any breach of Policy of Health Safety and Environment, and Code of Conduct as under Clause 27 of this Agreement, the Owner shall be entitled to immediately suspend the Work (or part thereof) by written notice to the O&M Partner until such time as such breach has been remedied by the O&M Partner, in which case no rates or other amounts shall be payable to the O&M Partner in respect of such period of suspension.

## 7. Expediting Process

If for any reason which does not entitle the O&M Partner to an extension to the Schedule, the rate of progress of the works is at any time in the reasonable opinion of the Owner too slow to ensure that the performance of the Services will be complete in accordance with the Schedule in relation thereto, the Owner may so notify the O&M Partner in writing. The O&M Partner 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 O&M Partner or any subcontractor employed on the works or the addition of subcontractors) to accelerate the progress of the works so as to achieve the Schedule. The O&M Partner shall not be entitled to any additional payment for taking such steps.

## 8. Risk purchase

In the event of any delay or any breach in performance of the Services, 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 O&M Partner, to complete part of the balance Services at the risk and cost of the O&M Partner; or (iii) cancel the contract and get the balance Services done from any other agency at the sole risk and cost of the O&M Partner. The additional cost and expenses so incurred by the Owner in procuring the whole or part of Services shall be liable to be recovered from the charges payable to the O&M Partner or the Security deposit or Bank Guarantee so deposited by the O&M Partner.

## 9. Permits, licenses, encumbrances, liens etc.

9.1 The O&M Partner shall ascertain and comply with the Applicable Laws in performance of the Contract and shall obtain and keep in good standing all approvals, permits and licenses, right of way, as the case may be, which are necessary or expedient for the performance of his obligation under the Agreement. These approvals, permits and licenses shall be valid and acceptable under appropriate laws.

9.2 The O&M Partner shall not cause or permit any lien, attachment or other encumbrance other than for borrowings in the ordinary course of business.

## 10. Safety

10.1 The O&M Partner shall follow in letter and spirit, the safety policy of the Owner, and if not made available to him (cannot be an excuse for violation), shall collect the same from the Owner. O&M Partner acknowledges that maintain highest standard of safety as per the HSE Policy of Owner remains the fundamental condition of this Contract and failure to adhere with the same will constitute material breach and in such event, Owner reserves the right to terminate the contract with all consequential damages and liabilities to the account of the O&M Partner. The HSE Policy herein also refers to and includes the Life Saving Rules of the Company/Site.

10.2 The O&M Partner shall ensure that all safety measures as recommended and stipulated in the Policy are adhered to, and shall take all safety precautions while the work is under progress. O&M Partner shall further ensure that the workers do not indulge in any unsafe or hazardous practice during the execution of the Contract.

10.3 The O&M Partner shall ensure that PPEs such as safety helmets, gloves, safety shoes, full body harness, safety net, fall arrester, and any other PPEs as may be required for the safe execution of the work are provided to the workers, and they are trained in the effective usage of the same. If any worker is found to be in violation of this clause, or the safety policy of the Owner, he is liable to be blacklisted, or/and have his gate pass revoked.

10.4 The O&M Partner shall ensure that safe working conditions are maintained, all PPEs provided to the workmen are ISI marked, and approved by the Owner. Any safety appliances, if need to be issued to the O&M Partner, shall be issued on a chargeable basis, and the amount shall be deducted from the O&M Partner's bills.

10.5 The work shall be commenced only after obtaining of Work Safety Permits from the concerned engineer-in-charge. Further, a dedicated supervisor has to be deputed to each work site to ensure overall safety at the site.

10.6 O  
nly duly tested tools, tackles and appliances, in conformity with applicable laws, shall be used, and a copy of their certificate shall be submitted to the Safety Department of the Owner.

10.7 T  
he O&M Partner shall be responsible for the reporting of all minor/major accidents/incidents/near-misses/unsafe

conditions, to the HOD, Safety Department, and HR Department of the Owner, within one hour of such occurrence. Further, in case of any injury, the injured should be rushed to the plant dispensary immediately.

10.8 In case of any accident involving the O&M Partner and/or his workmen, if the investigation proves that the accident occurred due to violation of the safety norms, or due to unsafe act/condition attributable to the O&M Partner and/or his workmen, the Owner reserves the right to impose such cost on the defaulting party as may be decided by Owner's management after appropriate investigation. In these circumstances, the Owner may also terminate the Contract and get it executed through another party, at the cost and risk of the O&M Partner.

## 10.9 Emergency Action

If an emergency endangering the safety or protection of persons, the Plant, or property located near the Plant occurs, the O&M Partner acknowledges and agrees to promptly notify the Owner and take all necessary action for preventing or mitigating any such threatened damage, injury or loss. The O&M Partner further agrees and undertakes to make reasonable efforts to minimize any cost associated with remedial action in case of such an emergency.

## 11. O&M Partner's Office On Site

11.1 The O&M Partner shall maintain an office premise near the Site for its staff and personnel, and said office shall be open at all reasonable hours to receive instructions, notices, or other communications. The O&M Partner has to intimate the address and telephone/fax number of said office to the Owner.

11.2 The O&M Partner shall vacate the premises of the Owner, and remove all his equipment, material, etc., within 7 days of notice by the Owner, either on the expiry of the term of the Contract, or following the Termination of the Contract as per the provisions regarding the same. In case of the O&M Partner's failure to vacate the premises within 7 days of the notice, the Owner shall have the right to dismantle the Site facilities, and remove all equipment, materials, etc., and recover the expenses thereon.

11.3 In the course of execution of the Contract, the O&M Partner shall keep the Site free from all unnecessary obstruction, remove any surplus material and store it in an orderly manner, clear away any wreckage or rubbish, and remove any O&M Partner's equipment no longer required for the execution of the Contract. All disposal of unwanted material shall be done at the designated area, with proper levelling and dressing, and the Site shall be maintained in a clean and safe manner.

## 12. Indemnity

12.1 The O&M Partner 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 O&M Partner or its subcontractor by any Government Authority arising out of or in connection with the performance of this



Agreement which originated from the performance of services by the O&M Partner Group.

12.2 The O&M Partner shall be liable for and shall defend, indemnify and hold the Owner harmless from and against and all Claims arising out of or in connection with the performance of this Agreement by the O&M Partner.

12.3 O&M Partner shall at all times be responsible for, shall release and shall defend, protect, indemnify and hold Purchasing Group harmless from and shall keep Owner's equipment and property free and clear of all liens, claims, assessments, fines and levies incurred, created, caused or committed by O&M Partner Group.

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

12.5 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.

12.6 Owner shall have the right to retain / withhold out of any payment to be made to the O&M Partner an amount sufficient to indemnify it completely against any such lien, Claim and all associated costs, irrespective of any dispute in relation to such Claims.

12.7 The O&M Partner shall at all times be responsible for, shall release and shall defend, protect, indemnify and hold Purchasing Group harmless from Losses, interest, penalties and any/all other charges/ expenses imposed on the Owner because of the O&M Partner's failure to obtain a GST registration and/or intimate the Owner about the de-registration/ cancellation of GST registration of the O&M Partner.

12.8 It is the express intention of the Parties hereto that the provisions of this Agreement/Purchase Order shall exclusively govern the allocation of risks and liabilities of the Parties, it being acknowledged that the Agreement reflected herein has been based upon such express understanding. It is acknowledged that the compensation payable to O&M Partner as specified in this Agreement and/or applicable Purchase Order has been based upon the express understanding that risks and liabilities shall be determined in accordance with the provisions of this Agreement and/or applicable Purchase Order.

### **13. Liquidated Damages**

Owner reserves the right to stipulate, subject to mutual understanding between the Parties, the following:

13.1 In case of any failure towards timely completion of the Services or failure in meeting the stipulated parameters of performance contained under Schedule ... of this Contract or any annexures or variation thereto, the O&M Partner shall be liable to pay to Owner Liquidated Damages, and not by way of penalty, an amount as stipulated in Sch. – ... (LD for delay in completion) of the Contract on account of delay in completion.

13.2 Payment or deduction of Liquidated Damages shall in no way relieve the O&M Partner from completing the Services and discharging all its other obligations under this Contract.

13.3 The liquidated damages delay in completion and for non-performance are mutually exclusive.

### **14 Limitation of Liability**

14.1 Except as may be otherwise provided in this agreement, 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, exemplary or incidental loss or damages of any nature arising at any time from any cause whatsoever.

14.2 The limitations of liability and exclusion of warranties as set out in the Agreement shall be to the maximum extent permitted by applicable law. Nothing in this Agreement purports to exclude or limit liability for fraud, death, violation of HSE Policy, Environmental Damage or personal injury.

### **15 Relationship between Parties**

15.1 Nothing contained in the Agreement is intended to, or shall operate to, create a relationship of partnership or employer-employee or joint venture between the parties. Nothing in the Agreement 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.

15.2 For the purpose of this Contract, the O&M Partner shall be an independent O&M Partner, and any and all workmen and labourers hired by him for the execution of the Contract shall remain solely on the roll of the O&M Partner, and shall not at any time claim employment under the Owner.

### **16 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 Agreement 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 Agreement or otherwise, the same should be addressed to Head Legal, \_\_\_\_\_.

### **17. Suspension & Termination**

17.1 Company may immediately terminate all or part of this Agreement/Purchase Order as under:

(i) by a written notice to the other Party if the other Party has committed any material breach of the terms of this

Agreement and has failed to remedy such breach within 30 days from receiving notice from the other Party.

(ii) If the O&M partner (i) has abandoned the Contract (ii) 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; (iii) (a) ceases, or threatens to cease, to function as a going concern or conduct its operations in the normal course of business, (b) commences, or becomes the subject of, any bankruptcy, insolvency, reorganization (other than in the course of a corporate re-organization or to an affiliate), administration, liquidation or similar proceedings, (c) makes, or plans to make, a general assignment for the benefit of its creditors, or (d) O&M Partner's creditors attach or take possession of all or a substantial part of O&M Partner's assets; the foregoing shall not apply to any action or proceeding which is in the reasonable opinion of the Owner, frivolous or vexatious or (e) discharged, stayed or dismissed within ninety (90) days of commencement; (iv) does any act or omission that results in Owner committing a breach of any of its obligation under this Agreement; or does any act or omission in breach or violation of any Directive which has material adverse effect on the site or the Company's enjoyment of its rights or benefits under any of the Agreements;

(iii) if other party is unable to carry out its obligations by reason of Force Majeure events and the force majeure continues for a period more than 30 days, then Company may, by giving notice in writing, terminate this Agreement with immediate effect. Any such termination shall be without prejudice to any of the right of the Parties accrued prior to the date of such termination.

17.2 The Owner may terminate all or part of this Agreement by one (1) months' written notice without assigning any reason whatsoever or if the O&M Partner fails to obtain any approval required under the terms of this Agreement.

#### 17.3 Company's Event of Default

For the following events, unless occurring as a result of a breach by the O&M Partner of its obligations under this O&M Agreement, shall constitute Company's Event of Default if the Owner: (i) ceases, or threatens to cease, to function as a going concern or conduct its operations in the normal course of business, (ii) commences, or becomes the subject of, any bankruptcy, insolvency, reorganization (other than in the course of a corporate re-organization or to an affiliate), administration, liquidation or similar proceedings, (iii) makes, or plans to make, a general assignment for the benefit of its creditors, or (iv) Owner's creditors attach or take possession of all or a substantial part of Owner's assets.

#### 17.4 Termination on Owner's Event of Default

Upon the occurrence of Owner's Event of Default, the O&M Partner may terminate this Agreement by delivery of a written notice to this effect to the Owner. The Termination Notice may specify a termination date after the date of receipt of the notice by the other Party from which the termination shall come into effect. Upon the termination date, this O&M Agreement shall stand terminated, except for the obligations or duties that are stated to survive termination or are to be carried out after termination or owed by a Party at the time of or as a result of such termination.

17.5 Upon termination of this Agreement, both Parties shall be relieved of their respective rights and obligations under this Agreement save such obligations and/or liabilities of the Parties set forth herein which (i) that the Parties have expressly agreed will survive any expiration or termination, or (b) by their nature would be intended to be applicable following any such expiration or termination, or (c) have accrued before expiration or termination, as the case may be.

17.6 In the event of O&M Partner's breach of its obligations hereunder, no payment shall be due by Owner in respect of such order/Owner order, or, in the case of suspension, until the failure or breach has been remedied to the reasonable satisfaction of Owner.

17.7 Notwithstanding anything to the contrary in this Agreement, Owner may, at its sole discretion, suspend this Agreement / any Purchase Order, in whole or in part, upon twenty-four (24) hours written notice to O&M Partner for any reason whatsoever. The Owner shall promptly notify the O&M Partner in writing of the same.

17.8 In the event of written notice pursuant to Clause above, O&M Partner's failure to perform the Purchase Order to the standards required by the Purchase Order and O&M Partner's material breach of any of its obligations under the Agreement, no payment shall be due by Owner in respect of such order/Owner order, or, in the case of suspension, until the failure or breach has been remedied to the reasonable satisfaction of Owner.

### 18. FORCE MAJEURE

18.1 For the purposes of this Agreement, "Force Majeure" means the occurrence of any event or circumstance or combination of events or circumstances that is beyond the reasonable control of a Party, has a material and adverse effect on the performance by that Party of its obligations under or pursuant to this Agreement, and that demonstrably could not have been foreseen by the Parties; provided, however, 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; but provided, further, that the exercise of diligence and reasonable care will not include the obtaining or maintaining of insurance beyond the requirements of this Agreement.

18.2 Subject to clause 18.1 hereinabove, Force Majeure includes without limitation, the following events and circumstances, but only to the extent that each satisfies the above requirements as provided under Clause 18.1; (a) Act of God, (b) fire, flood, earthquake, epidemic, pandemic, natural disaster or extreme natural event (c) war, riot,

insurrection, civil commotion, mobilization or military, call up of a comparable scope, which has been notified in accordance with this Clause 18 any direction, judgement, decree or any other order passed by any judicial/quasijudicial/administrative authority and/or any direction passed by the government authority/(ies) restraining the performance of obligations, whether in part or in full, of the affected party provided that such orders or directions must not emanate out of actions directly attributable to the affected party or (e) any event owing to any restrictions, directives/directions imposed or passed by the government, judicial, quasi-judicial authorities if they impede or delay the performance of the Agreement (Force Majeure Events).

#### 18.2.1 FORCE MAJEURE EXCLUSIONS:

Force Majeure will expressly not include the following conditions, except and to the extent that they result from an event or circumstance otherwise constituting Force Majeure:

- (i) unavailability, late delivery or changes in cost of machinery, equipment, materials, spare parts or consumables;
- (ii) prevailing weather conditions at the place of performance of the services/works, including during monsoon periods;
- (iii) failure or delay in performance by any Subcontractor;
- (iv) normal wear and tear or flaws in materials and equipment or breakdowns in equipment.
- (v) any labour unrest/strike or any other event of the like nature caused by the O&M Partner (which includes its subcontractors) shall not be considered as a force majeure occurrence

18.3 In the event of a Force Majeure occurrence, the party that is or may be delayed in performing the Agreement shall notify in writing to the other party without delay but not later than fifteen (15) business days on the initiation 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. Provided, however, that the occurrence of such an event would entitle the parties to renegotiate the time frame for performance of the respective obligations, taking into consideration the nature of such event. In such a situation, the party, which is not able to perform its obligations under this Agreement on account of Force Majeure Event(s), shall not be liable to the other party for the default or breach of this Agreement for the period of failure or delay. If the said notice is not received by the other party within fifteen (15) business days, after the party who fails to perform knew or ought to have known of the impediment, it is liable for damages resulting from such non-receipt.

18.4 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. Upon the cessation of the event of Force Majeure, the party declaring Force Majeure shall immediately but not later than three (3) business days give notice thereof to the other party.

18.5 Neither Party shall be liable in any manner whatsoever to the other party in respect of any loss, damage, costs, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant hereof. The costs associated with taking all steps required to mitigate the effects of the Force Majeure Event and restore its ability to perform its obligations under this Agreement as soon as reasonably practicable shall be borne by the respective parties.

18.6 The Party not claiming Force Majeure shall have the right to terminate this Agreement by giving 7 (seven) days prior written

notice thereof to the other Party if the work remains suspended for more than ninety (30) Days due to Force Majeure event/s. Any such termination shall be without prejudice to any of the right of the Parties accrued prior to the date of such termination.

## 19. Arbitration

19.1 Any dispute or difference whatsoever arising between the parties out of or relating to the interpretation, meaning, scope, operation or effect of this Agreement 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 or such further period as the parties shall agree in writing, 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) A sole arbitrator shall be appointed in case the value of claim under dispute is less than ₹ 50,00,000 (Rupees Five Million Only) and in any other event 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 courts of Andhra Pradesh, India.

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

(iv) The requirement of appointing an arbitrator to settle the disputes is not binding on the insurance company, and it is free to resort to legal measures for realisation of its claims against the O&M Partner, if any.

(v) Notwithstanding the existence of any Dispute being referred to arbitration, the O&M Partner shall continue to perform their respective obligations under this Agreement unless otherwise directed by the Owner.

## 20. Governing Law and Jurisdiction

a. This Agreement shall be governed by, construed and enforced in accordance with the laws of India.

b. The parties submit to the exclusive jurisdiction of the courts of Andhra Pradesh, India and any courts that may hear appeals from those courts in respect of any proceedings in connection with this Agreement.

## 21. Change in Law

In the event of any Change in Law excluding Income tax applicable to the O&M Partner's performance of the Services or its obligations under this Agreement which occurred after the date of this Agreement results in additional cost incurred by the O&M Partner to complete the Services, the O&M Partner and

Owner shall agree on such measures and mitigating practices as is reasonably necessary to complete the Services.

## 22. Assignment and Subcontracting

a. O&M Partner may not assign, sublet or subcontract its rights or obligations under any Purchase Order, in whole or in part, to any third party without the prior written consent of Owner, which the Owner may at its sole discretion accept or refuse. O&M Partner shall have a written contract in place for each approved subcontractor prior to such subcontractor Partner performing any Services. O&M Partner shall assume full responsibility for the acts or omissions of O&M Partner's subcontractor of any tier. All of O&M Partner's subcontracts, if any, for performance of the Services shall contain terms and conditions substantially similar to those contained in this Agreement and/or the applicable Purchase Order which protect and do not restrict Owner's rights as set forth in this Agreement and/or in the applicable Purchase Order.

b. In case where the approval has been granted for the engagement of a subcontractor, the O&M Partner shall furnish an indemnity bond to the Owner, indemnifying the Owner from any act/omission of his subcontractor which is in contravention of this Contract, and requirements therein.

c. The O&M Partner shall not be relieved from any obligation under this Contract by subcontracting it, and shall be responsible for all acts, omissions, and defaults of the subcontractor, its employees, agents, representatives, servants or workmen.

d. Owner shall have the right to assign the Agreement / Purchase Order to its Affiliate or any third party customer. This Agreement shall inure to and be binding upon the respective successors and assignees of the Parties.

## 23. Recourse of the Parties

a. O&M Partner shall look only to Owner for the due performance of the Purchase Order and nothing therein contained shall impose any liability upon, or entitle O&M Partner to commence any proceedings against any third party customer or any person not a party to the Agreement or the Purchase Order.

b. Owner shall be entitled to enforce any Purchase Order on behalf of any third party customer in connection with the Agreement / Purchase Order as well as for itself and for this purpose, only Owner may commence proceedings against O&M Partner. The obligations and liabilities of Purchasing Group issuing Purchase Orders are several and not joint.

c. It is clarified that under no circumstances, by virtue of this Agreement, will the employee/workers of the O&M Partner be deemed to have any privity of contract with the Company nor would they or any of their heirs, assigns or successors would claim any benefit / privilege, whatsoever, from the Company.

## 24. Waiver and Remedies

A failure or delay in exercising any right, power or privilege in respect of this Agreement 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 Agreement must be made in writing.

## 25. Severability

If any clause or provision of this Agreement 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 Agreement or affecting the validity or enforceability of that provision in any other jurisdiction, unless it materially alters the nature or material terms of this Agreement.

## 26. Amendment

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

## 27. Code of Conduct

O&M Partner confirms having read and understood the Code of Conduct of \_\_\_\_\_ ('Company'), a copy of which has been provided to the O&M Partner and is also available at [http://www.vedantalimited.com/media/1\\_04182/supplier\\_code\\_of\\_conduct\\_december\\_2016.pdf](http://www.vedantalimited.com/media/1_04182/supplier_code_of_conduct_december_2016.pdf) the Company's Human Rights Policy (a copy of which is available at [http://www.vedantalimited.com/media/8\\_0325/vedanta\\_human\\_rights\\_policy.pdf](http://www.vedantalimited.com/media/8_0325/vedanta_human_rights_policy.pdf)) including the Modern Slavery Act 2015 as may be amended from time to time and in case of breach thereof, the same shall be treated as a breach of this Agreement. including (i) measures for prevention of corrupt practices, unfair means and illegal activities including compliance of all anti-bribery and anti-corruption laws and regulations of India, Foreign Corrupt Practices Act, 1977 of USA and UK Bribery Act, 2010; and

(ii) adherence to the insider trading prohibition laws and regulations of all jurisdictions where securities of the company or its Affiliates may be listed including but not limited to SEBI (Prohibition of Insider Trading) Regulations, 2015 [SEBI (PIT) Regulations, 2015], which inter alia prohibits the O&M Partner and its employees and associates from trading in the securities of the Owner based on any 'Unpublished Price Sensitive Information'. The O&M Partner confirms that he/she has read the relevant regulations stated above and policies of the Owner at the time of entering into this Agreement and undertakes to abide by the terms thereof to the fullest extent at all times. The O&M Partner affirms that it has formulated a Code of Conduct and instituted appropriate measures to comply with the requirements of SEBI (PIT) Regulations, 2015 as amended from time to time.

The Code of Conduct enlists compliance with the following acts and regulations:

- The UK Bribery Act ("UKBA")
- The Foreign Corrupt Practices Act (the "FCPA")
- SEBI (PIT) Regulations, 2015
- The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 ("Prevention of Workplace Sexual Harassment Act")

- Modern Slavery Act, 2015

Annexure I- Code of Conduct to these General Terms & Conditions shall be deemed accepted by O&M Partner as an integral part of this document.

If at any time during execution or performance of this Agreement the O&M Partner is faced with any undue demand, request for gratification or favor from any employee of the Company or a person connection with such employee, the Contractor must report the same immediately 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:  
sgl.whistleblower@vedanta.co.in

### **28. Mistake, Fraud, Misrepresentation etc.**

No rights shall accrue to the O&M Partner 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 O&M Partner or any Representative of the O&M Partner.

### **29. Confidentiality**

a. 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 Agreement 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.

b. 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 Agreement 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.

c. Unless otherwise agreed, this clause shall continue to remain in force for a period of 2 years after the expiry or termination of this Agreement.

d. For the purposes of this Agreement, 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.

e. 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.

### **30. Data Protection**

30.1 Where necessary to enable the O&M Partner to perform the Services, Company may provide the O&M Partner with, or the O&M Partner may have access to, information relating to an identified or identifiable individual ('personal data').

30.2 In making personal data available to the O&M Partner, the O&M Partner and the Company confirms that both the Parties have complied with applicable data protection law ('Data Protection Law') and all other Applicable laws (including the European Union's General Data Protection Regulations and the SPDI Rules in relation to the personal data.

30.3 The O&M Partner agrees that when processing personal data on Company's behalf in the performance of the Services the O&M Partner will:

(a) only process personal data on Company's documented instructions save where required by law or the order of competent court or tribunal;

(b) ensure that personal data is processed in accordance with applicable Data Protection Law and any other Applicable laws, and to notify Company if an instruction infringes any law to which we are subject;

(c) take all reasonable steps to ensure that the personal data is protected against misuse and accidental loss or disclosure, and from unauthorised or unlawful processing, destruction or alteration, and in case of any personal data breach (as defined by applicable Data Protection Law) the O&M Partner will notify the Company without undue delay upon becoming aware of it;

(d) not sub-contract our processing of personal data (save that the O&M Partner may subcontract and, in doing so, transfer personal data, to the authorised personnel with prior written approval of the Company in other jurisdictions, or third parties who are bound by appropriate confidentiality and security obligations consistent with the terms of this clause;

(e) only disclose personal data to its authorised personnel to the extent that they have a need to know for the purpose of providing the Services and are subject to appropriate obligations of confidentiality;

(f) answer Company's reasonable enquiries to enable Company to monitor the O&M Partner's compliance with this clause and provide Company with reasonable assistance to enable Company to comply with applicable Data

Protection Laws.

30.4 Where the O&M Partner process personal data that originates from a jurisdiction where the applicable Data Protection Law requires additional safeguards to be put in place for the protection of that data, or the O&M Partner transfer personal data from such a country, or third parties in accordance with clause 23.3 (d) the O&M Partner agree to take such steps as Company reasonably require, including entering into contractual clauses to meet the requirements of applicable Data Protection Law.

### **31. 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.

### **32. Review by Owner**

The O&M Partner agrees and undertakes that no review or comment by the Owner with respect to any Services or Additional Services, including documents and procedures to be prepared hereunder by the O&M Partner, or attendance by the Owner at any test or other activity of the O&M Partner at the Plant or examination or inspection by the Owner of the Plant during the Term shall in any way operate to release the O&M Partner from its obligations under this O&M Agreement, including its obligation to perform the Services in accordance with the performance standards set out herein.

### **33. Miscellaneous Provisions**

a. Entire Agreement: This Agreement along addendums and with all annexures, if any constitutes the entire agreement and understanding between the parties with respect to its subject matter and overrides and supersedes all previous agreements, representations, written documents, correspondence and understanding of the parties, whether in writing or otherwise.

b. Counterpart: This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original Agreement and all of which, when taken together, will constitute one and the same instrument

c. Validation: This Agreement shall come into effect when authorized representatives of both Company and O&M Partner execute and affix their signature hereto in their due capacity, within 3 working days after confirmation of business by Company and constitutes the entire agreement between the Parties relating to its subject matter. Any alteration, amendment or addition to any of the terms of this Agreement 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.

d. Notices: Any notice required to be given hereunder shall be given by sending the same by facsimile, prepaid post, by hand delivery or by email to the address of the addressee as shown in this Agreement or to such other address as either party may notify to the other for this purpose in writing. If sending by facsimile, notice shall be deemed to have been given upon successful transmission, if by hand upon at the time of dispatch, if sending by post, notice shall be deemed to have been given on the 3rd day on dispatch by post and if sending by email, the notice shall be deemed to have been received by the Party at the time of receipt on the reciever's email provider. If the email is received after the normal business hours of the Company, it will be deemed to have been received only at the next business hour

e. 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 Agreement.

f. Language of the Agreement: English shall be the language of the Agreement 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 Agreement shall be fluent in English.

g. Remedies cumulative: Except as expressly provided in this Agreement, all remedies available to the Parties for breach of this Agreement 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" being uploaded in the website of " \_\_\_\_\_ " the Uniform Resource Locator (URL) for which shall be communicated in the corresponding Purchase Order along with the Annexure ... : Special Terms and Conditions shall be deemed to be an integral part of the Purchase Order. Order Acknowledgement by the O&M Partner shall cover acknowledging this document and the general terms and conditions mentioned herein as well.
- These Conditions along with the Special Terms & Conditions shall apply and shall be incorporated by reference/deemed incorporated in any Purchase Order/Agreement 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 Agreement; or (ii) by incorporation of any special conditions into any Purchase Order. This Agreement, together with the Purchase Order, shall solely and exclusively form the contract between Owner and O&M Partner for the purchase of the Materials or Services to the exclusion of all other terms and conditions (including any terms or conditions which O&M Partner purports to apply to any purchase order, confirmation of order, specification, invoice or other document).
- These General Terms & Conditions shall always be in addition to any terms and conditions contained in the Purchase Order/Agreement/Annexures, of which these GTCs form integral part of, and signed between the Parties and in case of any inconsistency between the GTCs and any other terms which cannot be resolved through harmonious construction of both, then in such an event, Company's interpretation shall be final and binding.
- The reference to the Schedule numbers, wherever applicable, to be filled in manually by the Parties, and shall always denote the title of the Schedule named therein, in case of any clarification required.