

# **AMRAVATI POWER TRANSMISSION COMPANY LIMITED**

## **PART- B**

### **GENERAL CONDITIONS OF CONTRACT (GCC)**

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## GENERAL CONDITIONS OF CONTRACT

## TABLE OF CONTENT

Clause No.	Description	Page No.
<b>GENERAL</b>		
1.0	Scope of Contract	4
2.0	Contract Documents	4
3.0	Definition of Terms and Interpretations	5
4.0	Contractor to Inform Itself Fully	8
5.0	Construction of Contract	9
6.0	Contract	10
7.0	Language and Measures	10
8.0	Contract Co-ordination Procedure	10
9.0	Owner's Decision	10
10.0	Settlement of Disputes	11
11.0	Arbitration	11
12.0	Enforcement of Terms	12
13.0	Validity of Provisions	12
14.0	Survival	12
15.0	Ownership & Use of Drawings	13
16.0	Confidential Information	13
17.0	Release of Information	13
18.0	Notices	14
<b>COMMERCIAL</b>		
19.0	Contract Price and Price Basis	14
20.0	Taxes, Duties & Levies	15
21.0	Payment	20
22.0	Transfer of Title	22
<b>WORK QUALITY STANDARD</b>		
23.0	Guarantee/Defect Liability	23
24.0	Quality Assurance, Inspections and Acceptance	24
25.0	Replacement of Defective Parts and Materials	27
26.0	Rejection of Work	28
27.0	Assignment and Subletting of Contract	28
28.0	No Waiver of Rights	30
29.0	Certificate not to affect right of the Owner and Liability of Contractor	30
30.0	Contractor's Default	30
31.0	Spares	31
32.0	Maintenance Tools and Tackle	32
<b>TIMING OF WORK</b>		
33.0	Amendment to the Contract	33
34.0	Time - the essence of Contract	33
35.0	Completion of Contract	33
36.0	Liquidated Damages	33
37.0	Progress Reports	33

Clause No.	Description	Page No.
<b>WORK CHANGES</b>		
38.0	Change/Variation Order	34
39.0	Suspension of Work	36
40.0	Termination of Contract on the Owner' initiative	37
41.0	Claim	37
42.0	Backcharge	38
<b>WORK CONDITIONS</b>		
43.0	Manner of Execution of Contract	39
44.0	Packing, Forwarding and Despatch	40
45.0	Demurrage, Wharfage, etc.	40
46.0	Co-operation with other Contractors and Consulting Engineers	41
47.0	Laws and Regulations	41
48.0	Lien	41
49.0	Force Majeure	42
50.0	Grafts and Commission etc.	43
51.0	Contractual Relationship	43
<b>INDEMNITY AND INSURANCE</b>		
52.0	Insurance	44
53.0	Liability for Accidents and Damages	46
54.0	Patent Rights and Royalties	46
55.0	Indemnity	46
56.0	Consequential Losses	48
<b>ANNEXURES</b>		
I	List of Abbreviations used	49
II	List of Free Issue Material	50
III	Format of Advance Bank Guarantee	51
IV	Format of Performance Bank Guarantee	55

**1.0 SCOPE OF CONTRACT**

The scope of the Contract shall be as defined in Technical Specification and conclusion of the Contract in accordance with the terms & conditions contained in the Contract Documents.

These General terms & conditions shall form a part of the specifications and documents.

Scope shall also include all such items which may not have been specifically brought out in the Bid documents but which may be necessary for the successful fulfillment of Contractor's obligation under the Contract as per good Engineering practice and recognized principles.

**2.0 CONTRACT DOCUMENTS**

2.1 The term "Contract Documents" shall mean and include the following documents (including all amendments/addendums/ errata issued thereto) which shall be deemed to form an integral part of the Contract:

2.1.1 Commercial Documents including letter forwarding the Bidding documents, Instructions to Bidders (ITB), Contract for Package, Special Conditions of Contract (SCC), General Conditions of Contract (GCC), Erection Conditions of Contract (ECC), if applicable and all other documents referred to therein, all of which shall be referred to as Commercial Documents.

2.1.2 Specifications of the Equipment / Materials and Site, Works to be furnished, erected and constructed under the Contract as brought out in accompanying Technical Specifications including Drawings, Technical Data Sheets, Bid documents etc.

2.1.3 Contractor's offer and the documents attached thereto including the letters of clarification(s) thereto and Minutes of the Meeting (MOM) between the Contractor and the Owner prior to the Award of Contract except to the extent of repugnancy with the above mentioned Commercial Documents and the Technical Specifications and Drawings.

2.1.4 All materials, literature, data and information of any sort given by the Contractor along with its offer, subject to the acceptance of the same by the Owner.

2.1.5 Agreed Variations, if any, to the provisions of the documents referred to at Clause 2.1.1 & 2.1.2 above.

2.1.6 Letter of Award issued by the Owner to the Contractor.

2.2 The documents referred to at Clause 2.1 above, are meant to compliment each other. However, in the event of any conflict arising between the provisions of various documents, the documents shall take precedence in the order given below:

- Contract for Package (Contract)
- Special Conditions of Contract.
- General Conditions of Contract.

- Technical Specifications including Drawings.
- Erection Conditions of Contract, if any
- Accepted Materials, literature, data & information
- Letter of Award

In the event it is not possible to resolve any conflict between the above mentioned documents in the above manner, the matter shall be referred to Owner whose decision, shall be final and binding upon the parties.

### 3.0 **DEFINITION OF TERMS AND INTERPRETATIONS**

3.1 The capitalized terms wherever used in the Contract Document shall have meaning as ascribed hereunder:

3.1.1 "Affiliate" means, in relation to any person, another person that controls, is controlled by, or is under common control with, such person.

3.1.2 "Applicable Law" shall mean any court order or judgment, law, legislation, statute, rule, directive, notification, exemption, regulation or any interpretation thereof enacted, issued, or promulgated by any governmental authority from time to time in India. and shall also include all treaties, ordinances, rules, regulations applicable in India and amendments, re-enactments, revisions, applications, and adaptations thereto made from time to time and in force and effect, decrees, injunctions, writs and orders of any court, arbitrator or governmental agency or authority, rules, regulations, orders and interpretations of any Governmental Instrumentality, court or statutory or other body having jurisdiction over construction of the Work on the Jobsite.

3.1.3 "Codes" shall mean all the codes etc. listed in the Technical Specifications including the latest amendments and/or replacements, if any.

3.1.4 "Commercial Operation" shall mean the conditions of operation in which the complete equipment covered under the Contract is officially declared by the Owner to be available for continuous operation as specified in the Contract Documents. Such declaration by the Owner, however, shall not relieve or prejudice any of the Contractor's obligations under the Contract.

3.1.5 "Commissioning" shall mean satisfactory completion of all supplies, erection, commissioning checks and successful completion of all site tests and charging of the transmission line at rated voltage as per the Contract and to the satisfaction/approval of the Owner.

3.1.6 "Consulting Engineer"/"Consultant" shall mean any firm or person or agency duly appointed as such from time to time by the Owner.

3.1.7 "Contract" shall mean the Agreement, the Conditions, the Schedules and Appendices together constituting the Contract.

3.1.8 "Contractor"/ "Supplier" shall mean the party whose offer has been accepted by the Owner for the award of the Works envisaged in the Contract Documents and shall include such party's legal representatives, successors and permitted assigns.

- 3.1.9 "Contract Price" shall mean the price payable by the Owner to the Contractor as a consideration for performance of the under the Contract.
- 3.1.10 "Drawings" shall mean all:
- a) Drawings furnished by Owner/Consultant as a basis for Bid.
  - b) Supplementary drawings furnished by Owner/Consultant to clarify and to define in greater detail the intent of the Contract.
  - c) Drawings submitted by the Contractor with his offer, provided such drawings are acceptable to the Owner/Consultant.
  - d) Drawings furnished by Owner/Consultant to the Contractor during the progress of the work, and
  - e) Engineering data and drawings submitted by the Contractor during the progress of the work provided such drawings are acceptable to the Owner.
- 3.1.11 "Effective Date" shall mean the date of issue of Letter of Award by the Owner, unless otherwise provided in such Letter of Award.
- 3.1.12 "Owner" or "APTCL" shall mean Amravati Power Transmission Company Limited and shall include their legal representatives, successors and permitted assigns.
- 3.1.13 "Engineer" shall mean the person/firm/agency, appointed in writing by the Owner to act as Engineer, from time to time, for the purposes of the Contract. Wherever terms like "Engineer-in-Charge", "Chief Engineer", "Dy Chief Engineer" etc. may have been used in the Contract Documents, they shall be deemed to mean the Engineer.
- 3.1.14 "Facility" shall means the Plant and Equipment to be supplied and installed, as well as all the Installation Services to be carried out by the Contractor under the Contract.
- 3.1.15 The term "Final Acceptance" or "Taking Over" shall mean the Owner's written acceptance of the Works performed under the Contract, after successful completion of Performance and Guarantee Tests.
- 3.1.16 The term "Goods" or "Equipment" or "Stores" shall mean and include all plant, equipment, materials and mandatory spares, to be provided by the Contractor under the Contract for incorporation in the Facility.
- 3.1.17 "Guarantee Period" or "Maintenance Period" or "Defect Liability Period" shall mean the period during which the Contractor shall remain liable for repair or replacement of any defective part of the Works performed under the Contract.
- 3.1.18 "Initial Operation" shall mean the first integral operation of the complete equipment covered under the Contract with sub-systems and supporting equipment in service or available for service.
- 3.1.19 "Inspector" shall mean the Owner and/or any person/agency/firm nominated by the Owner, from time to time, to inspect the equipment, stores or various stages of Works under the Contract and/or the duly authorized representative of the Owner.
- 3.1.20 "Letter of Award" or "Notification of Award" shall mean the official notice issued by the Owner notifying the Contractor that his offer has been accepted. Such a Letter of Award may be in the form of Letter or FAX.

<b>Amravati Power Transmission Company Ltd.</b>	<b>GCC</b>	<b>BID DOCUMENTS</b>
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- 3.1.21 "Liquidated Damages" (LD) shall have its meaning as ascribed in Clause 7 of SCC.
- 3.1.22 "Manufacturer' Works" or "Contractor' Works", shall mean the place of work used by the Manufacturer, the Contractor, their Collaborators or Sub-contractors for the performance of the Works.
- 3.1.23 "Month" shall mean the calendar month. "Day" or "Days", unless herein otherwise expressly defined, shall mean calendar day or days of 24(twenty four) hours each.
- 3.1.24 "Owner" or "APTCL" shall mean Amravati Power Transmission Company Limited. and shall include their legal representatives, successors and permitted assigns.
- 3.1.25 Words imparting "Person" shall include firms, companies, corporations and associations or bodies of individuals, whether incorporated or not.
- 3.1.26 "Plant and Equipment" means plant, equipment, machinery, apparatus, articles and things of all kinds to be provided and incorporated in the Facilities by the Contractor under the Contract (including the spare parts to be supplied by the Contractor), but does not include Contractor's Equipment.
- 3.1.27 The term "Service Portion or Erection Portion of the Contract Price" shall mean the value of field activities of the Works, including handling and storage, erection, testing and putting into satisfactory operation, successful completion of performance and guarantee tests to be performed at site by the Contractor, cost of insurance till handing over of the Works to the Owner, in terms of the Contract.
- 3.1.28 "Site" shall mean and include the land and other places on, into or through which the Works envisaged under the Contract and the related facility including the residential colony are to be carried out and any adjacent land, path, street or reservoir which may be allocated or used by the Owner or the Contractor in the performance of the Contract.
- 3.1.29 "Sub-Contractor" or "Sub-Vendor" or "Sub-Supplier" shall mean the person/firm/agency/party named in the Contract for any part of the work or any person/firm/agency/party to whom any part of the Contract has been sub-let by the Contractor with the consent in writing of the Owner and will include the legal representatives, successors and permitted assigns of such person/firm/agency/party.
- 3.1.30 The term "Supply Portion of the Contract Price" shall mean the ex-works / CIF value (inclusive of packing and forwarding), as applicable, of the equipment, goods and Mandatory Spares to be supplied under the Contract.
- 3.1.31 "Works" shall mean and include the furnishing of equipment, labour and services, and all other activities to be performed by the Contractor for the complete design ,engineering, erection, testing, commissioning and putting into satisfactory operation of the Goods including all transportation, handling, unloading and storage at site, administration, supervision, construction services and management, including, without limitation, hauling, to and from the Site or other place(s) of work and cleaning of the site etc. as defined in the Contract Documents.
- 3.1.32 "Writing" shall include any manuscript, type-written or printed statement, under or over signature and/or seal as the case may be.

3.1.33 When the words "Approved", "Subject to Approval", "Satisfactory", "Equal to", "Proper", "Requested", "As Directed", "Where Directed", "When Directed", "Determined by", "Accepted", "Permitted", or words and phrases of like importance are used, the approval, judgment, direction etc. is understood to be a function of the Owner.

### 3.2 Interpretation

In this GCC and the Contract Document, except to the extent that the context requires otherwise:

3.2.1 References to this GCC include Schedules to this GCC. References to paragraphs, Clauses, Recitals or Schedules are references to such provisions of this GCC. References to a sub-clause or paragraphs to the relevant sub-clause or paragraph of the Clause or Schedule in which it appears;

3.2.2 Use of the singular shall include the plural and vice versa. Words denoting any gender shall include any other gender;

3.2.3 Headings are for ease of reference only;

3.2.4 The words "**include**" and "**including**" are to be construed without limitation;

3.2.5 a reference to a "**law**" includes any national, regional, provincial or local law, common or customary law and any constitution, decree, judgment, legislation, order, ordinance, regulation, statute, treaty or other legislative measure, in each case of any jurisdiction whatever (and "**lawful**" and "**unlawful**" shall be construed accordingly) ;

3.2.6 a reference to any "**party**" includes its successors in title, permitted assignees and permitted transferees;

3.2.7 a reference to a "**person**" includes any person, firm, company, corporation, government, state or agency of a state, or any association, foundation, trust or partnership (whether or not having separate legal personality) or two or more of the foregoing and words denoting natural persons include any other persons; and

3.2.8 The Recital shall be construed as an operative part of the GCC and Contract Document.

3.2.9 Terms and expressions not herein defined shall have the same meaning as are assigned to them in the Indian Sale of Goods Act (1930), failing that in the Indian Contract Act (1872) and failing that in the General Clauses Act (1897) including amendments thereof if any.

## 4. CONTRACTOR TO INFORM ITSELF FULLY

4.1 Contractor shall be deemed to have carefully examined the Contract Documents including documentation, drawings and specifications for the Work and fully acquainted it with site conditions including climatic conditions and all other conditions relevant to the Works, and its surroundings. Contractor shall be deemed to have assumed the risk of such conditions and will, regardless of such conditions, expenses, and difficulty of performing the Works, or negligence of the Owner, if any, fully complete the Works for the stated Contract Price without further recourse to the Owner. Information on the site of the Works and local conditions at such site furnished by the Owner in specifications,

drawings or otherwise is not guaranteed by the Owner and is furnished only for the convenience of Contractor.

- 4.2 Without any prejudice to the provisions of Clause 4.1 above, the Contractor shall be deemed to have inspected and examined the Site, its surroundings, the above data and other available information, and to have satisfied himself before submitting the offer, as to:
- (a) The means of access to the Site and the accommodation the Contractor may require.
  - (b) Rules and Regulations of India.
  - (c) Conditions imposed by State Electricity Board.
  - (d) Site is appropriate for the performance of the work.
- 4.3 Once the site has been inspected by the Contractor all risks relating to the ground condition should be taken by the Contractor.
- 4.4 If the Contractor shall have any doubt as to the meaning of any portion of the Contract Document, he shall, before signing the Contract, set forth the particulars thereof, and submit them to the Owner in writing, in order that such doubt may be removed. The Owner will provide such clarifications as may be necessary, in writing, to the Contractor. Any information otherwise obtained from Owner shall not in any way relieve the Contractor of his responsibility to fulfill his obligations under the Contract.
- 4.5 The specifications and drawings may not be complete in every detail. Contractor shall comply with their manifest intent and general purpose, taken as a whole, and shall not make use of any errors or omissions therein to the detriment of the Works. Should any conflict, error, omission or discrepancy appear in the drawings, specifications, instructions, in work done by others, or in site conditions, Contractor shall notify Owner in writing at once and Owner will issue written instructions to be followed. If Contractor proceeds with any of the Works in question prior to receiving such instructions, then required corrections shall be at Contractor's expense.

## **5. CONSTRUCTION OF THE CONTRACT**

- 5.1 Notwithstanding anything stated elsewhere in the Contract Documents, the Contract to be awarded shall be treated as a divisible Supply, Services and Civil works Contract on a single source responsibility basis. The supply portion of the Contract will relate to the design, engineering and supply of equipment and material (Supply Contract), the service contract will relate to insurance, customs clearance, handling, storage, erection, testing, commissioning etc.(Service Contract) and the civil works contract will relate to the civil Works, as defined in the Contract Documents.
- 5.2 The award of three Contracts shall not in any way dilute the responsibility of the Contractor for the successful commissioning of the Plant and Equipment as per Contract and all the Contracts will contain a cross fall breach Clause namely, that a breach in one Contract shall automatically be construed as a breach of the other Contracts which will confer a right on the Owner to terminate the other Contracts at the risk and cost of the Contractor.

5.3 In case where the Owner hands over the Equipment to the Contractor for executing the Contract, the Contractor shall, at the time of taking delivery of the Equipment through the dispatch documents, be required to execute an Indemnity Bond in favour of the Owner in the form acceptable to the Owner for keeping the Equipment in safe custody and to utilize the same exclusively for the purpose of the said Contract.

5.4 The Contract shall in all respects be construed and governed according to Indian laws.

5.5 It is clearly understood that the total consideration for the Contract(s) has been broken up into various components only for the convenience of payment under the Contract (s) and for the measurement of deviations or modifications under the Contract (s).

## **6. CONTRACT**

6.1 This Contract constitutes the entire understanding between parties hereto with respect to the subject matter hereof and supersedes all communication, negotiations and agreement (whether written or oral) of the parties with respect hereto made prior to the date of this Contract.

6.2 There are no understandings or agreements between the Owner and the Contractor which are not fully expressed herein including the Schedules referred to in the Contract.

## **7. LANGUAGE AND MEASURES**

7.1 The governing language for the Contract shall be English. All documents pertaining to the Contract including specifications, schedules, notices, correspondence, operating and maintenance instructions, drawings or any other writing shall be written in English language. The Metric system of measurement shall be used exclusively in the Contract.

## **8.0 CONTRACT CO-ORDINATION PROCEDURE**

8.1 Within 15 (fifteen) days of receipt of Letter of Award from the Owner, Contractor shall furnish for approval a Contract Co-ordination Procedure, setting out procedures for communications between the Contractor and Owner in connection with this Contract, including details relating to correspondence, circulation of notices and documentation, meetings and other interfaces. The parties shall comply with the requirements of such project co-ordination procedures once approved by the Owner. Such procedures may be amended from time to time by mutual agreement.

## **9.0 OWNER'S DECISION**

9.1 In respect of all matters which are left to the decision of the Owner including the granting or withholding of the certificates, the Owner shall, if required to do so by the Contractor, give in writing a decision thereon.

9.2 If in the opinion of the Contractor, a decision made by the Owner is not in accordance with the meaning and intent of the Contract, the Contractor may file with the Owner within 15 (fifteen) days after receipt of the decision, a written objection to the decision. Failure to file an objection within the allotted time shall make the Owner's decision as final and binding.

- 9.3 The Owner's decision and the filing of the written objection thereto shall be a condition precedent to the right to request arbitration. It is the intent of the Contract that there shall be no delay in the execution of the Works and the decision of the Owner, as rendered, shall be promptly observed.
- 9.4 Any determination, instruction, inspection, examination, testing, consent, approval or similar act by any such assistant of the Owner, in accordance with the delegation, shall have the same effect as though it had been an act of the Owner. However, any failure to disapprove any Plant or workmanship shall not prejudice the right of the Owner or its Representative to reject such Plant, workmanship at later date.
- 10.0 **SETTLEMENT OF DISPUTES**
- 10.1 Any dispute or difference arising out of or in connection with the Contract shall, to the extent possible, be settled amicably between the parties.
- 10.2 Except as otherwise specifically provided in Clause 11.0 herein below, all unsettled disputes or differences arising out of or in connection with the Contract shall in the first instance be decided by the Owner whose decision shall be final and binding on the parties.
- 11.0 **ARBITRATION**
- 11.1 If any dispute or difference of any kind whatsoever shall arise between the Owner and the Contractor, arising out of the Contract for the performance of the Works whether during the progress of the Works or after its completion or whether before or after the termination, abandonment or breach of the Contract, it shall, in the first place, be referred to and settled by the Owner, who, within a period of 30 (thirty) days after being requested to do so, shall give written notice of his decision to the Contractor.
- 11.2 Save as hereinafter provided, such decision in respect of every matter so referred shall be final and binding upon the parties until the completion of the entire work under the Contract and shall forthwith be given effect to by the Contractor who shall comply with all such decisions, with all due diligence, whether he requires arbitration, as hereinafter provided or not.
- 11.3 If after the Owner has given written notice of his decision to the Contractor and no claim to arbitration has been communicated to him by the Contractor within 30 (thirty) days from the receipt of such notice, the said decision shall become final and binding on the Contractor.
- 11.4 In the event of the Owner failing to notify his decision, as aforesaid, within 30 (thirty) days after being requested, or in the event of the Contractor being dissatisfied with any such decision, or within 30 (thirty) days after the expiry of the first mentioned period of 30 (thirty) days, as the case may be, either party may require that the matters in dispute be referred to arbitration as hereinafter provided.
- 11.5 Subject to as specified in this Clause 11.0, all disputes or differences in respect of which the decision, if any, of the Owner has not become final or binding as aforesaid, shall be settled by arbitration, under and in accordance with the provisions of The Arbitration and Conciliation Act, 1996 or any statutory modification, in the manner hereinafter provided. The venue of arbitration shall be New Delhi, India.

- 11.6 The arbitration shall be conducted by three arbitrators, one each to be nominated by the Contractor and the Owner and the third to be nominated by the two arbitrators nominated by the parties at the commencement of arbitration proceedings and failing agreement between them, in accordance with the said act. The third arbitrator so appointed shall act as the presiding arbitrator.
- 11.7 The decision of the majority of the arbitrators shall be final and binding upon the parties. The expense of the arbitration shall be paid as may be determined by the arbitrators. The arbitrators may, from time to time, with the consent of both the parties increase the time for making the award. In the event of any of the aforesaid arbitrators dying, neglecting, resigning or being unable to act for any reason, it will be lawful for the party concerned to nominate another arbitrator in place of the outgoing arbitrator.
- 11.8 The arbitrators shall have full powers to review and/or revise any decision, opinion, directions, certification or valuation of the Owner in consonance with the Contract, and neither party shall be limited in the proceedings before such arbitrators to the evidence or arguments put before the Owner for the purpose of obtaining the said decision.
- 11.9 No decision given by the Owner in accordance with the foregoing provisions shall disqualify him as being called as a witness or giving evidence before the arbitrators on any matter whatsoever relevant to the dispute or difference referred to the arbitrators as aforesaid.
- 11.10 During settlement of disputes and arbitration proceedings, both parties shall be obliged to carry out their respective obligations under the Contract.
- 11.11 Parties agree that the party invoking arbitration shall specify all disputes to be referred to arbitration at the time of invocation of arbitration and not thereafter.
- 11.12 Parties agree that neither party to the Contract shall be entitled for any interest on the amount of award.
- 12.0 **ENFORCEMENT OF TERMS**
- 12.1 The failure of either party to enforce at any time any of the provisions of this Contract or any rights in respect thereto or to exercise any option therein provided, shall in no way be construed to be a waiver of such provisions, rights or options or in any way to affect the validity of the Contract. The exercise by either party of any of its rights herein shall not preclude or prejudice either party from exercising the same or any other right it may have there under.
- 13.0 **VALIDITY OF PROVISION**
- 13.1 In the event any section, or any part or portion of any section of this Contract shall be held to be invalid, void or otherwise unenforceable, such holding shall not affect the remaining part or portions of that section, or any other section hereof.
- 14.0 **SURVIVAL**
- 14.1 The provisions of this Contract which by their nature are intended to survive the termination, cancellation, completion or expiration of this Contract shall continue as valid and enforceable obligations of the parties notwithstanding any such termination, cancellation, completion or expiration.

15.0 **OWNERSHIP AND USE OF DRAWINGS**

15.1 Drawings, technical documents and data prepared or developed by Contractor and furnished to the Owner in performance of the Works, shall be the property of the Owner and may be used by the Owner without restriction. Contractor shall arrange that any rights and titles, including intellectual property rights (together with the obligations connected therewith) relating to Work which Contractor or any of its Subcontractor may acquire vis-à-vis third parties can, if so required by Owner, be assigned to Owner .

16.0 **CONFIDENTIAL INFORMATION**

16.1 Drawings, specifications, and other information obtained by Contractor from Owner in connection with the Works shall be held in confidence by Contractor and shall not be disclosed to third parties or used by Contractor for any purpose other than for the performance of Works or as authorized in writing by Owner. All such documents furnished by the Owner to Contractor shall remain their property, and upon completion of the Works, Contractor shall, as requested by the Owner, either destroy or return such documents, including any copies thereof.

16.2 All drawings, specifications, blueprints, calculations, data, reports and other documents, as well as information, improvements in connection with the scope of supply or prepared by and furnished to Contractor by Owner or vice versa shall be deemed as Confidential Information.

16.3 Contractor will not at any time without the prior written consent of Owner publish, disclose or otherwise disseminate, duplicate or use, directly or indirectly, confidential information to or for the benefit of any third party whether or not it relates to a process, product, equipment or apparatus embodied therein.

16.4 The Contractor shall disclose confidential information only to those vendors and employees of Contractor directly involved in the scope of engineering and supply on a need to know basis and shall be responsible to see that such Sub-Contractors, vendors and employees observe the requirements of confidentiality and non disclosure Clause and enter into non-disclosure/confidentiality agreements with them.

16.5 Copyright in the Owner's requirements and other documents issued by the Owner or the Owner's Representative to the Contractor shall (as between the parties) remain the property of the Owner / Owner as the case may be. The Contractor may, at his cost, copy, use and communicate any such documents for the sole purpose of the Contract. They shall not, without the Owner's / Owner's consent, be used, copied or communicated to a third party by the Contractor, except as necessary for the purposes of the Contract.

17.0 **RELEASE OF INFORMATION**

17.1 The Contractor shall not communicate or use in advertising, publicity, sales releases or in any other medium photographs or other reproduction of the Works under this Contract, or description of the Site, dimensions, quantity, quality or other information, concerning the Works unless prior written permission has been obtained from the Owner. Contractor acknowledges that the trade and service names, marks, and logos of Owner/Owner, its parent, and all affiliate companies are of great value and agrees not to use or permit the use or misuse of such marks in any manner that would impair the ownership or image of Owner/Owner.

18.0 **NOTICES**

18.1 **Notices to Owner:** Any contractual notice, report, certificate or other communication to be given to the Owner under the Contract shall be served by sending the same by facsimile transmission or electronic mail (with a confirmation copy by couriers or by hand delivery only in case of major issues relating to the Contract, Viz. Notices of Tests, arbitration, making a claim, termination etc.) to, or by leaving the same at, the respective addresses set out in the Contract Documents or such other addresses as may be specified for that purpose in writing to the Contractor.

18.2 **Notices to Contractor:** All certificates, notices or decisions, instructions and orders to be given by Owner under the Contract shall be served by sending the same by facsimile transmission or electronic mail (with a confirmation copy by couriers or by hand delivery only in case of major issues relating to the Contract, Viz. Notice of Tests, arbitration, claims, termination etc.) to, or by leaving the same at, the address set out in the Contract Documents or such other address as the Contractor shall nominate in writing for that purpose

18.3 Any notice sent by facsimile transmission shall be deemed to have been served at the time of receipt. A positive transmission report from the sender's machine will be conclusive evidence of receipt in the absence of evidence to the contrary.

19.0 **CONTRACT PRICE AND PRICE BASIS**

19.1 The Contractor shall be deemed to have satisfied himself as to the correctness and sufficiency of the Contract Price. Unless otherwise stated in the Contract, the Contract Price shall cover all his obligations under the Contract (including those under provisional sum(s), if any) and all things necessary for the proper execution and completion of the Works and the remedying of any defects.

19.2 Contract Price is full compensation to Contractor for full and complete performance by Contractor of all the Works, compliance with all terms and conditions of this Contract, and for Contractor's payment of all obligations incurred in, or applicable to the performance of the Work,

19.3 Notwithstanding any escalation in the raw materials, wages for labour, transportation costs etc, the Contract Price, and all other prices and rates set forth in the Contract shall remain fixed and firm and shall not be subject to any change whatsoever during the currency of the Contract.

19.4 Contract Price includes all Contractor's costs, expenses, overhead and profit for complete performance of the Works.

19.5 The Contract Price, and all other prices and rates set forth herein shall include design, manufacturing, inspection, supply, transportation receipt, offloading, storage, subsequent handling of materials, construction, erection, testing, Commissioning, Performance Guarantee Test and handing over the Works to the Owner under the Contract, and the loading, transport and disposal of surplus materials, if any.

19.6 The lump sum prices shall include Mobilization, Demobilization and Site Establishment charge which shall not be subject to adjustment based upon any additions or deletions to the lump sum price.

19.7 The lump sum and all unit prices shall apply regardless of when the Works is performed, be it day or night or a holiday, unless the Owner accepts in writing, prior to performance that Works performed outside of normal working hours is subject to additional compensation to Contractor.

19.8 All pricing shall include all costs associated with and relative to, performing Works in accordance with and working in accordance with all applicable local, state and federal safety regulations, as well as Owner's safety, security and fire regulations.

19.9 Failure by Contractor to assess fully the scope of work, as required and described in the Contract shall not be accepted as a basis for variations to the lump sum, unit pricing, and time and material rates for changes.

20.0 **TAXES, DUTIES & LEVIES**

The applicable taxes and duties for the Contracts shall be as under:

20.1 **For Supply Contract**

20.1.1 The Contract Price shall be inclusive of Customs duty, Sales tax, Value Added Tax, Excise duty, Octroi, Royalty, local taxes and other levies solely in respect of the transaction between the Owner and the Contractor. It also includes taxes and duties on sub-vendor items directly dispatched to Site and sold on sale in transit basis.

Customs duty on the imported finished goods, forming part of Contract Price, shall be paid by the Contractor on behalf of and in the name of the Owner (or an entity specified by the Owner) by filing Bill of entry in the name of the Owner (or an entity specified by the Owner).

Contractor shall provide the item wise breakup of Contract Price indicating separately the unit price and taxes & duties applicable thereon in Price Schedule attached with the tender document. In case taxes & duties indicated in Price Schedule subsequently proves wrong, incorrect or misleading, the Owner shall have no liability to reimburse/pay to the Contractor the excess taxes, fees etc. However, if the taxes/fee levied/imposed are lower than the amount indicated in the Price Schedule, the Owner shall be entitled to recover the difference from the Contractor.

The Contractor shall pay VAT under the Maharashtra VAT laws (if applicable) at actuals.

20.1.2 All taxes, duties and levies payable on the components, raw materials, sub-assemblies, equipment etc., proposed to be purchased by the Contractor, for their consumption in the manufacture of the Goods, including such components, equipment, sub-assemblies etc. as may be proposed for direct dispatch to the Owner, by the sub-supplier(s)/sub-vendor(s) shall be included in the Contract Price and the Owner shall have no liability whatsoever in this regard. Any statutory variation in such taxes, duties and levies, during the currency of the Contract, shall be to the account of the Contractor. However in cases where such items has been sold on sale in transit basis, Statutory variation in taxes, duties and levies will be adjusted as per clause 20.4 of GCC.

<b>Amravati Power Transmission Company Ltd.</b>	<b>GCC</b>	<b>BID DOCUMENTS</b>
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- 20.1.3 All taxes, duties and levies applicable outside India for the goods to be supplied under the Contract shall be included in the Contract Price and Owner shall have no liability whatsoever in this regard.
- 20.1.4 Wherever concessional Sales Tax for inter State transaction, is applicable, the Owner shall issue to the Contractor Form 'C' in accordance with the provisions of the Central Sales Tax Act, 1956.
- 20.1.5 The Contractor shall ensure delivery of such items, which may not require any value additions at Contractor's Works, directly by his Sub-Vendors/Sub-Suppliers to the Project Site, on sale-in-transit basis. All taxes & duties on such transactions shall also be included in the Contract price.
- 20.1.6 As regards, income tax, surcharge on income tax and other corporate tax, if any, the Owner shall not bear any liability whatsoever irrespective of the mode of contracting and the same shall be the responsibility of the Contractor alone.
- 20.1.7 In the event that the Owner is required to withhold tax on the payments for supply of goods, the Owner shall deduct such taxes from the gross value of the Contractor's invoice and remit the net amount taking into account such deductions. However, the Owner shall furnish a TDS certificate to this effect in favour of the Contractor so as to enable him to take the tax credit, if any. The Owner shall withhold tax at a lower or nil rate provided the Contractor produces a lower/nil withholding certificate from the appropriate authority
- 20.1.8 Sale in Transit -E-I & E-II process shall be discussed mutually, before supply of material by the contractor and Contractor including its sub vendors will comply with the process agreed upon and any non compliance results in penalty etc from Sales Tax Authorities shall be on account of contractor only.
- 20.1.9 The prices for freight and transit insurance shall be inclusive of all applicable taxes and duties.

**20.2 For Services Contract:**

- 20.2.1 The Service Contract envisages the services, unloading of material at site, storage, transportation to work site area, erection, testing & commissioning and conducting the performance and guarantee tests to establish the parameters guaranteed under the Contract.

As part of the Service Contract, the Contractor shall be responsible for the timely payment of customs duty to the relevant Governmental Authorities for and on behalf of the Owner (or an entity specified by the Owner) and customs clearance as contemplated in the contract documents as part of its scope of services.

- 20.2.2 The Contract price for the Service Contract shall be inclusive of Service Tax and all other taxes, duties and levies as may be payable by the Contractor and the Owner shall have no liability whatsoever in this regard. Taxes shall be paid by Owner to Contractor against documentary evidence.

The Contract Price given in the Price Schedule are based on the applicable rates as indicated by the Contractor in the Price Schedule. In case this information subsequently proves wrong, incorrect or misleading, the Owner shall have no liability to reimburse/pay

to the Contractor the excess taxes, fees etc. However, if the taxes/fee levied/imposed are lower than the amount indicated in the Price Schedule, the Owner shall be entitled to recover the difference from the Contractor.

- 20.2.3 The Contractor must indicate all such cases including the basis thereof, where the service tax is leviable and needs to be discharged by the Owner directly to the Government on a reverse charge basis.

The reasoning tendered by the Contractor for applicability of the Service tax on reverse charge basis must be acceptable to the Owner, and such reasoning must be communicated to the Owner along with the Price Bid. If necessary, the Owner may call the Contractor for discussions to understand the reasoning and basis for levy of service tax on reverse charge basis indicated by the Contractor

In the event that the Owner is in agreement with the reasoning tendered by the Contractor for imposition of the service tax on a reverse charge basis, it would communicate the same in writing and thereafter, the Contractor shall not have any right to recover any service tax on the scope of work performed by the Contractor with respect to such portion of the scope of work and bid price relating thereto on which the Contractor and the Owner had mutually agreed that service tax on reverse charge basis is leviable, before the submission of the bid price

In the event that the Contractor does not convey applicability of service tax on reverse charge basis prior to submission of the Bid price and post award of the Contract, if the Owner comes to the conclusion that Service tax on a reverse charge basis is leviable, then post issuance of appropriate intimation, the Contract price shall stand reduced accordingly to the extent of the service tax payable by the Owner directly to the Government

In the above cases, the Contractor must indicate the quantum and the rate of Service Tax so payable by the Owner on reverse charge basis, which shall be factored by the Owner only for Bid evaluation purposes and shall not form part of the bid price

- 20.2.4 In the event that the Owner is required to pay the income tax / withholding tax applicable on services provided whether outside India or within India, the Owner shall deduct such taxes from the gross value of the Contractor's invoice and remit the net amount taking into account such deductions. However, the Owner shall furnish a TDS certificate to this effect in favour of the Contractor so as to enable him to take the tax credit. The Owner shall withhold tax at a lower or nil rate provided the Contractor produces a lower/nil withholding certificate from the appropriate authority.

- 20.2.5 All taxes, duties and levies applicable outside India for the services to be provided outside India or within India under the Contract shall be included in the Contract Price and Owner shall have no liability whatsoever in this regard.

### **20.3 For Civil Work Contract**

- 20.3.1 The Contract price for the Civil Contract shall be inclusive of Value added Tax, Central Sales Tax, Service Tax, Work contract tax and all other taxes, duties , rentals, royalties, fees, charges, levies as may be payable by the Contractor and the Owner shall have no liability whatsoever in this regard. Contractor shall register himself with the VAT Authorities in the State of Maharashtra. Taxes shall be paid by Owner to Contractor against documentary evidence.

- 20.3.2 Contractor will determine
- a. The value of goods chargeable to VAT on actual basis as per rule 58 of Maharashtra VAT Act and as amended time to time.
  - b. The value of services chargeable to service tax on actual basis as per Rule 2A of the Service Tax Valuation Rules and as amended time to time.

Contractor will provide the above calculation as an annexure to its bill. Contractor will also provide proper bifurcation of material value into major items purchased with VAT rate applicable on them as annexures with bills.

Further Value derived under (a) and (b) above shall not exceed the Bill value.

In case of sub-contractors of the Contractor who have an obligation to supply material, a bifurcation of the Contract Price from sub-contractors will be obtained by contractor in a like manner. However, where it is not possible for the sub-contractor to arrive at such bifurcation, then the Contractor shall bifurcate the amount into material and labour by applying the deemed deduction rates prescribed in table 58 rule of MVAT.

- 20.3.3 Contractor shall provide the breakup of contract price between the Value of goods chargeable to VAT on actual basis as per point (a) above and The value of services chargeable to service tax on actual basis as per point (b) above in Price Schedule attached with tender documents.

In case taxes & duties indicated in Price Schedule subsequently proves wrong, incorrect or misleading, the Owner shall have no liability to reimburse/pay to the Contractor the excess taxes, fees etc, if any finally levied/imposed under the statutes except as provided in Price Schedule.

- 20.3.4 Contractor will maintain proper documentation and the backup for the valuation determined under 20.3.2 above. Contractor will provide such supporting documents as well as other necessary assistance in this regard to the Owner as and when requested by Owner.

- 20.3.5 The Contractor shall submit copy of service tax registration certificate specifying category of services under which registration is obtained prior to raising their 1st bill.

The Contractor shall submit following documents with 1st RA bills onwards (required under Rule 4A of service tax rule, 1994):

- a) Invoice No. and date
- b) Name & address of service provider
- c) Registration number of the service provider
- d) Name & address of the service receiver
- e) Valuation of goods charged to VAT on actual basis
- f) Bifurcation and valuation of services charged to Service Tax on actual basis
- g) Bifurcation of material value into major items purchased with VAT rate applicable on them
- h) Description & classification of service provided
- i) Value of taxable service provided
- j) Service tax payable

k) Signature of authorized person

No reimbursement shall be made by the Owner based on debit notes or supplementary invoices.

The Contractor shall submit copy of Maharashtra VAT registration certificate and raise invoices in compliance with Maharashtra VAT regulations.

20.3.6 In case of any requirement to withhold taxes under the Applicable Laws, the Owner shall withhold such amounts from the payments to be made to the Contractor as a part of the Contract Price. In case the Contractor seeks to have the taxes withheld at a lower or nil rate, the Contractor shall furnish lower or nil withholding certificates from the appropriate authorities to the Owner

20.3.7 Contractor agrees to and hereby accepts full and exclusive responsibility for the payment of all salaries, wages, commission, allowances and other remuneration to Contractor's or any Subcontractor's employees, servants, agents or representatives and of the deduction of the applicable taxes, legal, social and any other burdens there from for remittance to tax, legal, social and any other authorities and the Contract price shall be deemed to include any of the foregoing.

#### **20.4 Impact of change in taxes for the above contracts:**

20.4.1 Notwithstanding anything contained in the Contract Documents, in case of any Change in Tax, the Contract Price shall be increased or decreased by the amount of such increase or decrease in Tax at actuals at the output side transaction of the Contractor to the Owner.

For the purposes of this sub-clause,

(i) 'Tax' means only such tax, duty, impost, fee or levy payable in respect of the performance of all or any of the obligations of the Contractor under this Agreement and, for the removal of doubt, would exclude any changes in taxes, imposts or levies, which are payable on income or profession by the Contractor, its Subcontractors, their servants or agents

(ii) "Change in Tax" means

(a) any change during the term of this Contract in the rates of Taxes, including any change in the application or interpretation of any Tax by a competent legislature or any Indian Government instrumentality which is contrary to the accepted legally binding application or interpretation thereof by a competent legislature or an Indian Government instrumentality;

(b) statutory variation in Taxes or imposition of any new Taxes or withdrawal or introduction of any Tax by the Government of India or the Government of Maharashtra as may be delegated and enforced by any statutory authority of such Government including VAT;

(c) abolition or repeal of any Taxes;

After the date of submission of bidding documents by Bidder.

- 20.4.2 No amount would be paid to the Contractor on account of Change in Tax, if the Change in Tax is solely attributable to any delay in completion of Work solely attributable to the Contractor. In case delay is attributable to the Contractor, no reimbursement compensation on this ground shall be admissible for the extended contract period.
- 20.5 The rate of all taxes, duties, levies, Octroi etc payable shall be as prevalent on the due date of bid.
- 20.6 Contractor shall be liable and pay all non-Indian taxes, duties and levies lawfully assessed against the Owner or the Contractor in pursuance of the Contract. In addition, the Contractor shall also be responsible for payment of all Indian duties, levies and taxes lawfully assessed against the Contractor.
- 20.7 Owner will be solely entitled to all the incentives, exemptions and benefits for example deemed export benefits, available under any act on account of obtaining of any special statutory status to Project / Owner, i.e. a unit / co-developer in a Special Economic Zone, on good /services supplied by contractor or on goods /services used by contractor as input goods/ services. Contractor hereby agrees to pass all such benefits and incentives to the owner.
- 20.8 Contractor hereby agrees to co-operate and make required changes in the documentation
- a) to facilitate the owner for claiming benefits/ exemptions / incentives available to SEZ co-developer / SEZ unit under SEZ Act, 2005, SEZ Rules, 2006 and any other laws and rules and/or
- b) to pass on benefits/ exemptions / incentives claimed by the contractor under SEZ Act, 2005, SEZ Rules, 2006 and any other laws and rules on account of obtaining of SEZ co-developer / SEZ unit to Project / Owner .
- 20.9 The company reserves the right to change the procurement pattern of various materials, goods and services required for the project in consultation with all the parties concerned. If Contractor or any other vendors / suppliers do not cooperate or do not execute the documentation in required manner for claiming such benefits / exemptions / incentives, then such benefits / exemptions / incentives accruable would be deducted from the payments made to Contractor from time to time.

**21 PAYMENT**

- 21.1 The payment to the Contractor for the performance of the Works under the Contract will be made by the Owner as per the guidelines and conditions specified herein. All payments made during the Contract shall be on-account payments only. The final payment will be made on completion of all the Works and on fulfillment by the Contractor of all its liabilities under the contract including those in respect of guarantees etc. Payments to be made hereunder are subject to any adjustment/deductions as per Contract.
- 21.2 Payment Schedule: The Contractor shall prepare and submit to the Owner for his approval, a break-up of the Contract Price as Payment Schedule. The Contract Price break-up shall be interlinked with the agreed detailed PERT network of the Contractor setting forth the starting and completion dates for the various key phases of Works prepared as per condition in "Time for Completion". All payment under the Contract

excluding advance payment shall be made only after the Contractor's Payment Schedule is approved by the Owner. The aggregate sum of the Contractor's price break-up in Payment Schedule shall be equal to the Contract Price. A price break-up over valuing those items of supply which will be shipped first will not be accepted.

- 21.3 Notwithstanding any agreed fixed schedule of payments, all payments to Contractor, including variations, shall be subject to verification of progress in Works, and Works actually in place and to adjustment for delays in the progress of Contractor.
- 21.4 The Owner reserves the right to withhold payments for Contractor's failure to comply with agreed erection & commissioning schedule
- 21.5 In the event of slow progress of work likely to impact the project schedule, the Owner reserves the right to get the work done through its own resources. The cost incurred by the Owner would be recovered from the Contractor.
- 21.6 Also in case of Contractors failure to make payments to his subcontractors for the work carried out by his subcontractors, resulting in delay in erection and commissioning, Owner reserves the right to make the payments directly to sub contractors and recover the amount from the Contractor's payment due or remaining bills.
- 21.7 The above would not absolve the Contractor of his overall obligation to meet project schedule and performance guarantee.
- 21.8 Terms of Payment – As detailed in Special Conditions of Contract.

**21.9 Bank Guarantees:**

**21.9.1 Issuance of Securities**

The Contractor shall provide the securities specified below in favour of the Owner at the times, and in the amount, manner and form specified below.

**21.9.2 Advance Payment Security**

- a) The Contractor under conditions of availing the Advance Payment shall furnish a Bank Guarantee (in Owner's prescribed format) against the amount of Advance Payment issued by any Nationalised/Scheduled Bank (except co-operative banks) or a branch of an International bank situated in India, acceptable to Owner and registered with the Reserve Bank of India as scheduled foreign bank and which shall be valid up to Delivery (in case of Supply Contract) /Commissioning and demonstration of Performance Guarantees (in case of Services Contract and Civil Work Contract) of the subject Works/Facility with a claim period of 30 (thirty) days beyond validity.
- b) In case any extension is granted to the Contract, the validity of the Advance Bank Guarantee (ABG) shall be extended accordingly.
- c) The Advance Payment Guarantee shall be allowed to be reduced every 6 (six) months, in proportion to the progress payments received by the Contractor, after First Running Account Bill/Stage payment under the Contract if the validity of the Bank Guarantee is more than 1 (one) year. The cumulative amount of reduction at any point of time shall not exceed 75% (seventy five percent) of the advance corresponding to cumulative value of the Facility completed as per a certificate to be issued by the Project Manager. It should be clearly understood that reduction in the value of Advance Bank Guarantee shall

not in any way dilute the Contractor's responsibility and liabilities under the Contract including in respect of the Facility for which reduction in the value of security is allowed.

**21.9.3 Performance Security**

- a) The Contractor shall furnish a security equal to 10 (ten) percent of the Contract Price for faithful Performance of the Contract. The security deposit shall be remitted in the form of a Bank Guarantee (in Owner's prescribed format) obtained from a Scheduled /Nationalized Bank (except co-operative banks) in India or a branch of an International bank situated in India, acceptable to Owner and registered with the Reserve Bank of India as scheduled foreign bank.
- b) The Performance Bank Guarantee (PBG) shall be furnished within 30 (thirty) days from the date of issue of Letter of Award.
- c) The Performance Bank Guarantee shall be valid till Defect Liability Period with a claim period of 30 (thirty) days beyond validity. In case any extension is granted to the Contract, the validity of the Performance Bank Guarantee shall be extended accordingly.
- d) The PBG will be forfeited if the Works/Contract is abandoned by Contractor before commissioning of Facility as specified in the Contract.

21.9.4 In case of award of the Contract to a Joint Venture, the all above Bank Guarantees shall be submitted in the name of all the partner(s) of the Joint Venture.

21.9.5 All Bank Guarantees shall have the provision of assignment, at the instance of Owner/Owner to any of the affiliates or group company or to lenders or financial institutions.

**22 TRANSFER OF TITLE****22.1 For Domestic Supplies:**

- (a) For equipment and materials supplied by the Contractor from within the state of Maharashtra, the title in respect of such equipment and materials shall pass to the Owner when delivered at Site.
- (b) For equipment and materials supplied by the Contractor from outside the state of Maharashtra through inter-state sale, the title in respect of such equipment and materials shall pass to the Owner during the transport of such equipment and materials from the manufacturer's premises to the Site by endorsement of documents of title by the Contractor in favour of the Owner.

22.2 **For Imported Supplies:** In case of a foreign Contractor, title in respect of imported supplies of equipment and materials pursuant to the terms of this Agreement shall pass to the Owner at the time of loading of goods at the port of loading as evidenced by Bill of Lading.

In case of a domestic Contractor (who purchases the goods from a foreign supplier) the title in respect of imported supplies of equipment and materials pursuant to the terms of this Agreement shall pass to the Owner from the domestic Contractor through high sea sales (i.e. by endorsement of documents of title and execution of a high seas sale agreement prior to the goods entering the territorial waters of India).

<b>Amravati Power Transmission Company Ltd.</b>	<b>GCC</b>	<b>BID DOCUMENTS</b>
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22.3 **Notwithstanding** aforesaid Transfer of Title, the Contractor shall continue to be responsible for materials/Plant and Equipment upto commissioning and Taking Over at Site except as mentioned otherwise elsewhere in the Contract. Any loss or damage during transit is to the Contractor's account.

22.4 To enable the Contractor to carry out its obligation under the Agreement such as erection, commissioning, and testing, Owner shall hand over the supplied equipment/materials to the Contractor. The Contractor shall be fully responsible for the safety of the goods while the same are under its custody.

22.5 Contractor hereby grants to the Owner an interest in and to the aforesaid Works, equipment prior to the interests of any other party after passage of title to all Works and equipment occur.

**23 GUARANTEE / DEFECT LIABILITY**

23.1 Contractor guarantees Owner that the Works shall comply strictly with the provisions of this Contract and all specifications, drawings and standards referred to in this Contract or thereafter furnished by Owner, and that the Works shall be first-class in every particular and free from defects in materials and workmanship and in any design or engineering furnished by Contractor. Contractor further guarantees Owner that all materials, equipment and supplies furnished by Contractor for the Works shall be new, merchantable, of the most suitable grade and fit for their intended purposes. Without limitation of any other rights or remedies of Owner, if any defect in the Works in violation of the foregoing guarantees arises within the period set forth below, Contractor shall, upon receipt of written notice of such defect, promptly furnish, at no cost to Owner, design and engineering, labor, equipment and materials necessary to correct such defect and cause the Work to comply fully with the foregoing guarantees.

23.2 The Contractor Guarantees the Works shall be fit for the purpose it is intended.

23.3 If any replacement, repair or modification is of such a character which may affect the subsequent performance of the Works or any part thereof in accordance with the Performance Guarantees, Owner may within 30 (thirty) days after such replacement, repair or modification give to the Contractor notice requiring that such further tests be conducted in respect of the relevant part as may be necessary to demonstrate the adequacy and efficacy of the replacement, repair or modification.

23.4 Contractor's guarantees set forth in Section 23.1 shall extend for 18 (eighteen) months after the date of final written acceptance of the Works by Owner. Any period wherein the Works is not available for use due to defects in materials, workmanship or engineering furnished by Contractor shall extend the guarantee period by an equal period of time.

23.5 Design and engineering, labor, equipment and materials furnished by Contractor, pursuant to Section 23.1, to correct defects shall be guaranteed by Contractor in accordance with the guarantees set forth in Section 23.1 for a period of 18 (eighteen) months from the date of completion of the correction, or for the remainder of the guarantee period set forth in Section 23.4 above, whichever is longer.

23.6 In the event Contractor shall have been notified of any defects in the Works in violation of Contractor's foregoing guarantees and shall fail to promptly and adequately correct such defects, Owner shall have the right to correct or to have such defects corrected for

the account of Contractor, and Contractor shall promptly pay Owner the costs incurred in correcting such defects.

- 23.7 Contractor shall include, as a minimum, the foregoing guarantee requirements in any subcontract that it places.
- 23.8 The acceptance of the equipment by the Owner shall in no way relieve the Contractor of his obligation under this Clause.
- 23.9 In respect of goods supplied by the Sub-contractors to the Contractor where a longer guarantee (more than 18 (eighteen) months) is provided by sub-contractors, the Owner shall be entitled to the benefit of such longer guarantees.
- 23.10 At the end of Guarantee Period set forth in Clause 23.5 above, Contractor's liability ceases except for the Latent Defects. The Contractor's liability for Latent Defects shall be limited to a period of Ten (10) years **from the end of Defect Liability Period**. For the purpose of this Clause, the Latent Defects shall be defects inherently lying within the material or arising out of design deficiency which do not manifest themselves during Guarantee Period.

## 24 QUALITY ASSURANCE, INSPECTIONS AND ACCEPTANCE

- 24.1 The Contractor shall at his own expense carry out at the place of manufacture and/or on the Site all such tests and/or inspections of the Plant and Equipment and any part of the Facility as are specified in the Contract.
- 24.2 The Owner shall be entitled to attend the aforesaid test and/or inspection, provided that the Owner shall bear all costs and expenses incurred in connection with such attendance including, but not limited to, all travelling, boarding and lodging expenses.
- 24.3 Whenever the Contractor is ready to carry out any such test and/or inspection, the Contractor shall give 15 (fifteen) days advance notice of such test and/or inspection and of the place and time thereof to the Project Manager. The Contractor shall obtain from any relevant third party any necessary permission or consent to enable the Owner to attend the test and/or inspection.
- 24.4 The Contractor shall provide the Project Manager with a certified report of the results of any such test and/or inspection. If the Owner, fails to attend the test and/or inspection, or if it is agreed between the Parties that such persons shall not do so, then the Contractor may proceed with the test and/or inspection in the absence of such persons, and may provide the Project Manager with a certified report of the results thereof.
- 24.5 The Project Manager may request the Contractor to carry out any such test and/or inspection not specified in the Contract but necessary for satisfactory performance of the Works/Facility.
- 24.6 If any Plant and Equipment or any part of the Works/Facility fails to pass any test and/or inspection, the Contractor shall either rectify or replace such Plant and Equipments/Works or part of the Plant and Equipments /Works and shall repeat the test and/or inspection upon giving a notice under GCC Sub-Clause 24.3
- 24.7 If any dispute or difference of opinion shall arise between the Parties in connection with or arising out of the test and/or inspection of the Plant and Equipment or part of the Works/Facility that cannot be settled between the Parties within a reasonable period of time, it may be referred to the Project Manager for determination in accordance with "Settlement of Disputes".

<b>Amravati Power Transmission Company Ltd.</b>	<b>GCC</b>	<b>BID DOCUMENTS</b>
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- 24.8 The Contractor agrees that neither the execution of a test and/or inspection of Works/Facility or any part of the Works/Facility, nor the attendance by the Owner, nor the issue of any test certificate pursuant to GCC Sub-Clause 24.4, shall relieve the Contractor from Contractor's obligations under the Contract.
- 24.9 No part of the Works/Facility or foundations shall be covered up on the Site without the Contractor carrying out any test and/or inspection required under the Contract to be carried out prior to such covering. The Contractor shall give a reasonable notice to the Project Manager whenever any such part of the Works/Facility or foundations is ready or about to be ready for test and/or inspection; such test and/or inspection and notice thereof shall be subject to the requirements of the Contract.
- 24.10 All Plant and Equipment shall comply with the requirement of type tests and shall be subjected to the routine tests specified in the set of standards adopted and to such other tests as stipulated in the respective technical specifications. Manufacturer's test certificate shall be submitted to the Owner for approval prior to despatch of any equipment.
- 24.11 In all cases where the Contract provides for test, whether at the premises of works of the Contractor or of any sub-contractor, the Contractor, except where otherwise specified shall provide free of charge to the Owner, such labour, materials, electricity, fuel, water, stores, apparatus and instruments as may reasonably be demanded to carry out efficiently such test of the plant, in accordance with the Contract and shall give Facility to the Owner or his authorised representative to accomplish such testing.
- 24.12 The Contractor shall provide without any extra charges, all necessary Facility including materials, tools, labour and assistance required for carrying out such inspection, testing and examination. The Contractor shall also furnish the latest calibration certificate of the testing instruments/equipments used for the testing of the material/equipment/as covered in the Contract, to the inspecting officer. The testing instruments/ machines should be got calibrated by the Contractor from time to time from the manufacturer of the testing instruments or any Govt. recognised testing laboratory. The calibration certificate should not, in any case, be older than one year at the time of presenting the same to the inspecting officer. In case, however, the Contractor fails to comply with the conditions as aforesaid, a certificate in writing of the inspector/ representative of the Owner that the Contractor has failed to provide the Facility shall be conclusive.
- 24.13 Unless the inspection is specifically waived, no material shall be despatched without prior inspection and clearance for despatch by the Owner's representative.
- 24.14 The Owner also reserves the right to get the material/ equipment tested in any recognised Government Laboratory and claiming any compensation or rejecting the material/equipment, if not found in accordance with the specification. All charges consequent to such erection and replacement / rectification shall be borne by the Contractor.
- 24.15 **Acceptance of Facilities for Despatch:**  
When all tests to be performed in the Contractor's or sub-contractors premises under the terms of this Contract have been successfully carried out and test reports approved, the despatch instructions will be given by the Owner to the Contractor. Instructions for immediate despatch will not unreasonably be withheld.
- 24.16 The Contractor shall uncover any part of the Works/Facility or foundations, or shall make openings in or through the same as the Project Manager may from time to time require at the Site, and shall reinstate and make good such part or parts.
- 24.17 If any part of the Works/Facility or foundations covered up at the Site after compliance with the requirement of GCC Sub-Clause 24.9 are still required by the Project Manager to

be opened out or uncovered and are found to be executed in accordance with the Contract, the expenses of uncovering, making openings in or through, reinstating, and making good the same shall be borne by the Owner, and the Time for Completion shall be reasonably adjusted to the extent that the Contractor has thereby been delayed or impeded in the performance of any of its obligations under the Contract.

**24.18 Acceptance Tests**

24.18.1 In all cases where the Contract provides for tests at the Site, the Contractor, except where otherwise specified, shall provide free of charge such labour, material, electricity, fuel, water, apparatus and instruments as may be required from time to time to carryout efficiently such test of the plant, material or workmanship in accordance with the Contract. In case equipment/material is not found as per the Contract, all expenses incurred during site testing will be to the Contractor account and material shall be replaced by Contractor at Site at his own cost and expense.

24.18.2 For the purpose of Trial Operation/Commissioning and Performance Guarantee Tests to be performed by the Contractor, the Owner, as a part of his input, will provide operating personnel for operation of the Equipment. During such operation, the Owner's operating personnel shall be under the direct supervision of the Contractor's/Manufacturer's representative. However, the operating personnel of the Owner shall be required to do only those duties which are normally assigned to such operational staff. All other required labour shall be arranged by the Contractor.

24.18.3 The following field inspections and tests will be carried out in the sequence detailed below and the successful performance and completion of all the tests taken together shall constitute the Owner Acceptance Tests:

**a) Initial Checking**

- i) On completion of erection of the equipment and before testing & Commissioning, each material of the equipment shall be thoroughly cleaned and then inspected jointly by the Owner and the Contractor for correctness and completeness of installation and acceptability leading to initial pre-commissioning tests at Site. The list of pre-commissioning tests to be performed shall be as mutually agreed and included in the Contractor's quality assurance programme.
- ii) The Contractor's Commissioning engineers, specially identified as far as possible, shall be responsible for carrying out all the pre-commissioning tests at Site.
- iii) The time consumed in the inspection and checking of the Facility shall be considered as a part of the erection and installation period.

**b) Pre - Commissioning**

- i) On completion of inspection and checking of Facilities, the Contractor shall commence Precommissioning of the Facilities or the relevant part thereof, in presence of the Employer's representatives, as per procedures detailed in Technical Specifications in preparation for Commissioning.
- ii) The time consumed in pre-commissioning shall be considered as a part of the erection and installation period.
- iii) As soon as possible after Precommissioning, the Contractor shall complete all outstanding minor items so that the Facilities are fully in accordance with the requirements of the Contract, failing which the Employer will undertake such

completion and deduct the costs thereof from any monies owing to the Contractor.

**c) Commissioning**

- i) Commissioning of the Facilities or any part thereof shall be commenced by the Contractor immediately after the Pre-commissioning is considered to be completed.
- ii) Commissioning of the Facilities or any part thereof shall be completed by the Contractor as per procedures detailed in Technical Specifications.

**d) Equipment Performance Guarantees**

The Contractor guarantees that Plant and Equipment shall attain the rating and performance requirements specified in the Contract Agreement, subject to and upon the conditions therein specified.

**e) Trial - Operation**

- i) Trial – Operation of the Facilities or any part thereof shall be commenced by the Contractor immediately after the Commissioning is completed.
- ii) Trial – Operation of the Facilities or any part thereof shall be completed by the Contractor for the period specified in Technical Specification (or for a continuous period of 24 hours where such period is not specified in Technical Specification) and as per procedures detailed in Technical Specifications.

**24.19 Final Acceptance /Taking Over**

24.19.1 Owner will take over the care, custody and control of the Works/Facility upon successful Delivery (as the case may be as per the Contract)/Commissioning of Works/Facility. Apart from successful Delivery/Commissioning the Contractor shall fulfil the following obligations (i) achievement of the Completion; ii) operating manuals (if any) are provided; (iii) Contractor has successfully rectified any shortfall in required performance parameters; (iv) Liquidated Damages required to be paid under the Contract shall have been paid by the Contractor, (v) all Contractor and Sub-Contractor supplies, equipment, waste materials, hazardous materials, rubbish and temporary Works/Facility shall have been removed from the Site; followed by the information in writing by the Contractor for Taking Over and on the date of the letter of such acceptance by Owner that Taking Over has been achieved.

24.19.2 However, such acceptance shall not relieve the Contractor of any of his obligations which otherwise survive, by the terms and conditions of the Contract after issuance of such certificate.

**25 REPLACEMENT OF DEFECTIVE PARTS AND MATERIALS**

25.1 If during the progress of the Works, the Owner shall decide and inform in writing to the Contractor, that the Contractor has manufactured any plant or part of the plant unsound and imperfect or has furnished any plant inferior to the quality specified, the Contractor on receiving details of such defects or deficiencies shall, at its own expense, within 3 (three) days of receiving the notice, or otherwise, within such time as may be reasonably necessary for making it good, proceed to alter, reconstruct or remove such work and

furnish fresh equipment up to the standards of the specifications. In case the Contractor fails to do so, the Owner may on giving the Contractor 3 (three) days notice in writing of its intentions to do so, proceed to remove the portion of the Works so complained of and at the cost of the Contractor perform all such work or furnish all such equipment provided that nothing in this Clause shall be deemed to deprive the Owner of or affect any rights under the Contract which the Owner may otherwise have in respect of such defects and deficiencies.

25.2 The Contractor's full and extreme liability under this Clause shall be satisfied by the payment to the Owner of the extra cost, of such replacement procured (including erection as provided for in the Contract), such extra cost being the ascertained difference between the price paid by the Owner for such replacements and the Contract Price portion for such defective plants paid by the Owner to the Contractor. Should the Owner not so replace the defective Transmission Line materials, the Contractor's extreme liability under this Clause shall be limited to repayment of all sums paid to him under the Contract, for such defective plant.

25.3 If any defect attributable to fabrication and erection shall appear or damage occurs, the Owner shall forthwith inform the Contractor thereof stating in writing the nature of the defect or damage. The Contractor shall be responsible for making good by repair or replacement with all possible speed at his expense any defect in or damage to any part of the Work which may appear or occur during the Defects Liability Period and which arises either from any defective, workmanship or from any act or omission of the Contractor done in fabrication and erection or omitted during the said period.

## 26 REJECTION OF WORKS

26.1 If the completed Works or any portion thereof before it is finally accepted is found to be defective or fails to fulfill 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 Minimum 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 agreement under (a) within 30 (thirty) days, Owner shall be entitled to reject and replace at the cost of the Contractor the whole or any portion of the plant as the case may be which is defective or fails to fulfill the minimum acceptance criteria as specified in Technical Specification of the Contract. However, such rejection/replacement by the Owner shall not absolve the Contractor of any of their responsibilities under this Contract.

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

26.3 The maximum liability on account of such rejection shall not exceed the total Contract Price.

## 27 ASSIGNMENT AND SUBLETTING OF CONTRACT

27.1 Contractor shall not assign this Contract wholly or in part, voluntarily, by operation of law, or otherwise, without first obtaining the written consent of Owner. Any assignment

of this Contract in violation of the foregoing shall be, at the option of Owner, void. Subject to the foregoing, the provisions of this Contract shall extend to the benefit of and be binding upon the successors and assigns of the parties hereto.

- 27.2 The Owner may assign the rights under this Contract to any of the Affiliates or Group Company and/or lenders /lending institutions and the Contractor agrees to enter into such further documents for the same without alteration of any terms and conditions contained herein.
- 27.3 Contractor may, after informing the Owner and getting his written approval, assign or sub-let the Contract or part thereof other than for raw materials, for minor details or for any part of the plant for which makes are identified in the Contract. Suppliers of the equipment not identified in the Contract or any change in the identified supplier shall be subject to approval by the Owner. The experience list of equipment vendors under consideration by the Contractor for this Contract shall be furnished to the Owner for approval, prior to procurement of all such items/equipment. Such subletting shall not relieve the Contractor from any obligation, duty or responsibility under the Contract and the Contractor shall be and shall remain exclusively responsible to the Owner, for which purposes the Sub-Contractor shall, vis-à-vis the Owner, be deemed to be the servant/agent of Contractor employed for the performance of the particular work with full responsibility on Contractor for all acts, omissions and defaults of the Sub-Contractor. Any subletting without prior written approval from the Owner, as above, shall be void.
- 27.4 If requested by Owner, Contractor shall furnish Owner a copy of the proposed subcontract/purchase order (with price deleted) for Owner review of the ordering specification and terms & conditions thereof and shall not execute such subcontract/purchase order until Owner has accepted such terms.
- 27.5 Contractor guarantees that its subcontractors shall comply fully with the terms of this Contract applicable to the portion of the Works performed by them. If any portion of the Works which has been subcontracted by Contractor is not prosecuted in accordance with this Contract, on request of the Owner, the subcontractor shall be replaced at no additional cost to the Owner and shall not be employed again on the Works and shall keep the Owner indemnified against the consequences.
- 27.6 Contractor shall include a provision in every subcontract that it places authorizing assignment of such subcontract to Owner/Owner (as required) without requiring further consent from such subcontractor or sub-supplier.
- 27.7 Owner shall have the right from time to time to contact Contractor's subcontractors to discuss their progress.
- 27.8 Contractor shall not be relieved of its responsibility for the Works by virtue of any subcontracts it may place regardless of Owner's acceptance of such subcontract.
- 27.9 Assignment by Owner: Contractor hereby consents to the creation by the Owner/Owner of a security assignment of the Contract in favor of any Financing Entity (or a trustee acting on behalf of one or more Financing Entities) and hereby undertakes to execute upon the request of the Owner such documents as may be reasonably and customarily required to give effect to any such assignment provided that the Contractor's consent, which shall not be unreasonably withheld or delayed, shall be required for the inclusion in such documents of any terms other than a simple confirmation of the consent given

above or a simple acknowledgement of a notice of an assignment pursuant to this Clause 27.9.

28 **NO WAIVER OF RIGHTS**

28.1 Neither the inspection by the Owner or any of their officials, employees or agents nor any order by the Owner for payment of money or any payment for or acceptance of, the whole or any part of the Works by the Owner, nor any extension of time, nor any possession taken by the Owner shall operate as a waiver of any provision of the Contract, or of any power herein reserved to the Owner or any right to damages herein provided nor shall any waiver of any breach in the Contract be held to be a waiver of any other or subsequent breach.

29 **CERTIFICATE NOT TO AFFECT RIGHT OF THE OWNER AND LIABILITY OF CONTRACTOR**

29.1 No interim payment certificate of the Owner nor any sum paid on account by the Owner nor any extension of time for execution of the Works granted by the Owner shall affect or prejudice the rights of the Owner against the Contractor or relieve the Contractor of his obligations for the due performance of the Contract or be interpreted as approval of the Works done. No certificate shall create liability for the Owner to pay for alterations, amendments, variations or additional Works not ordered, in writing, by the Owner or discharge the liability of the Contractor for the payment of damages whether due, ascertained, or certified or not or any sum against the payment of which it is bound to indemnify the Owner nor shall any such certificate nor the acceptance by him of any sum paid on account or otherwise affect or prejudice the rights of the Owner against the Contractor.

30 **CONTRACTOR'S DEFAULT**

30.1 If the Contractor:

30.1.1 shall have voluntarily commenced winding-up, bankruptcy, insolvency, reorganization, stay, moratorium or similar debtor-relief proceedings, or shall have become insolvent or is 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;

30.1.2 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;

30.1.3 has abandoned the Contract;

30.1.4 despite previous notices in writing from the Owner 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;

30.1.5 has failed to achieve completion of Works within 120 (one hundred and twenty) days of the Completion Schedule in accordance with the Contract,

then, the Owner may by giving 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 there from but without thereby making the Contract void or releasing the Contractor from any of its obligations 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 Works at the risk and cost of the Contractor.

30.2 The Owner's right to terminate the Contract following the occurrence of the events or circumstances described in paragraphs 30.1.4 and 30.1.5 shall be subject to the Owner having first given the Contractor 30 days prior notice of its intention to terminate the Contract, during which period Contractor shall have failed:

30.2.1 in the case of Clause 30.1.4, to remedy or to take all reasonable steps to commence the remedy of the default; or

In the event the Contractor fails to perform the tests as mentioned in the Clause 3.1.24 and 3.1.31 of the Contract, the Contractor shall be given an opportunity to remedy the same by an advance written notice of 7 (seven) days, which can be extended upto 15 (fifteen) days, with the prior written consent of the Owner, from the date of receipt of notice of such default. However, in the case the Contractor failed to remedy and perform the test during the said notice period it shall be considered as the Contractor's event of default

30.2.2 in the case of Clause 30.1.5, to achieve completion of Works.

30.3 Payment after Termination: 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 the "Cost of Completion"). If the Cost of Completion when added to the total amounts already paid to Contractor as at the date of termination exceeds the total amount which would have been payable to the Contractor for 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 only for the value of works executed till the date of termination.

## 31 SPARES

31.1 All spares for the Plant and Equipment under the Contract will strictly conform to the technical specification and documents and will be identical to the corresponding main equipment/components supplied under the Contract and shall be fully interchangeable.

31.2 Commissioning Spares

31.2.1 The Contractor shall supply along with the Plant and Equipment, additional commissioning spares considering allowances as per experience of the Contractor to cover wastage/breakage during transportation, storage, handling, construction, erection, testing and commissioning. The Contractor shall be fully responsible for ensuring adequate quantities of commissioning spares at the Site so that the Completion Schedule is not adversely affected. Should the commissioning spares furnished by the Contractor

be found to be inadequate, the Contractor shall deliver the same promptly without any additional cost.

31.2.2 In case of exigency during commissioning, the Contractor shall be allowed to draw necessary spares from the inventory of spares for operation and maintenance with the approval of the Owner. In such a case however, the Contractor shall be required to replenish the spares so drawn within a reasonable period as advised by the Owner.

31.3 **Mandatory & Recommended Spares**

31.3.1 The Contractor shall supply Mandatory & Recommended spares (for 2 (two) years of normal operation) as per the item list and quantity mutually agreed and incorporated in this Contract.

31.3.2 The Contractor shall recommend minimum stock levels in respect of each spares.

31.3.3 The Contractor will provide the Owner with the manufacturing drawings, catalogues, assembly drawings and any other document required by the Owner so as to enable it to identify the recommended spares.

31.4 The quality plan and the inspection requirement finalised for the main equipment will also be applicable to the corresponding spares.

31.5 The Contractor will provide the Owner with all the addresses and particulars of its sub-suppliers while placing the order on vendors for items/components /equipment covered under the Contract and will further ensure with its vendors that the Owner, if they so desire, will have right to place order for spares directly on them on mutually agreed terms based on offers of such vendors. Likewise, if the Owner so desires, it will have the right to place orders for spares directly on the Contractor on mutually agreed terms based on the Contractor' offers.

31.6 **Warranty for Spares**

31.6.1 The Contractor shall warrant that all spares supplied will be new and in accordance with the Contract Document and shall be free from defects in design, material and workmanship, shall be interchangeable and shall further guarantee as under:

31.6.2 The item of spares ordered or to be ordered by the Owner will be warranted for a period of 18(eighteen) months (reckoned from the date of delivery at Site). However, if such spare parts are put to use after 18 (eighteen) months of the delivery at Site then the guarantee of such spares will stand valid till the expiry of 12(twelve) months from the scheduled date of the completion of successful commissioning of plant.

31.6.3 The warranty of spares that are not used within 18 (eighteen) months from the respective dates of the delivery at Site covered in Clause 31.6.2 above will be, however, subject to condition that all such spares are stored/maintained/preserved in accordance with Contractor's standard recommended practice (if any), provided the same has been furnished, before delivery of the items, by the Contractor.

32 **MAINTENANCE TOOLS AND TACKLES**

32.1 All equipment and systems covered under this Contract shall be designed so as to enable Plant maintenance to be carried out in the least time at the least cost and with minimum

expenditure on support resources without adversely affecting the System / Equipment performance or safety characteristics.

32.2 For all major Equipment, the Contractor shall provide appropriate structural steel members for mounting various handling devices which are necessary for the dismantling and reassembly of the Equipment / components during maintenance.

32.3 Contractor shall furnish all the special tools, tackles, appliances and lifting devices for the effective maintenance and servicing of the Equipment and components covered under this Contract. Price for these items is included in Contract Price. The Owner reserves the right to exclude any of the above items from the Contractor's scope of supply and effect price adjustments on the basis of the unit rates quoted by the Contractor. The dispatch of tools, tackles, appliances and lifting devices shall be synchronized with the dispatch of the related Equipment.

32.4 All the tools, tackles, appliances and lifting devices shall be marked with its size and/or purpose and shall not be used for erection purpose.

### **33 AMENDMENT TO THE CONTRACT**

33.1 No modifications of the Contract shall be valid unless the same is agreed in writing by the parties hereto and issued as an amendment to the Contract.

33.2 In the event, the Lenders of the Project suggest any reasonable change in writing regarding the terms of the Contract, either prior to or after signing of the Contract the same shall be acceptable to the Contractor /Supplier.

### **34 TIME – THE ESSENCE OF CONTRACT: As detailed in Special Conditions of Contract**

### **35 COMPLETION OF CONTRACT**

35.1 Unless otherwise terminated under the provisions of any other relevant Clause, this Contract shall be deemed to have been completed at the expiration of the Guarantee Period as provided for under Clause titled "Guarantee" in this GCC.

### **36 LIQUIDATED DAMAGES – As detailed in Special Conditions of Contract**

### **37 PROGRESS REPORTS**

37.1 The Contractor shall at monthly intervals prepare formal written and quantitative reports to 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). Within 10 (ten) days of the submission of each such report and at such other times as the Owner may reasonably request, the Contractor and the Owner shall meet to discuss progress. Each monthly progress report shall be submitted no later than the 5th day of the month following that in respect of which it is made, but may

report on actual progress only up to the 25th day of the month and anticipated progress thereafter. Monthly progress reports shall include the followings:

- 37.1.1 executive summary;
- 37.1.2 description of the work and services performed during the preceding month;
- 37.1.3 Updated Project Schedule showing progress up to the end of the month (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;
- 37.1.4 Updated billing schedule showing the payment become due to the end of the month;
- 37.1.5 Identification of areas with foreseeable problems relating to scope, claims for adjustments to the Contract Price, or changes in the Project Schedule;
- 37.1.6 Such other information and supporting documentation as the Owner may reasonably request;
- 37.2 Contractor shall submit 3(three) hard copies and one soft copy of progress report.
- 37.3 All progress review meeting shall be held at New Delhi / Amravati or any other place as advised by Owner.
- 37.4 In the event Contractor's performance of the Works is not in compliance with the schedule established for such performance, Owner may, in writing, require the Contractor to submit its plan for schedule recovery, or specify in writing the steps to be taken to achieve compliance with such schedule, and/or exercise any other remedies under this Contract. Contractor shall thereupon take such steps as may be directed by Owner or otherwise necessary to improve its progress without additional cost to Owner.
- 37.5 Contractor recognizes that Owner, other contractors and subcontractors may be working concurrently at the jobsite. Contractor agrees to cooperate with Owner and other contractors so that the project as a whole will progress with a minimum of delays. Owner reserves the right to direct Contractor to schedule the order of performance of its Work in such manner as not to interfere with the performance of others.
- 37.6 If any part of Contractor's Work is dependent upon the quality and/or completeness of work performed under another contract, Contractor shall inspect such other work and promptly report to Owner any defects therein which render such work unsuitable for the proper execution of the Work under this Contract. Failure to make such inspections or to report any such defects to Owner shall constitute Contractor's acceptance of such other work as suitable to receive Contractor's Work provided however, that Contractor shall not be responsible for defects which could not have reasonably been detected.
- 37.7 Any submission of reports by the Contractor's under this Clause shall not absolve the obligation of the Contractor to complete the Works within the time prescribed and any acceptance of reports by the Owner shall be without any prejudice to the rights of the Owner to enforce its rights against the Contractor under this Contract.

**38 CHANGE/VARIATION ORDER**

<b>Amravati Power Transmission Company Ltd.</b>	<b>GCC</b>	<b>BID DOCUMENTS</b>
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- 38.1 The Scope of Work shall be subject to change by additions, deletions or revisions (Variations) thereto by Owner. Contractor shall be notified of such changes by receipt of additional and/or revised drawings, specifications, exhibits or other written notification. The Contractor shall carry out Variations and be bound by these Conditions in so doing as though the Variations were stated in the Contract
- 38.2 If, upon receipt of any notification, Contractor considers that a change is involved that could affect its costs of performing the Works or the schedule for performance of the Works, Contractor is obligated to inform Owner within 2 (two) working days of Contractor receiving the notification. Unless Contractor notifies Owner in accordance with this Clause 39.2, Contractor is obliged to perform the Works in accordance with the change and will have no entitlement to any additional compensation or to any change to the schedule. While informing the Owner under this Clause, the Contractor shall provide following details to the Owner: -
- (a) A detailed description of the circumstances and reasons for the adjustment;
  - (b) The specific reasons a reasonably detailed itemization and substantiation of the adjustment;
  - (c) Documentation, charts, graphs, photographs and reports which bear on the Variation;
  - (d) Specific references to the provisions of this Contract on which the Contractor intends to rely; and
  - (e) Any other supporting data upon which Contractor intends to rely or which the Owner requests
- 38.3 Contractor shall submit to Owner, within 10 (ten) working days after submission of the notification by Contractor required under Clause 39.2 above, a detailed takeoff with supporting calculations and pricing for the change, together with any requested adjustments in the schedule. The pricing shall be itemized as required by Owner and shall be in sufficient detail to permit an analysis of all labor, material and equipment and shall cover all work involved in the change, whether such work was deleted, added or modified. Amounts related to subcontracts shall be supported in similar detail. Any adjustments to the schedule must be accompanied by a revised version of the detailed schedule, demonstrating that any proposed changes to the schedule have been caused by the change and have affected a critical path on such previously agreed detailed schedule.
- 38.4 If Contractor does not provide the detailed take-off to Owner within the time allowed by Clause 39.3, Contractor will have waived any right to additional compensation or to a change to the schedule in respect of the change and will proceed with the Works in accordance with the change notification issued pursuant to Clause 39.1 above.
- 38.5 Contractor shall not perform changes in the Works in accordance with Clause 39.1 until Owner has approved in writing the pricing for the Variations and any adjustment in the schedule for performance of the Works, except as set forth in Clause 39.4 and 39.6. Upon receiving such written approval from Owner, Contractor shall diligently perform the change in strict accordance with this Contract.
- 38.6 Notwithstanding Clause 39.5, Owner may expressly authorize Contractor in writing to perform the change prior to such approval by Owner. Contractor shall not suspend

performance of this Contract during the review and negotiation of any change, except as may be directed by Owner pursuant to Clause 40.0, Suspension of Work. In the event Owner and Contractor are unable to reach timely agreement regarding any change, Contractor shall then comply with Clause 42.0, Claims.

38.7 Contractor shall not comply with oral changes in the Work. If Contractor believes that any oral notice or instruction received from Owner will involve a change in the cost, time to perform or integrity of the Work, it shall require that the notice or instruction be given in writing and shall comply with the provisions of Clause 39.2, 39.3, 39.4, 39.5 and 39.6. Any costs incurred by Contractor to perform oral changes shall be to Contractor's account, and Contractor waives any and all rights to claim from Owner for such costs or additional time to perform the Works as a result of compliance by Contractor with such oral changes.

### **39 SUSPENSION OF WORK**

39.1 Owner reserves the right to suspend and reinstate execution of the whole or any part of the Works without invalidating the provisions of the Contract. Orders for suspension or reinstatement of the Works will be issued to the Contractor in writing. The time for completion of the Works will be extended for a period equal to duration of the suspension provided the suspension is not due to some default on the part of the Contractor or its sub-contractor.

39.2 Upon receiving any such notice of suspension, Contractor shall promptly suspend further performance of the Works to the extent specified, and during the period of such suspension shall properly care for and protect all Works in progress and materials, supplies, and equipment Contractor has on hand for performance of the Works. Upon the request of Owner, Contractor shall promptly deliver to the Owner copies of outstanding subcontracts of Contractor and shall take such action relative to such subcontracts as may be directed by the Owner. Contractor shall use its best efforts to utilize its material, labor and equipment in such a manner as to mitigate costs associated with suspension. Owner may, at any time, withdraw the suspension of performance of the Works as to all or part of the suspended Works by written notice to Contractor specifying the effective date and scope of withdrawal, and Contractor shall resume diligent performance of the Works for which the suspension is withdrawn on the specified effective date of withdrawal.

39.3 If Contractor believes that any such suspension or withdrawal of suspension justifies modification of the Contract Price or extension of time, Contractor shall submit his claim to the Owner within 7 (seven) days of receipt of notice of suspension / withdrawal of suspension. Contractor's claim for modification of the Contract Price or extension of time shall substantiate Contractor's increased costs for such suspension or withdrawal of suspension, with documents satisfactory to the Owner. Upon the Owner's verification and approval of such additional costs, Contractor and the Owner shall agree upon an adjustment in the Contract Price or extension of time, based upon such verified and approved additional costs as full settlement to Contractor for the suspension or withdrawal of suspension. Contractor shall not be entitled to any prospective profits or any damages because of such suspensions or withdrawals of suspension. Further, if the suspension is due to a cause attributable to the Contractor, the Contractor shall not be entitled to any extension of time for, or payment of the costs incurred in, making good any deterioration, defect or loss caused by faulty workmanship or by the Contractor's failure to take the measures specified in Sub-Clause 40.2.

39.4 If suspension continues for more than 90 (ninety) days, unless such suspension is on account of reasons mentioned in Clause 40.5, at the end of the period, the parties shall review and decide on further course of action for the Contract

39.5 If the suspension under this Clause is for reasons of force majeure as defined in Clause 50.0 or by reason(s) of the default or failure on the part of the Contractor or is for the purpose of ensuring safety of the work(s) or any part thereof or is necessary for the proper execution of the work(s) or is for reason(s) of weather affecting the safety or quality of the work(s) or materials (the reasons for the suspension stated by the Owner in any notice of suspension as aforesaid, inclusive as to existence or default or failure on the part of the Contractor, if so stated in the notice, shall be final and binding upon the Contractor), the Contractor shall not be entitled to claim compensation for any loss or damage sustained by the Contractor by virtue of any suspension as aforesaid, notwithstanding that consequent upon such suspension, the machinery, equipment and/or labour of the Contractor or any part thereof shall be or become or be rendered idle and notwithstanding that the Contractor shall be liable to pay salary, wages or hire charges and expenses thereof or therefore.

#### **40 TERMINATION OF CONTRACT ON THE OWNER'S INITIATIVE**

40.1 Owner may, with or without cause, terminate further performance of all or part of the Works by giving written 15 (fifteen) days notice to Contractor specifying the date of termination. On the date of such termination stated in said notice, Contractor shall discontinue performance of the Works and shall preserve and protect tools, construction equipment and Facility on Site, materials and plant equipment purchased for or committed to the Work (whether delivered to the Site or on order), Work in progress and completed Work (whether at Site or other locations) pending Owner's instructions and, if requested by it, shall turn over the same to Owner, including title to said materials and Plant and Equipment, or dispose of same in accordance with Owner's instructions.

40.2 Upon receipt of said notice, Contractor shall advise Owner of its outstanding subcontracts pertaining to performance of the terminated work and, upon request, furnish Owner with complete copies. Contractor shall place no further subcontracts except as may be necessary for completion of such portion of the Work as is not terminated. Contractor shall promptly make every reasonable effort to procure cancellation, upon terms satisfactory to Owner, of all subcontracts to the extent they relate to the performance of Works terminated or, as directed by Owner, shall assign to Owner, in form satisfactory to Owner, such of its subcontracts as are designated by Owner or shall take such other action relative to such subcontracts as may be directed by Owner.

40.3 In the event of such a termination, the Contractor shall be paid compensation, equitable and reasonable, dictated by the circumstances prevalent at the time of termination.

40.4 In no event shall Contractor be entitled to any prospective profits or any damages.

#### **41 CLAIM**

41.1 If, for any reason, Contractor considers that an event has occurred pursuant to which it has a right to claim compensation from Owner or an extension to the schedule, Contractor shall notify Owner in writing of the existence of such claim within 5 (five) working days of the parties' failure to reach a timely agreement pursuant to Clause 39.6 for changes or from the occurrence of the event in question for other claims. Within 10 (ten) days of giving such a notification, Contractor shall submit to Owner the proposed

cost and schedule effect of the change. In this respect, Contractor shall comply with the provisions of Clause 39.3. Contractor shall substantiate its claim with payroll documents, paid invoices, receipts, records of performance and other documents satisfactory to Owner and subject to its verification. Owner shall not be liable for, and Contractor hereby waives, any claim or potential claim of Contractor which was not reported by Contractor in accordance with the provisions of this Clause.

- 41.2 Owner will determine the extent, if any, to which the Contract Price is to be changed by reason of the claim and the extent to which the schedule is to be changed by reason of the claim. Owner will advise Contractor of the result of this determination and will issue a Contract modification accordingly. If Contractor disputes Owner's determination and notifies Owner within 5 (five) working days of receiving it, Contractor may seek to resolve the dispute in accordance with Clause 11.0 titled "Arbitration". If Contractor elects to proceed pursuant to Clause 11.0, Contractor agrees to limit its claim to the amount claimed by it in accordance with Section 42.1. In no event shall any work be halted, whether or not the claim can be resolved to Contractor's satisfaction, and Contractor shall be bound by the terms and conditions of this Contract to prosecute the Works without delay to its successful completion.
- 41.3 The following shall not constitute changes and Contractor has no right to make any claim in relation thereto:
- 41.3.1 Instructions, interpretations, decisions or acts by Owner which are:
- 41.3.1.1 to achieve compliance with the Contract by Contractor; or
- 41.3.1.2 to correct errors, omissions, poor engineering, defective workmanship or other failure of the Contractor to comply with the Contract;
- 41.3.2 Delay in the performance of Contractor's work or any additional work caused by Contractor.
- 41.3.3 Any work performed by Contractor required by Company comments to Contractor's submittals to the extent that such comments are consistent with the Contract.
- 41.4 If Contractor fails to follow the requirements of Clause 42.1, it shall have waived any right to make any claim in respect of the events referred to in Clause 42.1. Contractor's sole remedy in respect of any claim will be as provided in Clause 42.2. No claim by Contractor in relation to events referred to in Clause 42.1 shall be allowed after final payment is made.
- 41.5 Owner shall not be bound to any adjustments in the Contract Price or scheduled time unless expressly agreed to by Owner in writing.

## **42 BACKCHARGE**

- 42.1 A Backcharge is a cost sustained by Owner and chargeable to Contractor for the Owner's performance of work that is the responsibility of Contractor.
- 42.2 Without limitation and by way of example only, Backcharge may result from:
- 42.2.1 Services performed by the Owner, at Contractor's request, for work which is within Contractor's scope of work under this Contract.

- 42.2.2 Costs sustained by the Owner as a result of Contractor's non-compliance with the provisions of this Contract or Contractor's act of omission or negligence.
- 42.2.3 Costs incurred by the Owner to fix all defects, deficiencies or errors that may appear in the Works during the warranty period.
- 42.3 Upon identification by the Owner of an actual or anticipated backcharge, the Owner will issue a backcharge notice to Contractor. This notice shall describe the backcharge work to be performed, the schedule period for performance, the cost to be charged by the Owner to Contractor for the backcharge and other terms.
- 42.4 The backcharge cost shall consist of:
- 42.4.1 Labor: at actual cost plus 20% (twenty percent) to cover payroll additives;
- 42.4.2 Materials: at actual supplier and freight invoice cost delivered to jobsite;
- 42.4.3 Construction Equipment: at actual third party rental cost or at Company's equipment rental rates, whichever may be applicable:
- 42.4.4 Subcontracts: At actual cost;
- 42.4.5 All taxes, levies, duties and assessments attributable to the backcharge work;
- 42.4.6 20% (Twenty percent) shall be added to the foregoing for indirect costs, overhead, supervision and administration
- 42.5 Within 24 (twenty-four) hours after receipt of the backcharge notice, Contractor shall fax back to the Owner a signed copy of the backcharge notice, indicating either acceptance of the backcharge or agreement to perform the described backcharge work within the indicated schedule period for performance, utilizing Contractor supplied labor, material and equipment, as applicable.
- 42.6 Contractor will be required to sign the backcharge notice before commencement of the backcharge work by the Owner or others. In the event Contractor refuses to sign, Owner shall, at its option, proceed with the backcharge work and charge the backcharge cost to Contractor's account. 30 (thirty) calendar days after commencement of the backcharge work or on completion of the backcharge work, whichever occurs sooner, Owner will invoice Contractor for the incurred backcharge cost.

**43 MANNER OF EXECUTION OF CONTRACT**

- 43.1 Contractor, after receipt of the Letter of Award in duplicate from the Owner, will sign duplicate copy as a token of its unequivocal and unconditional acceptance thereof. Contractor shall provide for signing the Letter of Award and final agreement, appropriate power of attorney and other requisite materials. Further, Owner will send 1 (one) copy of the final Agreement to the Contractor for its scrutiny.
- 43.2 The Agreement, unless otherwise agreed to, shall be signed within 60 (sixty) days of the date of the "Letter of Award", at the Office of the Owner or at a place of mutual consent on a date and time to be mutually agreed. The Contractor shall provide for signing of the Contract, appropriate power of attorney and other requisite materials. Till a formal

agreement is prepared and executed, the Letter of Award, read in conjunction with the Contract Documents, will constitute a binding Contract.

- 43.3 The Agreement will be signed in 2 (two) originals. The Contractor shall be provided with 1 (one) signed original and the other one will be retained by the Owner.
- 43.4 The Contractor shall provide, free of cost to the Owner, all the Purchasing data, drawings and descriptive materials submitted with its offer, in at least 3 (three) copies to form a part of the Contract, immediately after issue of Letter of Award.
- 43.5 Subsequent to signing of the Contract, the Contractor, at its own cost, shall provide the Owner with at least 15 (fifteen) photocopies of Agreement within 30 (thirty) days after the signing of the Contract.

#### **44 PACKING, FORWARDING AND DESPATCH**

- 44.1 Contractor, wherever applicable, shall, after proper painting, pack and crate all equipment in such a manner so as to protect them from deterioration and damage during sea, river, rail and road transportation to the Site and storage at the Site till the time of erection. The Contractor shall be held responsible for all damages due to improper packing. Further, in case of dispatch by road, the transporters shall be Bank approved / approved by the Owner at the time of dispatch.
- 44.2 Contractor shall notify Owner of the date of each dispatch from its works (for indigenous supply) and sailing date from port of shipment (for offshore supplies), and the expected date of arrival at the port of discharge and also Site for the information of the Owner.
- 44.3 Contractor shall also give all dispatch information concerning the weight, size and content of each package including any other information that the Owner may require.
- 44.4 The following documents shall be sent by registered post to the Owner within 3 (three) days from the date of dispatch:
- 44.4.1 Invoice
  - 44.4.2 Packing List
  - 44.4.3 Delivery Challan
  - 44.4.4 Consignee copy of Consignment Note (for indigenous supplies)
  - 44.4.5 Bill of Lading or Airway Bill (for offshore supplies)
  - 44.4.6 Material Despatch Clearance Certificate
  - 44.4.7 Test Certificate, wherever applicable
  - 44.4.8 Certificate of Insurance
  - 44.4.9 Certificate of Origin (for offshore supplies)
- 44.5 Contractor shall prepare detailed packing list of all packages and containers, bundles and loose material forming each and every consignment dispatched to Site. The Contractor shall further be responsible for making all necessary arrangements for loading, unloading and other handling right from his works or place of dispatch till the Site and also till the equipment is erected, tested and commissioned. The Contractor shall be solely responsible for proper storage and safe custody of all equipment.

#### **45 DEMURRAGE, WHARFAGE, ETC.**

<b>Amravati Power Transmission Company Ltd.</b>	<b>GCC</b>	<b>BID DOCUMENTS</b>
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45.1 All demurrage, wharfage and other expenses incurred due to delayed clearance of the material or any other reason shall be to the account of Contractor only.

**46 CO-OPERATION WITH OTHER CONTRACTORS AND CONSULTING ENGINEERS**

46.1 Contractor agrees to co-operate with the Owner's other Contractors and Consulting Engineers and freely exchange with them such technical information as is necessary to obtain the most efficient and economical design and to avoid unnecessary duplication of efforts. Owner shall be provided with a copy of all correspondence addressed by the Contractor to other such Contractors and Consulting Engineers in respect of such exchange of technical information.

**47 LAWS AND REGULATIONS**

47.1 This Contract shall be governed by the Indian Laws and rules as amended from time to time.

47.2 The Courts of New Delhi shall have exclusive jurisdiction in all matters arising under this Contract, including execution of arbitration awards under Clause 11.0 of this GCC.

47.3 The United Nations convention on Contracts for the International Sale of Goods does not apply to this Contract.

47.4 Contractor shall comply strictly with local, municipal, state, federal and governmental laws, orders, rules and regulations applicable to Contractor's operations in the performance of the Works hereunder.

47.5 Contractor shall not, under any circumstances apply to or enter into negotiations with any governmental authority or agency for acceptance of variations from or revisions to safety or health, or air, water or noise pollution laws or regulations relating to this Contract, or to the performance thereof, without Owner's prior written approval.

47.6 Contractor shall not, under any circumstances, cause or permit, in connection with the Work to be performed hereunder, the discharge, emission or release of any hazardous substance and/or waste, pollutant, contaminant or other substance in violation of any Applicable Laws, rules or regulations which are now or hereafter promulgated by any governmental authorities having jurisdiction over the Works. Contractor shall comply with all legal regulatory requirements applicable to the Works performed under this Contract and shall be responsible for compliance with all hazardous waste, health and safety, notice, training, and environmental protection laws, rules, regulations and requirements.

**48 LIEN**

48.1 To the full extent permitted by applicable law, Contractor shall not have and hereby waives and releases, for itself and cause its subcontractors and vendors to waive and release, any and all rights of mechanic's lien and similar rights or similar encumbrance or charge on the Site, for payment for services, labor, equipment, or materials furnished by Contractor in performance of the Works and granted by law to persons supplying materials, equipment, services and other things of value to improve or modify land or structures hereon, which Contractor may have against property belonging to the Owner, whether or not such liens or charges are founded upon common, local or national law.

- 48.2 Contractor shall at all times promptly pay for all services, materials, equipment and labor used or furnished by Contractor in the performance of the Works under this Contract and shall, to the fullest extent allowed by law, at its expense keep all properties belonging to the Owner free and clear of any and all of the above mentioned liens and rights of lien arising out of services, labor, equipment or materials furnished by Contractor or its employees, material-men or subcontractors in the performance of the Works. If Contractor fails to release and discharge any lien or threatened lien against the property of the Owner arising out of performance of the Works within 5 (five) working days after receipt of written notice from the Owner to remove such claim of lien, the Owner may, at its option, discharge or release the claim of lien or otherwise deal with the lien claimant, and Contractor shall pay the Owner any and all costs and expenses of the Owner in so doing, including reasonable attorneys' fees incurred by the Owner.
- 48.3 If the Owner reasonably believes a lien or charge for which Owner might be or become liable or to which the Work or Owner's property might be or become subject and which is chargeable to Contractor, its subcontractors or vendors, Owner may retain out of any amounts due to Contractor an amount which in the judgment of Owner is reasonably sufficient to indemnify against such lien, charge or claim including legal fees and associated costs.
- 48.4 Owner will retain said amounts until Contractor pays and discharges the lien, claim or charge or until Owner is satisfied that such lien, charge or claim is invalid. In that event Owner will promptly release the amount retained and remit the same to Contractor less any costs Owner is entitled to recover from Contractor. If such lien, claim or charge is valid in Owner's reasonable judgment, Owner may pay and discharge the same and deduct the amount paid from the balance of the Contract Price due to Contractor.
- 48.5 If a lien, charge or claim remains unsatisfied after completion and acceptance of the Work, Contractor shall promptly refund to Owner all amounts paid by Owner in discharging such lien, charge or claim, including costs and reasonable legal fees and all costs incurred by Owner within 15 (fifteen) days of Owner sending a claim with this regard.

**49 FORCE MAJEURE**

- 49.1 Force Majeure is herein defined as any cause which is beyond the reasonable control of the Contractor or the Owner, as the case may be, which they could not foresee or with a reasonable amount of diligence could not have foreseen, which could not have been prevented or overcome by the affected party through the exercise of reasonable skill or care and which substantially affects the performance of the Contract, such as:
- 49.1.1 natural phenomena, including floods, droughts, earthquakes, epidemics, cyclone, lightning, storm, plague;
- 49.1.2 legal strikes and legal lockouts and other generalized labour action occurring within India (excluding such events which are site specific, work specific and attributable to Contractor.,
- 49.1.3 act of terrorism or sabotage, act of any Government, including but not limited to war (declared or undeclared), quarantines, embargoes, in each case occurring inside India or directly involving India.

- 49.1.4 radioactive contamination or ionizing radiation or chemical contamination originating from a source in India or resulting from another Force Majeure Event;
- 49.1.5 fire or explosion, except as may be attributable to the Contractor,;
- provided either party shall within 7 (seven) days from the occurrence of such a cause notify the other in writing of such causes.
- 49.2 Upon the occurrence of any circumstances of Force Majeure Contractor shall use all reasonable endeavors to continue to perform its obligations under the Contract and to minimize the adverse effects of such circumstances.
- 49.3 In the event of Force Majeure preventing the Contractor from performing its obligations under the Contract, for a continuous period of less than 1 (one) month from the beginning of Force Majeure Event or an aggregate period of not more than 3 (three) months, Contractor shall be entitled to extension of time for the period during which such Force Majeure Event had occurred for fulfillment of its obligations under the Contract and Contractor shall not be entitled to terminate the Contract or abandon the project during such above mentioned period.
- 49.4 If Force Majeure Event continues beyond the period of 1 (one) month from the beginning of the Force Majeure Event or prevents Contractor from performing its obligations under the Contract for an aggregate period of more than 3 (three) months, the parties shall mutually decide further course of action. If mutual settlement cannot be arrived at within 30 (thirty) days, either Party shall have the right to terminate the Contract. In the event of such termination, the Owner shall be liable to make payment for all Works done by the Contractor till the time such Force Majeure had commenced and Contractor shall be liable to hand over all Works completed pursuant to the Contract till the date of termination due to Force Majeure.
- 49.5 Contractor shall not be entitled to, and hereby expressly waives recovery of, any damages suffered by reason of delays of any nature, and extension of time shall constitute the sole liability of the Owner and Contractor's sole remedy for delays under this Clause.
- 49.6 Non performance of the Contractor or his subcontractor should not be treated as Force Majeure under the contract unless the reason for such non-performance would, itself, constitute an event of Force Majeure as defined under the Contract.

**50 GRAFTS AND COMMISSION ETC.**

- 50.1 Any graft, commission, gift or advantage given, promised or offered by or on behalf of the Contractor or its partner, agent, officers, director, employee or servant or any one on his or their behalf in relation to obtaining or to the execution of this or any other Contract with the Owner, shall, in addition to any criminal liability which it may incur, subject the Contractor to the cancellation of this and all other Contracts and also to payment of any loss or damage to the Owner resulting from any such cancellation. The Owner shall then be entitled to deduct the amounts so payable from any money otherwise due to Contractor under the Contract.

**51 CONTRACTUAL RELATIONSHIP**

51.1 Contractor represents that it is fully experienced and properly qualified to perform the class of Works provided for herein, and that it is properly equipped, organized and financed to perform such Works. Contractor represents that at the time of submission of its quotation for performance of the Works, it was properly licensed and qualified to do business in all governmental jurisdictions in which the Works is to be performed. Upon written request by Owner, Contractor shall furnish to it such evidence as Owner may require relating to the Contractor's ability to fully perform this Contract. Nothing contained in this Contract or any subcontract awarded by Contractor shall create any contractual relationship between any subcontractor and Owner.

51.2 The Contractor shall act as an independent Contractor performing the Contract. The Contract does not create any agency, partnership, joint ventures or joint relationship between the parties. Subject to the compliance of the Contract, Contractor shall be solely responsible for the manner in which Works are performed. All employees, representatives or subcontractors engaged by the Contractor in performing the Contract shall be under the complete control of the Contractor and shall not be deemed to be employees of the Owner and nothing contained in the Contract or in any subcontract awarded by the Contractor shall be construed to create any contractual relationship between any such employees or representative or subcontractor and the Owner. Contractor shall be responsible for the acts, defaults or negligence of the Contractor, his agencies, servant, workmen or subcontractor.

**52 INSURANCE**

52.1 Without limiting any of his obligations under the Contract, the Contractor, at its cost, shall arrange, secure and maintain all insurance as may be pertinent to the Works and obligatory in terms of law to protect its interest and interests of the Owner against all perils detailed herein. The form and the limit of such insurance, as defined herein and in FORM B-8 together with the underwriter in each case should be acceptable to the Owner. However, irrespective of such acceptance the responsibility to maintain adequate insurance coverage at all times during the above period of Contract shall be of the Contractor alone. The Contractor's failure in this regard shall not relieve it of any of its contractual responsibility and obligation. The insurance covers to be taken by Contractor shall be in the joint names of Owner and Contractor. Contractor shall, however, be authorized to deal directly with Insurance Company or Companies and shall be responsible in regard to maintenance of all insurance covers. All insurer's right of subrogation against such co-insured for losses or claims arising out of the performance of the Contract shall be waived under such policies.

52.2 Any loss or damage to the equipment, free issue material (if any) during handling, transportation, storage, erection, putting into satisfactory operation and all activities to be performed till the successful completion of commissioning and taking over of the plant by the Owner shall be to the account of the Contractor. Contractor shall be responsible for preferring of all claims and making good the damage or loss by way of repairs and/or replacement of the portion of the Works, damaged or lost. The transfer of title shall not in any way relieve the Contractor of the above responsibilities during the period of Contract. The Contractor shall provide the Owner with a copy of all insurance policies and documents taken out by him in pursuance of the Contract. Such copies of documents shall be submitted to the Owner, immediately after such insurance coverage. The Contractor shall also inform the Owner in writing at least 60 (sixty) days in advance, regarding the expiry/cancellation and/or change in any of such document and shall ensure revalidation, renewal etc., as may be necessary, well in time.

- 52.3 The perils required to be covered under the insurance shall include, but shall not be limited to fire and allied risks, miscellaneous accidents (erection risk), workmen compensation risks, loss or damage in transit, theft, pilferage, riot and strike and malicious damages, civil commotion, weather conditions, accidents of all kinds, risk of terrorism, etc. The scope of such insurance shall be adequate to cover the replacement/reinstatement cost of the equipment for all risks up to and including delivery of goods at Site. The insurance policies to be taken shall be on replacement value basis and/or incorporating escalation Clause. Notwithstanding the extent of insurance cover and the amount of claim available from the underwriters, the Contractor shall be liable to make good the full replacement/rectification value of all equipment/materials and to ensure their availability as per project requirements.
- 52.4 All costs on account of insurance liabilities covered under the Contract will be to the Contractor's account and will be included in Contract Price. However, the Owner may, from time to time, during the currency of the Contract, asks the Contractor in writing to limit the insurance coverage risks and in such a case, the parties to the Contract will agree for a mutual settlement, for reduction in Contract Price to the extent of reduced premium amount. Contractor, while arranging the insurance, shall ensure to obtain all discounts on premium which may be available for higher volume or for reason of financing arrangement of the Project.
- 52.5 In respect of insurance proceeds / claim settlements relating to claims raised / referred by the Contractor, the Owner shall give, from time to time, written authorization to the underwriter(s) to directly pay such proceeds / settlements to the Contractor as are in accordance with provisions hereunder:
- 52.5.1 Wherever total damage / loss of equipment / materials would occur, the Contractor will be entitled to payments received from the underwriters except the following amounts:
- 52.5.1.1 The amount paid to the Contractor under the Contract in respect of equipment / material damaged / lost (excluding the pro-rata initial advance)
- 52.5.1.2 Custom duties and taxes which have already been paid by the Owner.
- 52.5.1.3 Subsequent payment, if any, due under the Contract shall be regulated by the relevant terms of payment, provided the claim money settled by the underwriters is more than the total of the amount as per Clause No. 53.5.1.1 and 53.5.1.2 above. In the event of claim money being less than the total of the amount in Clause No. 53.5.1.1 and 53.5.1.2 above, the entire claim money settled will be retained by the Owner and the Contractor will forthwith pay the Owner the shortfall amount between the claim money and the total amount as per Clause No. 53.5.1.1 and 53.5.1.2 above.
- 52.5.2 In case of damage to any equipment / material during any stage, the Contractor upon rectification of the damaged equipment to the satisfaction of the Owner shall be paid to the extent of full claims settled by the underwriters. Subsequent payments, if any, due under the Contract shall be regulated by the relevant terms of payment.
- 52.6 The Clause entitled "Insurance" under the Section ECC covers the additional insurance requirements for the portion of the works to be performed at the Site.
- 52.7 All damages and/or shortages during transit, storage, erection etc as covered by Insurance shall be made good immediately on receipt of such information from the Owner and/or the Owner without waiting for settlement of claims.

**53 LIABILITY FOR ACCIDENTS AND DAMAGES**

53.1 Under the Contract, the Contractor shall be responsible for loss or damage to the plant until the successful completion of Trial Operation and Taking Over of the plant by the Owner.

**54 PATENT RIGHTS AND ROYALTIES**

54.1 Royalties and fees for patents covering materials, articles, apparatus, devices, equipment or processes used in the Works shall be deemed to have been included in the Contract Price. Contractor shall satisfy all demands that may be made at any time for such royalties or fees and he alone shall be liable for any damages or claims for patent infringements and shall keep the Owner/Owner indemnified in that regard. Contractor shall, at his own cost and expense, defend all suits or proceedings that may be instituted for alleged infringement of any patent involved in the Works, and, in case of an award of damages, Contractor shall pay for such award. In the event of any suit or other proceedings instituted against the Owner, the same shall be defended at the cost and expenses of Contractor who shall also satisfy/comply any decree, order or award made against Owner. But it shall be understood that no such machine, plant, work, material or thing has been used by the Owner for any purpose or any manner other than that for which they have been furnished and/or installed by the Contractor and specified under the Contract Documents. Final payment to the Contractor by the Owner will not be made while any such suit or claim remains unsettled. In the event any apparatus or equipment, or any part thereof furnished by the Contractor, is in such suit or proceedings held to constitute infringement, and its use is enjoined, the Contractor shall, at his option and at his own expense, either procure for the Owner, the right to continue use of said apparatus, equipment or part thereof, or replace it with non-infringing apparatus or equipment or modify it so that it becomes non-infringing.

54.2 Contractor hereby represents to the Owner that, as of the date of signing of the Contract, Contractor has received no notification of any rightful patent infringement claim which would prejudice the Owner's right to use or maintain the Works.

**55 INDEMNITY**

55.1 Contractor agrees to defend, indemnify and hold harmless the Owner and Owner, the affiliated companies, and all of their directors, officers, employees, agents and representatives, from and against any claim, demand, cause of action, liability, loss or expense arising:

55.1.1 By reason of Contractor's actual or asserted failure to comply with any law, ordinance, regulation, rule or order, or with this Contract. This Subsection 55.1.1 includes, but is not limited to, fines or penalties by government authorities and claims arising from Contractor's actual or asserted failure to pay taxes, wages and alike.

55.1.2 From actual or asserted violation or infringement of rights in any patent, copyright, proprietary information, trade secret or other property right caused or alleged to be caused by the use or sale of goods, materials, equipment, methods, processes, designs or information, including construction methods, construction equipment and temporary construction Facility, furnished by Contractor or its subcontractors in performance of the Work. Should any goods or services provided by Contractor become, or appear likely to become, the subject of a claim of infringement of a patent, copyright or other property

right, Contractor shall, at the Owner's option, either procure for the Owner the right to continue using such goods or services, replace same with equivalent, non-infringing goods or services, or modify the goods or services so that the use thereof becomes non-infringing, provided that any such modification or replacement is of equal quality and provides equal performance to the infringing goods or services.

- 55.1.3 From injury to or death of persons (including employees of the Owner, Owner, Contractor and Contractor's subcontractors) or from damage to or loss of property (including the property of the Owner) arising directly or indirectly out of this Contract or out of any acts or omissions of Contractor or its subcontractors. Contractor's defense and indemnity obligations hereunder include claims and damages arising from non-delegable duties of the Owner or arising from use by Contractor of construction equipment, tools, scaffolding or Facility furnished to Contractor by the Owner.
- 55.1.4 From actual or alleged contamination, pollution, or public or private nuisance, arising directly or indirectly out of this Contract or out of any acts or omissions of Contractor, its subcontractors, or suppliers.
- 55.1.5 From breach of any representations and warranties provided by the Contractor or its Sub-Contractors under this Contract or on account of any breach by the Contractor or its Sub-Contractors under this Contract.
- 55.2 Contractor's indemnity obligations shall apply regardless of whether the party to be indemnified was concurrently negligent, whether actively or passively, excepting only where the injury, loss or damage was caused solely by the negligence or willful misconduct of, or by defects in design furnished by, the party to be indemnified. Contractor's defense and indemnity obligations shall include the duty to reimburse any attorneys' fees and expenses incurred by the Owner for legal action to enforce Contractor's indemnity obligations.
- 55.3 In the event that the indemnity provisions in this Contract are contrary to the law governing this Contract, then the indemnity obligations applicable hereunder shall be construed to be to the fullest extent allowed by applicable law.
- 55.4 With respect to claims by employees of Contractor or its subcontractors, the indemnity obligations created under this Clause 56.0 shall not be limited by the fact of, amount, or type of benefits or compensation payable by or for Contractor, its subcontractors or suppliers under any workers' compensation, disability benefits, or other employee benefits acts or regulations, and Contractor waives any limitation of liability or immunity arising from workers' compensation or such other acts or regulations.
- 55.5 The Contractor shall protect, defend, indemnify and hold the Owner harmless from and against any and all losses arising directly or indirectly from or incurred by reason of hazardous materials introduced to the job site or works or any other location by the Contractor, its Affiliates, sub-contractors or suppliers or its or their agents in or in connection with the performance of the Contract.
- 55.6 The Owner shall be entitled to retain from payments otherwise due Contractor such amounts as shall reasonably be considered necessary to satisfy any claims, suits or liens for damages that fall within Contractor's indemnity obligations under this Clause 56.0, until such claims suits or liens have been settled and satisfactory evidence to that effect has been furnished to the Owner.

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

**56 CONSEQUENTIAL DAMAGES**

56.1 Except as expressly provided in the Contract, in no event shall any party hereto be liable to the other by way of indemnity or by reason of any breach of the Contract or otherwise for any loss of profit, loss of use, loss of contracts, idle labour or for any indirect, incidental or consequential damages whatsoever that may be suffered by the other. It is hereby agreed that this exclusion of liability shall not apply in respect of:

a) statutory penalties and sanctions and legal expenses for which the Owner is indemnified under Clause 56 hereof;

b) the indemnity against infringement given under Clause 55 and 56 hereof.

c) payment of LDs as per Contract by the Contractor to the Owner

56.2 The aggregate liability of the Contractor to the Owner under the Contract shall not exceed the Contract Price (excluding Taxes and Duties), provided that the limitation shall not apply to any obligation of the Contractor to repair or replace defective Package or to indemnify the Owner, with respect to patent infringement, if any, and shall be in addition to LDs as per Contract.

**ANNEXURE- I**

**LIST OF ABBREVIATIONS USED**

1. CIF : Cost, Insurance and Freight (As per Incoterms 2000)
2. CST : Central Sales Tax
3. MVAT : Maharashtra Value Added Tax
4. PERT : Program (or Project) Evaluation and Review Technique
5. RA : Running Account
6. TDS : Tax Deducted at Source
7. VAT : Value Added Tax

**ANNEXURE-II  
LIST OF FREE ISSUE MATERIALS  
(as confirmed by Owner)**

## ANNEXURE-III

## FORMAT FOR ADVANCE BANK GUARANTEE

(on non-judicial stamp paper of appropriate value to be  
purchased in the name of executing Bank)

**[Provisional- to be vetted by Lenders]  
ADVANCE BANK GUARANTEE**

Ref.....

Bank Guarantee No.....

Date.....

**WHEREAS**

- A. Amravati Power Transmission Company Limited. ("**Owner**"), a company incorporated under the laws of India, having its registered office at 5th Floor, East Wing, Tower-B, Worldmark-1, Aerocity, New Delhi- 110 037, India is operating 400 kV Transmission lines associated with evacuation of power from 5X 270 MW Amravati Thermal Power Project ("Project") in the State of Maharashtra, India.
- B. The Owner has entered into a contract with ..... having its registered office at ..... (hereinafter referred to as the "**Contractor**", which expression shall include its successors and permitted assigns) for supply of Emergency Restoration System for 400 kV Transmission lines associated with evacuation of power from 5 X 270 MW Amravati Thermal Power Project in the State of Maharashtra, India
- C. Pursuant to the terms of the Contract, the Contractor has agreed to provide an advance bank guarantee ("**ABG**") in favour of the Owner for the due performance of its obligations.
- D. The Contractor has approached [ ] (hereinafter referred to as "Guarantor" or "Bank") for issuance of the ABG and at the Contractor's request the Guarantor has agreed to provide the irrevocable ABG on first demand in writing without protest or demur or proof or satisfaction and without reference to the Contractor directly in favour of the Owner in consideration of Contractor receiving the Advance Payment of Rs. ..../- (Rupees ..... only) under the said Contract.

**NOW THE TERMS AND CONDITIONS** of this Advance Bank Guarantee are:

- The Guarantor shall, upon receipt of written demand made by the Owner, without proof or conditions or without recourse or demur or protest or enquiry pay forthwith in full without any deduction the sum claimed in the written notice or such sum not exceeding the sum of INR ...../- (Rupees ..... only) ("**Guarantee Amount**") as may be specified in such demand, in the event of the Contractor failing or neglecting to execute fully efficiently and satisfactorily the Contract in accordance with terms and conditions contained therein.
- The Guarantor further agrees that the guarantee herein contained shall come into force simultaneously with receipt of the corresponding advance payment by Contractor and remain in

full force and effect till [            ]. The amount of this ABG shall be upon the receipt of Owner's approval on the Contractor's application, progressively reduced on quarterly basis in proportion to the value of progress payment received by the party.

3. The Guarantor further unconditionally agrees with the Owner that any payment made under this ABG shall be made free and clear of and without deduction for, or on account of, any present or future taxes, levies, imposts, duties, charges, fees, commissions, deductions, withholdings of any nature whatsoever and by whomsoever imposed; and where any withholding on a payment is required by law, the Guarantor shall comply with such withholding obligations and shall pay such additional amount in respect of such payment such that the Owner receives the full amount due hereunder as if no such withholding had occurred.

The Guarantor's obligations under this ABG shall not be reduced by reason of any partial performance of the Contract. The Guarantor agrees that this Guarantee shall not be wholly or partially satisfied or exhausted by any payments made to or settled with the Owner by the Contractor and shall be valid and binding on the Guarantor. The Guarantor's obligations shall not be reduced by any failure by the Owner to timely pay or perform any of its obligations under the Contract.

The Guarantor undertakes to pay the Owner the amount so demanded notwithstanding any dispute raised by the Contractor in any suit or proceedings pending before any court or tribunal whatsoever or otherwise; the Guarantor's liability under this ABG being absolute and unequivocal. The payment so made by the Guarantor under this ABG, shall be a valid discharge of its liability for payment hereunder and the Contractor shall have no claim against us for making such payments.

The Guarantor further agrees that the Owner has and shall always have the fullest liberty without the Guarantor's consent and without affecting in any manner the Guarantor's obligations hereunder, to vary any of the terms and conditions of the Contract, including extending the time for performance / payments by the Contractor from time to time, or postpone for any time or from time to time any of the powers exercisable by the Owner against the Contractor and to forbear or enforce any of the terms and conditions relating to the Contract and the Guarantor shall not be relieved from its liability hereunder by reason of any such variation or extension granted to the Contractor or for any forbearance, act or omission on the Owner's part or any indulgence by the Owner to the Contractor that no change or addition to or other modification of the terms of the Contract or of any of the Contract, which may be made between the Owner and the Contractor, shall in any way release the Guarantors from any liability under this guarantee, and the Guarantor hereby waives notice of any such change, addition or modification

4. The Guarantor further undertakes to extend the validity of the ABG at the request of the Contractor till such time as may be mutually agreed between the Owner and the Contractor.
5. The ABG herein contained shall not be determined or affected by liquidation or winding up or insolvency or closure or by any change in the constitution or control of the Contractor and the Guarantor. This ABG shall be in addition to and shall not affect or be affected by any other security now or hereafter provided to the Owner by the Contractor or any other person and the Owner may at its discretion and without any further consent from the Guarantor and without affecting the liability of the Guarantor, vary or give up such security or make any other

arrangements with the Contractor or any other person and nothing done or omitted to be done by the Owner in pursuance of any authority contained in this ABG shall affect or discharge the liability of the Guarantor under this ABG. This ABG shall remain in force notwithstanding any intermediate settlement of account or payment.

6. The authorised signatory has the power to issue this ABG on behalf of the Guarantor and holds full and valid power of attorney granted in his favour by the Guarantor authorizing him to execute this ABG.
7. The Bank's obligations under this ABG for the Guarantee Amount are in the nature of primary, independent and absolute obligations and not by way of surety.
8. The Owner shall be entitled to assign the benefit of this ABG at any time to the lenders in connection with the Project (for which Contract is executed) with intimation to the Contractor and the Bank.
9. All documents arising out of or in connection with this ABG shall be served:
  - (i) Upon the Owner, at 5<sup>th</sup> Floor, East Wing, Tower-B, Worldmark-1, Aerocity, New Delhi-110 037, marked for the attention of [\_\_];
  - (ii) Upon the Bank, at [ \_\_ ], India, marked for the attention of [\_\_].
10. The ABG payment of an amount shall be made forthwith on demand without any demur or protest. Any such demand, notice or communication shall be deemed to have been duly served:
  - (i) If delivered by hand, when left at the proper address for service;
  - (ii) If given or made by pre-paid registered post or facsimile transmission, when received.
11. Notwithstanding anything contained herein above, our liability under this ABG is restricted to the Guarantee Amount only. This ABG shall be valid for all claims/demands made by the Owner to or upon us upto the ..... with a claim period of two month beyond the date of validity i.e. upto ..... provided that the Bank shall upon the written request of the Owner extend this Guarantee by a further period of six months and all the rights of the Owner under this ABG, whether this ABG returned to the Bank for cancellation or not, shall be forfeited and the Bank shall be relieved and discharged from all liabilities thereunder.
12. This ABG shall be governed by and construed in accordance with laws of India and the Contractor agrees to submit to the exclusive jurisdiction of the competent courts in New Delhi, India for the purposes of settling any disputes or differences which may arise out of or in connection with this ABG and for the purpose of enforcement under this ABG.

The Guarantor lastly undertakes not to revoke this Advance Bank Guarantee during its validity except with the previous consent of the Owner in writing.

In witness whereof we [\_\_] have set and subscribed our hand on this [\_\_] day of [\_\_].

SIGNED, SEALED AND DELIVERED

WITNESS

1) \_\_\_\_\_

\_\_\_\_\_  
(Stamp of the executants)

2) \_\_\_\_\_

(Name and address in full with  
Rubber Stamp)

Mention the relevant along with reference number.

**ANNEXURE - IV  
FORMAT FOR PERFORMANCE BANK GUARANTEE**

(on non-judicial stamp paper of appropriate value to be  
purchased in the name of executing Bank)  
**[Provisional- to be vetted by Lenders]**

**PERFORMANCE BANK GUARANTEE**

Ref.....

Bank Guarantee No.....

Date.....

**WHEREAS**

- A. Amravati Power Transmission Company Limited. ("**Owner**"), a company incorporated under the laws of India, having its registered office at 5th Floor, East Wing, Tower-B, Worldmark-1, Aerocity, New Delhi- 110 037, India is operating 400 kV Transmission lines associated with evacuation of power from 5X 270 MW Amravati Thermal Power Project ("Project") in the State of Maharashtra, India.
- B. The Owner has entered into a contract with ..... having its registered office at ..... (hereinafter referred to as the "**Contractor**", which expression shall include its successors and permitted assigns) for supply of Emergency Restoration System for 400 kV Transmission lines associated with evacuation of power from 5 X 270 MW Amravati Thermal Power Project in the State of Maharashtra, India
- C. Pursuant to the terms of the Contract, the Contractor has agreed to provide a performance guarantee ("**Performance Bank Guarantee**") for -----% (---- percent) of the Contract Price towards Security for due performance (hereinafter referred to as "Performance Security") valid till the end of the defect liability period as specified in the said Contract, in favour of the Owner for the due performance of its obligations under the Contract.
- D. The Contractor has approached [\_\_\_] (hereinafter referred to as "**Guarantor**" or "**Bank**") for issuance of the Performance Bank Guarantee and at the Contractor's request, the Bank has agreed to provide this Performance Bank Guarantee directly in favour of the Owner for the due performance of the Contractor's obligations under the Contract.

**NOW THE TERMS AND CONDITIONS** of this Performance Bank Guarantee are:

- (1) The Guarantor shall, upon receipt of written demand made by the Owner, without proof or conditions or without recourse or demur or protest or enquiry pay forthwith in full without any

deduction the sum claimed in the written notice or such sum not exceeding the sum of Rs. ..../- (Rupees ..... only) ("**Guarantee Amount**") only as may be specified in such demand, in the event of the Contractor failing or neglecting to execute fully, efficiently and satisfactorily the Contract in accordance with terms and conditions contained therein.

- (2) The Bank further agrees that the guarantee herein contained shall come into force simultaneously with receipt of the corresponding advance payment by Contractor and shall remain in full force and effect during the period that would be taken for the performance of the Contract and that it shall continue to be enforceable till the Owner or its authorized representative certified that the terms and conditions of the Contract have been fully and properly carried out by the Contractor and accordingly discharged this Performance Bank Guarantee.
- (3) The Guarantor further unconditionally agrees with the Owner that any payment made under this Performance Bank Guarantee shall be made free and clear of and without deduction for, or on account of, any present or future taxes, levies, imposts, duties, charges, fees, commissions, deductions, withholdings of any nature whatsoever and by whomsoever imposed; and where any withholding on a payment is required by law, the Guarantor shall comply with such withholding obligations and shall pay such additional amount in respect of such payment such that the Owner receives the full amount due hereunder as if no such withholding had occurred.

The Guarantor's obligations under this Performance Bank Guarantee shall not be reduced by reason of any partial performance of the Contract. The Guarantor agrees that this guarantee shall not be wholly or partially satisfied or exhausted by any payments made to or settled with the Owner by the Contractor and shall be valid and binding on the Guarantor. The Guarantor's obligations shall not be reduced by any failure by the Owner to timely pay or perform any of its obligations under the Contract.

The Guarantor undertakes to pay the Owner the amount so demanded notwithstanding any dispute raised by the Contractor in any suit or proceedings pending before any court or tribunal whatsoever or otherwise; the Guarantor's liability under this guarantee being absolute and unequivocal. The payment so made by the Guarantor under this guarantee, shall be a valid discharge of its liability for payment hereunder and the Contractor shall have no claim against us for making such payments.

The Guarantor further agrees that the Owner has and shall always have the fullest liberty without the Guarantor's consent and without affecting in any manner the Guarantor's obligations hereunder, to vary any of the terms & conditions of the Contract, including extending the time for performance / payments by the Contractor from time to time, or postpone for any time or from time to time any of the powers exercisable by the Owner against the Contractor and to forbear or enforce any of the terms & conditions relating to the Contract and the Guarantor shall not be relieved from its liability hereunder by reason of any such variation or extension granted to the Contractor or for any forbearance, act or omission on the Owner's part or any indulgence by the Owner to the Contractor that no change or addition to or other modification of the terms of the Contract or of any of the Contract, which may be made between the Owner and the Contractor, shall in any way release the Guarantors from any liability under this Performance

Bank Guarantee, and the Guarantor hereby waives notice of any such change, addition or modification.

- (4) The Guarantor further undertakes to extend the validity of the Performance Bank Guarantee at the request of the Contractor till such time as may be mutually agreed between the Owner and the Contractor.
- (5) The Guarantee herein contained shall not be determined or affected by liquidation or winding up or insolvency or closure or by any change in the constitution or control of the Contractor and the Guarantor. This Performance Bank Guarantee shall be in addition to and shall not affect or be affected by any other security now or hereafter provided to the Owner by the Contractor or any other person and the Owner may at its discretion and without any further consent from the Guarantor and without affecting the liability of the Guarantor, vary or give up such security or make any other arrangements with the Contractor or any other person and nothing done or omitted to be done by the Owner in pursuance of any authority contained in this Performance Bank Guarantee shall affect or discharge the liability of the Guarantor under this Performance Bank Guarantee. This Performance Bank Guarantee shall remain in force notwithstanding any intermediate settlement of account or payment.
- (6) The authorised signatory has the power to issue this Guarantee on behalf of the Guarantor and holds full and valid power of attorney granted in his favour by the Guarantor authorizing him to execute this Performance Bank Guarantee.
- (7) The Bank's obligations under this Performance Bank Guarantee for the Guarantee Amount are in the nature of primary, independent and absolute obligations and not by way of surety.
- (8) The Owner shall be entitled to assign the benefit of this Performance Bank Guarantee at any time to the lenders in connection with the Project (for which Contract is executed) with intimation to the Contractor and Bank.
- (9) All documents arising out of or in connection with this Performance Bank Guarantee shall be served:
  - (i) Upon the Owner, at 5<sup>th</sup> Floor, East Wing, Tower-B, Worldmark-1, Aerocity, New Delhi-110 037, marked for the attention of [\_\_];
  - (ii) Upon the Bank, at [ \_\_ ], India, marked for the attention of [\_\_].
- (10) The Performance Bank Guarantee payment shall be made forthwith on demand without any demur or protest. Any such demand, notice or communication shall be deemed to have been duly served:
  - (i) If delivered by hand, when left at the proper address for service;
  - (ii) If given or made by pre-paid registered post or facsimile transmission, when received.
- (11) Notwithstanding anything contained herein above, Guarantor's liability under this Performance Bank Guarantee is restricted to the Guarantee Amount only. This Guarantee shall be valid for all claims/demands made by the Owner to or upon us upto the ..... with a claim period of Two month beyond the date of validity i.e. upto ..... provided that the Bank shall upon the written

request of the Owner extend this Guarantee by a further period as may be agreed between the Owner and the Contractor and all the rights of the Owner under this Performance Bank Guarantee, whether this Performance Bank Guarantee returned to the Bank for cancellation or not, shall be forfeited and the Bank shall be relieved and discharged from all liabilities there under.

- (12) This Performance Bank Guarantee shall be governed by and construed in accordance with laws of India and the Contractor agrees to submit to the exclusive jurisdiction of the competent courts in New Delhi, India for the purposes of settling any disputes or differences which may arise out of or in connection with this Performance Bank Guarantee and for the purpose of enforcement under this Performance Bank Guarantee.

The Bank lastly undertakes not to revoke this Performance Bank Guarantee during the currency except with the previous consent of the Owner in writing.

In witness whereof we have set and subscribed our hand on this \_\_\_\_\_ day of \_\_\_\_\_.

SIGNED, SEALED AND DELIVERED

WITNESS

1) \_\_\_\_\_

\_\_\_\_\_  
(Stamp of the executants)

2) \_\_\_\_\_

(Name and address in full with  
Rubber Stamp)