

## **General Terms & Conditions (GTC)**

### **Parbati Koldam Transmission Company Limited (PrKTCL)**

#### **1. DEFINITIONS AND INTERPRETATION**

## 1.1. DEFINITIONS

Capitalized terms used but not otherwise defined in the body of this Agreement shall have the meanings assigned to them in this Clause 1.1:

**“Agreement”** means this agreement including all schedules, amendments, modifications, or supplements hereto.

**“Applicable Law”** means any applicable statute, law, regulation, ordinance, judgment, order, decree, directive, guideline, rule, policy, requirement, or other governmental restriction or any similar form of decision, or determination by, or any interpretation or administration of any of the foregoing by, any statutory, governmental, local, municipal or regulatory authority whether in effect as of the date of this Agreement or thereafter and in each case as amended in India.

**“Business Days”** means any day other than a Saturday, a Sunday or any day other than a day on which banks in India or Maharashtra, India are authorized or required by law to be closed for business.

**“Calendar Days”** means any day in the Christian calendar year.

**“Completion Date”** means the guaranteed date of delivery of the ERS, as identified in Clause 5.1.

**“Confidential Information”** means any information including but is not limited to proprietary information concerning the business operations or project or the Parties; terms of this Agreement including schedules and exhibits hereto; all information, disclosed by the Parties or its affiliates or any of their representatives to the other Party (or its agents/ representatives/ personnel engaged in connection with the supplies), whether shared orally or in writing or through electronic form in connection with this Agreement including but not limited to designs, drawings, specifications, techniques, models, data, documentation, records, registers, source code, object code, diagrams, flow charts, research, development, processes, procedures, know-how, maintenance know-how, SOPs, documents developed or created by or for the Parties, strategies and development plans, customer, supplier or personnel names and other information related to customers, suppliers or personnel, pricing policies and financial information, other information of a similar nature, any trade secrets and intellectual property of the Parties.

**“Defect”** means any defect in any ERS delivered (whether in design, material, workmanship or otherwise) or any failure of ERS to meet any requirements or any other specifications contained in this Agreement or non-compliance with the conditions contained in Clause 12.1 of this Agreement.

**“Effective Date”** means the date on which this Agreement is signed by both Parties.

**“ERS”** means emergency restoration system to be utilized in case of a tower collapse for line restoration and supplied by the Seller pursuant to the Agreement, including being compliant with the requirements identified in this Agreement and shall include all documents/software in relation to such ERS, and all the materials, spares and consumables used for operation and maintenance activities of the ERS or parts thereof.

**“ERS Warranty”** means the warranty provided by the Seller to Purchaser under Clause 12.

**“Governmental Authority”** means any federal, state, local or foreign government or political subdivision thereof, or any agency or instrumentality of such government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations or orders of such organization or authority have the force of law), or any arbitrator, court or tribunal of competent jurisdiction.

**“Intellectual Property”** means in respect of the ERS, all or any rights of the following types, which may exist or be created under the laws of any jurisdiction: (i) patents, patent applications, patent disclosures and inventions; (ii) trademarks, brand name, service marks, trade dress, trade names, logos, corporate names, internet domain names, eligible layout right, chip topography right and registrations and applications for the registration thereof together with all of the goodwill associated therewith; (iii) copyrights and copyrightable works (including computer programs) and registrations and applications thereof; (iv) trade secrets, know-how and other confidential information; (v) waivable or assignable rights of publicity, waivable or assignable moral rights; (vi) registered design

or other design right; and (vii) all other forms of intellectual property, such as data and databases, including all applications, renewals, extensions and revivals of, and all rights to apply for, any of the foregoing rights and confidential trade secrets related to research, development, design, manufacturing, running, maintenance or repair of ERS, such rights being either directly or by way of licenses, permissions, approvals or agreements in such Intellectual Property rights granted by third parties.

**“Latent Defects”** means Defects which a reasonable visual inspection by the Purchaser undertaken within a reasonable period prior to expiry of the relevant Warranty Period (which, for the avoidance of doubt shall not require the Purchaser to open up any equipment) would not have been apparent and which is, or is reasonably likely to have, a material adverse effect on the performance reliability, safety or cost of the functioning and utilization of the ERS.

**“Losses”** means all liabilities, demands, proceedings, losses, cost and expenses, damages, penalties, fines, claims, actions and suits, including reasonable attorney’s fees.

**“Product Specifications”** shall mean the technical specifications and other parameters with which the ERS must conform to or comply with and as more particularly set out in this Agreement.

**“Prudent Utility Practices”** means those practices, methods, Product Specifications and standards of safety and performance, as are generally accepted for use in the transmission sector, taking into account conditions in India and commonly used in the transmission sector in a manner consistent with Applicable Laws, health and safety of workers, environmental protection, economy and efficiency for facilities of the type and size similar to the specified ERS and that generally conform to the equipment manufacturer’s operation and maintenance guidelines.

**“Site”** means location of the relevant transmission project where the ERS that are being purchased hereunder are to be installed / utilized.

**“Store(s)”** mean location designated by the Purchases for delivery of ERS.

**“Taxes”** means any and all taxes (including withholding taxes, sales taxes and value added tax), fiscal contributions, levies, imposts, duties (including customs duties), tariffs, cess, deductions, withholdings, fees, liabilities and similar charges (and all interest, penalties and other liabilities imposed with respect thereto) imposed by or on behalf of any Governmental Authority.

**“Term”** shall have the meaning ascribed to it in Clause 17.1

**“Warranty Period”** means 24 months from the date of supply of last ERS under this Agreement.

**“Warranty Start Date”** means last date of supply.

## 1.2. INTERPRETATION

The following principles shall be observed in the interpretation and construction of this Agreement:

- 1.2.1 References to the singular include the plural and vice versa, and references to one gender include the other gender;
- 1.2.2 References to the preamble, recitals, clauses, sections, and annexures are, unless the context indicates otherwise, references to the preamble, recitals, clauses, articles, and sections of, and annexures to, this Agreement;
- 1.2.3 All annexures referenced in this Agreement shall be incorporated into this Agreement by such reference and shall be deemed to be an integral part of this Agreement;
- 1.2.4 Where a word or phrase is defined herein, each of its other grammatical forms shall have a corresponding meaning;

- 1.2.5 Terms such as “hereof,” “herein,” “hereto,” “hereinafter,” “hereunder,” and other terms of like import are not limited in applicability to the specific provision within which such references are set forth but instead refer to this Agreement taken as a whole;
- 1.2.6 Unless otherwise stated or unless the context indicates otherwise, the terms “include” and “including” shall be interpreted to mean “including without limitation” and the word “or” does not imply exclusivity;
- 1.2.7 References to any Applicable Law shall be construed at the particular time as a reference to such Applicable Law as amended, supplemented or modified from time to time;
- 1.2.8 Reference to any document, contract, or agreement, including this Agreement, shall be construed at the particular time as a reference to such document, contract or agreement, and all appendices, annexes, schedules and annexures thereto, as amended, supplemented, or modified from time to time, and shall include a reference to any document, contract or agreement which amends, modifies or supplements it, or is entered into, made or given pursuant to or in accordance with its terms;
- 1.2.9 References to a person shall include its successors and permitted assigns;
- 1.2.10 The Parties have participated jointly in the negotiation and drafting of this Agreement. Any rule of construction or interpretation otherwise requiring this Agreement to be construed or interpreted against any Party by virtue of the authorship of this Agreement shall not apply to the construction and interpretation hereof; and
- 1.2.11 All headings or captions contained in this Agreement are for convenience of reference only, do not form a part of this Agreement and shall not affect in any way the meaning or interpretation of this Agreement.

## **2. SCOPE OF SUPPLY**

- 2.1. IndiGrid is engaging the Contractor to perform the scope of Supply described in detail in the Purchase Order /STC (the “Scope of Supply” or the “Supply(s)”) in accordance with the terms of the Agreement and the Applicable Laws.
- 2.2. The Scope of Supply must be performed by the Contractor, strictly in accordance with the Purchase Order and other commercial understandings between the Parties with regards to the Supplies, to the satisfaction of IndiGrid.
- 2.3. Except as otherwise expressly provided in the Agreement, the Contractor agrees and acknowledges that it shall perform all of its obligations and responsibilities under the Agreement at its own risk, cost and expense.

## **3. ERS REQUIREMENTS**

- 3.1. The ERS Requirements described in detail in the Purchase Order /STC (the “ERS Requirements”) in accordance with the terms of the Agreement.

## **4. TESTING**

- 4.1. The Testing described in detail in the Purchase Order /STC (the “Testing”) in accordance with the terms of the Agreement.

## **5. DELIVERY**

- 5.1. The Delivery described in detail in the Purchase Order /STC (the “Delivery”) in accordance with the terms of the Agreement.

## **6. TRANSFER OF TITLE AND RISK**

### **6.1 Warranty of Title**

The Seller warrants good and marketable title to all ERS and warrants and guarantees that title, when it passes to and vests in the Purchaser as described in Clause 6.2, will be free and clear of any and all rights of retention, claims, liens, security interests, attachments, charges, encumbrances and rights of other persons whether arising as a result of any actions or failure to act of the Seller or its representatives or not.

## 6.2 **Title and Risk of Loss**

6.2.1 Subject to Clause 6.2.2 below, the transfer of title from the Seller to the Purchaser in all ERS under this Agreement shall take place at the delivery location as designated by Purchaser "Store" (FOR basis) . Notwithstanding the foregoing transfer of title, all the risks of loss in connection with such ERS shall transfer from the Seller to the Purchaser only post-delivery at the "Stores". Further, notwithstanding the title transfer, the Seller shall however retain care and custody of the ERS and exercise due care thereof until delivery in accordance with the obligation under this Agreement.

6.2.2 Title, ownership and risk of loss for each replacement ERS shall pass from the Seller to the Purchaser at the Store when such replacement ERS is delivered at the Store, except that where the Purchaser has rejected an ERS, title to such Rejected ERS shall pass back to the Seller when the Seller picks up such ERS.

6.2.3 Under no circumstances shall the passage of title and risk of loss be construed to impair any rights that the Purchaser may have for recovery of damages or to reject any ERS in accordance with the terms of this Agreement.

## 7. **TRANSPORTATION**

7.1 The Seller shall be responsible for the transport of the supplies from their place of origin to the agreed destination on FOR basis up to Stores.

7.2 Shipping method finalization for containerized items, to ensure the safety of the material.

7.3 Seller should inform the Purchaser approximately one (1) month in advance about the material movement, so that necessary action can be taken. Purchaser will not be responsible for any additional costs or any claim brought against Purchaser, because of Seller's failure to dispatch, transport and/or deliver in accordance with the terms of this Agreement.

## 8. **ORDER VALUE**

8.1. The Order Value described in detail in the Purchase Order /STC (the "Order Value") in accordance with the terms of the Agreement.

## 9. **PAYMENT TERMS & PROCEDURES**

9.1. The Payment Term & Procedure described in detail in the Purchase Order /STC (the "Payment Term & Procedure") in accordance with the terms of the Agreement.

## 10. **INSURANCE**

10.1 The Seller shall at his own expense take out and maintain in effect, during the performance of the Agreement, the insurances set forth below in the sums and with the deductibles and other conditions specified herein.

10.1.1 The Seller will arrange for an open comprehensive insurance of the material included under the scope hereunder, to cover all risks in transit by road between Seller's manufacturing facilities / warehouse/point of dispatch and Purchaser's nominated Store(s);

10.1.2 The Insurance shall be on full replacement value basis covering 120% of FOR Value with all risks.

## 10.2 **Third Party Liability insurance for Transportation**

10.2.1 Seller shall insure against liability for compensation and claimants costs and expenses in respect of accidental bodily injury or illness to third parties, accidental losses, or damages to property belonging to third parties (not being loss of a damage to property to which above applies) arising out of execution of the works.

10.2.2 The Purchaser shall also be named as co-insured under the insurance policy taken out by the Seller except for Third Party Liability.

10.3 Notwithstanding the insurance requirements mentioned above, it would be the Seller's responsibility to take adequate insurance cover as may be pertinent to protect its interest and interest of the Purchaser. If at any point of time during this Agreement, the insurance policies are found to be inadequate, the Seller shall take fresh insurance policies meeting aforesaid requirements.

10.4 Any loss or damage to the equipment and mandatory spares during handling, transportation, on FOR basis shall be to the account of the Seller. The Seller shall be responsible for preference of all claims and make good the damages or loss by way of repairs and/or replacement of plant and equipment damaged or lost. Notwithstanding the extent of insurances cover and the amount of claim available from the underwriter, the Seller shall be liable to make good the full replacement/rectification of all the equipment/materials and to ensure their availability as per project requirement without additional financial liability to the Purchaser.

## **11 LIMITATION OF LIABILITY**

11.1 At any time, the Seller's aggregate liability under this Agreement shall under no circumstance exceed the aggregate of the total Order Value.

11.2 NOTWITHSTANDING ANYTHING CONTAINED IN CLAUSE 11.1, THE AFOREMENTIONED LIMITATION OF LIABILITY DOES NOT APPLY TO LIABILITIES RESULTING FROM FRAUD, GROSS NEGLIGENCE, WILLFUL DEFAULT, REPLACEMENT OF THE ERS AND OTHER REMEDIES (INCLUDING PURSUANT TO THE EXERCISE OF THE ERS WARRANTY), ANY DAMAGE OR INJURY TO ANY PERSON, ANY DAMAGE TO PHYSICAL PROPERTY (PRIOR TO THE PASSING OF RISK OF LOSS IN ACCORDANCE WITH CLAUSE 6.2), INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS, OR THE SELLER'S INDEMNITY OBLIGATIONS PURSUANT TO CLAUSE 13.

11.3 **NO LIABILITY FOR CONSEQUENTIAL OR INDIRECT DAMAGES** - EXCEPT FOR LIABILITY FOR INDEMNIFICATION, LIABILITY FOR BREACH OF CONFIDENTIALITY, OR LIABILITY FOR INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS, IN NO EVENT SHALL EITHER PARTY OR ITS REPRESENTATIVES BE LIABLE FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR ENHANCED DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, ARISING OUT OF OR RELATING TO ANY BREACH OF THIS AGREEMENT, REGARDLESS OF (A) WHETHER SUCH DAMAGES WERE FORESEEABLE, (B) WHETHER OR NOT IT WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND (C) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

## **12 WARRANTIES**

12.1 The Seller warrants that, for the duration of the Warranty Period, the ERS shall:

12.1.1 conform with all specification provided under this Agreement including Product Specifications, standards, drawings, samples, descriptions, quality requirements, performance requirements, statements of work, and fit, form and function requirements furnished, specified or approved by Purchaser;

12.1.2 conform with Purchaser's quality standards;

12.1.3 be merchantable and free from Defects, latent or otherwise, in design, materials and workmanship;

12.1.4 be fit and sufficient for the particular purpose intended by Purchaser and its customers, of which the Seller is aware (and Seller acknowledges that it knows of Purchaser's intended use of the ERS and that such ERS

have been selected, designed, manufactured or assembled by Seller based upon Purchaser's stated use and will be fit and sufficient for the particular purposes intended by Purchaser);

- 12.1.5 comply with all Applicable Laws; and
- 12.1.6 each of the ERS will be new and conveyed by Seller to Purchaser with good title, free and clear of all encumbrances.
- 12.2 For the purposes of this Agreement, warranty period for each unit of the ERS shall be 24 months from the date of supply of last ERS or 12 months from the date of replacement/repair of any defective ERS, whichever is later ("**Warranty Period**"). Warranty Period for any "**Latent Defect**" shall be 10 years from the expiry of the Warranty Period for Defects of each relevant unit.
- 12.3 In the event there is a Defect/Latent Defect or deficiency in the ERS during the relevant Warranty Period, the Seller shall rectify such Defect/Latent Defect either by way of repair or replacement, at its own cost and expense, and with the least adverse impact on machine availability, as the case may be. This warranty is the principal value proposition for this transaction. Further, all types of costs towards repair / rectification of the Defect/Latent Defect including spares and all kinds of consumables, costs incurred by the Seller's representative to attend to any issues related to the ERS, shall be solely to the Seller's account.
- 12.4 All parts and components employed in the replacement shall as minimum be of the agreed quality and workmanship and shall consist of new parts and components.
- 12.5 The Seller shall bear all costs of such replacement of defective ERS including cost of replaced ERS, and shall procure and pay for all materials, equipment, parts, supplies, consumables, transportation of the ERS to and from the Store labor, crane charges, supervision and other services necessary to replace the defective ERS. The replaced / modified parts or equipment shall have 12 months warranty from the date of replacement / modification plus balance time period of original Warranty Period.
- 12.6 Upon identification of a Defect/Latent Defect, the Purchaser shall notify the Seller of such Defect/Latent Defect as soon as reasonably practicable. The Seller may be entitled to access the defective ERS at such times as may be permitted by the Purchaser, during the business hours of the Purchaser. The Seller shall ensure minimum disruptions at the Site in discharging its warranty obligations under this Agreement.
- 12.7 **Resolution Time:** The Seller shall be obligated to rectify the Defect/Latent Defect at the earliest, but not later than within 7 (seven) days from the notification of Defect/Latent Defect to the Seller, or within such period as mutually agreed between the Parties. Such replaced part of the ERS shall form part of the ERS and shall become exclusive property of the Purchaser.
- 12.8 Where necessitated, the Seller shall perform a root cause analysis, or such other analysis to determine the root cause of the Defect/Latent Defect as is necessary for each significant instance of Defect/Latent Defect, that necessitates such analysis.
- 12.9 **Failure to remedy Defect/Latent Defect:** If the Seller fails to replace the defective ERS within the time prescribed above, then:
  - 12.9.1 the Purchaser may procure such replacement ERS from an alternate source. However, the Seller shall pay the Purchaser all the costs incurred by the Purchaser in remedying the Defect/Latent Defect including the cost of procuring the replacement ERS, and all costs associated with such replacement; and
  - 12.9.2 the performance of remedial work by the Purchaser or other persons shall not invalidate the Seller's warranty obligations with respect to the ERS upon which the remedial works have been undertaken. The warranty obligations of the Seller will be valid in all such cases.
- 12.10 The remedies for defective ERS hereunder are in addition to those available under law to the Purchaser.
- 12.11 It has expressly agreed between both Parties that the Seller will provide the following services without fail:

- 12.11.1 The Seller has agreed that during Warranty Period, Seller will take necessary action within 1 (one) day of logging of call by Purchaser personnel on to the Seller;
- 12.11.2 Spares, if required, will be shipped free of cost within 24 (twenty-four) hours. If any spares are required to be shipped from outside India, such spares will be air shipped within 2 (two) working day from the request;
- 12.11.3 The Seller shall attempt to resolve all issues by telephonic support, in case, issues are not resolved over the telephonic support, Seller's service engineer will reach the Site within 36 (thirty six) hours of logging of the complaint and resolve any issue within 60 (sixty) hours. The repair period in any case will not exceed 7 (seven) days in case of consultation is required from Seller's head quarter or any other Seller's hub;
- 12.12 In the event of an emergency, where in the judgment of the Purchaser, delay in action would cause serious loss or damage, repairs or adjustments may be made by the Purchaser or a third party chosen by the Purchaser with notice to the Seller and the cost of such work shall be paid by the Seller. In the event such action is taken by the Purchaser, the Seller will be notified promptly and he shall assist wherever possible in making necessary corrections. This shall not relieve the Seller's liability under the terms and conditions hereunder.
- 12.13 If any defects are not remedied within a reasonable time, the Purchaser may proceed to do the work at the Seller's risk and cost, but without prejudice to any other rights which the Purchaser may have against the Seller in respect of such defects.
- 12.14 The repaired or new parts shall be furnished free of cost by the Seller to make good the defects. If any repair is carried out on his behalf at the Site, the Seller shall bear the cost for such repair.
- 12.15 The cost of any special or general overhaul rendered necessary during the guarantee period due to defects in the supplies shall be borne by the Seller.
- 12.16 The acceptance of the supplies by the Purchaser shall in no way relieve the Seller of his obligation under this clause.
- 12.17 In case of those defective parts which are not repairable at Site but are essential for the commercial operation of the supplies, the Seller and the Purchaser shall mutually agree to a programme of replacement or renewal which will minimize / dislocation to the maximum extent, in the operation of the supplies.
- 12.18 It should be clearly understood that all expenses in respect of replacement/repair during the Warranty Period including but not limited to transportation cost, all taxes, duties and levies etc. as applicable, till such replacements are installed in the plant after necessary repairs/replacement and the plant is put back into operation, shall also be to the Seller's account.
- 12.19 If any replacement, repair or modification is of such a character as may affect the subsequent performance of the supplies or any part thereof in accordance with the guaranteed performance parameters, the Purchaser may within 30 days after such replacement, repair or modification give to the Seller notice requiring that such further tests to be conducted in respect of the relevant part as may be necessary to demonstrate the adequacy of the replacement, repair or modification.
- 12.20 The warranty contained hereunder (a) is in addition to all other warranties, express, implied, statutory and under common law, (b) extends to the ERS's future performance, (c) survives Seller's delivery of the ERS, Purchaser's receipt, inspection, acceptance, use of the ERS and payment for the ERS, and the termination or expiration of this Agreement, (d) inures to the benefit of Purchaser and its successors and assigns and the users of Purchaser, and (e) may not be limited or disclaimed by Seller. Purchaser's approval of Seller's designs, materials, processes, drawings, specifications or similar requirements will not be construed to relieve Seller of any warranties. Seller shall transfer and assign to Purchaser all of its rights (but not any obligations) under all warranties from equipment or material manufacturers or suppliers, permitted subcontractors or other third parties. Any applicable statute of limitations on Purchaser's claims for breach of warranty will commence no earlier than the date on which Purchaser discovers the breach.

### **13 Indemnity**



### 13.1 General Indemnity

To the fullest extent permitted by Applicable Law, Seller (the “**Indemnifying Party**”) shall defend, indemnify and hold harmless the Purchaser and its representatives (the “**Indemnified Parties**”), from and against any and all Losses suffered or incurred by the Indemnified Parties attributable to (a) violation of Applicable Law (including with respect to any applicable anti-bribery or anti-corruption law or regulation) by negligence or misconduct of Indemnifying Party or anyone employed thereby (excluding any Indemnified Parties) in matters related to this Agreement; (b) Indemnifying Party’s failure to pay Taxes for which it is responsible hereunder; (c) breach of any term of the Agreement by the Indemnifying Party, and (d) any damage or injury to any person (including the Indemnified Parties) or to the physical property of any person (including Indemnified Parties) to the extent caused by the Indemnifying Party’s breach of Agreement, negligence, gross negligence or willful misconduct of any Indemnifying Party or its representatives or anyone directly or indirectly employed by them or anyone for whose acts they may be liable.

### 13.2 Intellectual Property Indemnity

To the fullest extent permitted by Applicable Law, the Seller shall defend, indemnify and hold harmless Purchaser and its representatives (the “**Purchaser Indemnified Parties**”), from and against any and all Losses suffered or incurred by the Purchaser Indemnified Parties in connection with any claim brought against the Purchaser Indemnified Parties asserting that the ERS infringes or misappropriates any Intellectual Property right of any third party. If any such claim materially impairs the value of, or right to use, the ERS, then the Seller shall procure, at its own expense, the right to secure such rights as are reasonably required to maintain the value of the ERS, including, without limitation, at its own election (a) modifying infringing ERS to make them non-infringing; (b) procuring right of continued use; or (c) substituting such ERS with non-infringing equipment satisfying all Product Specifications and other specifications agreed in this Agreement applicable to such ERS; provided, however, that to the extent that any of the foregoing actions materially and adversely impact the electricity transmission capacity, or operation or maintenance, of the project for which the ERS is being utilized, the Seller shall refund the portion of the Order Value paid for the ERS equivalent to the greater of (i) the reduction, if any, in the fair market value of the ERS as a result of such actions, or (ii) the loss in revenue to any Purchaser Indemnified Party attributable to such adverse impact upon electricity transmission of the ERS.

**13.3** Promptly after receipt by Purchaser of any claim or notice of the commencement of any action, administrative or legal proceeding, or investigation as to which the indemnities provided for may apply, Purchaser shall notify the Seller in writing of such fact, provided that the failure of Purchaser to give any such notice promptly shall not excuse the Seller from its indemnification obligations hereunder except and to the extent any such failure actually prejudices the Seller in the defence of such matters. The Seller shall assume on behalf of the Purchaser and conduct with due diligence and in good faith the defence thereof with counsel reasonably satisfactory to the Purchaser; provided that the Purchaser shall have the right to be represented therein by counsel of its own selection and at expense of the Seller; and provided, further that if the defendants in any such action include both the Seller and the Purchaser and Purchaser shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the Seller, the Purchaser shall have the right to select separate counsel to participate in the defense of such action on its own behalf at the Seller’s expense. The Purchaser shall at the request of the Seller, provide all reasonably available assistance in the defense or settlement of any such claim, action, proceeding or investigation and all reasonable costs and expenses incurred by the Purchaser in connection with the defense or settlement of any such claim, action, proceeding or investigation shall be reimbursed by the Seller promptly upon demand there for.

**13.4** If any claim, action, proceeding or investigation arises as to which the indemnities provided for may apply, and the Seller fails diligently and expeditiously to assume and conduct the defense of such claim, action proceeding or investigation then the Purchaser may at the Seller’s expense contest (or with the prior written consent of the Seller) settle such claim.

**13.5** Subject to the above sub-clause, in the event of any claim being made or action brought against the Purchaser which is covered by the indemnity set out, the Seller shall be promptly notified thereof and may at its own expense conduct all negotiations for the settlement of the same, and any litigation that may arise there from. The Purchaser shall not, unless and until the Seller shall have failed to take over the conduct of the negotiations or litigation, agree to any

settlement of such negotiations or litigation or make any admission which might be prejudicial thereto. The conduct by the Seller of such negotiations or litigation shall be conditional upon the Seller having first given to the Purchaser such reasonable security as shall from time to time be required by the Purchaser to cover the amount ascertained or agreed or estimated, as the case may be, of any compensation, damages, expenses, and costs for which the Purchaser may become liable. The Purchaser shall, at the request of the Seller, afford all available assistance for the purpose of contesting any such claim or action, and shall be repaid all reasonable expenses incurred in so doing.

- 13.6 The provisions of this Clause shall survive termination/expiry of this Agreement; provided that neither Party shall have any indemnity obligations pursuant to this Clause for any claim arising out of or resulting from events or circumstances which occur after the termination/expiry of this Agreement.

## **14 REPRESENTATION & WARRANTIES**

### **14.1 Seller Representations**

The Seller hereby represents and warrants to the Purchaser that the ERS will be manufactured & all necessary tests & checks will be carried out and shall otherwise perform its obligations under this Agreement by abiding the following:

- 14.1.1 Using the skill, care and diligence to be expected of appropriately qualified and experienced professional engineers and constructors with experience in works of type, nature and complexity similar to the works.
- 14.1.2 In accordance with good modern engineering principles and practices of a standard equivalent to those adopted for power projects using similar technology internationally.
- 14.1.3 Using only materials and goods for incorporation into the plant which are new and unused and so that such materials and goods and the standards of all workmanship, manufacture and fabrication shall conform in all respects to the standards and codes of practice referred to in the Product Specifications and existing as at the date of this Agreement.
- 14.1.4 So that each material of supplies shall, upon completion of delivery, be in accordance with all relevant requirements of this Agreement unless otherwise agreed in writing by the Purchaser, or altered in accordance with a variation instructed by the Purchaser.
- 14.1.5 So that the supplies shall be capable of being operated in accordance with the requirements of this Agreement and Prudent Utility Practices and good industry practice consistent with the Seller's operating and maintenance manuals; and so that the supplies shall comply with the provisions of any Applicable Law(s).

### **14.2 Mutual Representations**

The Parties represent and warrant as follows:

- 14.2.1 that each Party is duly incorporated, validly existing and in good standing under the laws of their respective countries, and that each Party has the requisite power and authority to carry on business as is currently being conducted and to perform all obligations under this Agreement;
- 14.2.2 that each Party is permitted by their respective organizational or charter documents, to enter into this Agreement, and is not otherwise restrained, prevented, or inhibited from entering into this Agreement or from undertaking the obligations herein contained; and
- 14.2.3 that each Party's signatory to this Agreement is duly authorized to execute the same in a manner binding upon it and that all corporate approvals and procedures necessary for entering into this Agreement and vesting the authority in such signatory have been duly obtained and complied with.

### **14.3 Special Representations of Seller**

- 14.3.1 As of the Effective Date and the date the ERS are delivered pursuant to the delivery schedule agreed hereunder, the Seller represents, warrants and covenants that (a) it owns or has sufficient rights to all Intellectual Property rights necessary for it to perform its obligations under this Agreement, (b) its ERS does not infringe upon, violate or misappropriate the Intellectual Property rights of any person and (c) it has not received notice from any third party claiming infringement of such third party's Intellectual Property rights regarding the same.
- 14.3.2 Seller represents and warrants that it is competent to supply the ERS in the most effective manner.
- 14.3.3 Seller represents and warrants that it has and it shall maintain sufficient financial resources to meet its obligations under this Agreement.
- 14.3.4 Seller further represents and warrants that no criminal proceeding / investigation is pending against it or its directors, promoters or beneficial owners. Seller recognizes that the Purchaser has entered into this Agreement in good faith relying on such representation.

## **15 CONFIDENTIALITY**

- 15.1 The Seller shall not, without the previous written consent of the Purchaser, use, copy, publish, disclose or otherwise deal with nor cause nor permit its agents/representatives or any persons engaged in connection with the supplies under this Agreement to use, copy, publish, disclose or otherwise deal with any Confidential Information, in any manner, other than for the performance of its obligations under this Agreement.
- 15.2 Nothing contained in the foregoing shall render the Seller liable for breach of any of the obligations contained in this clause if such knowledge or information constitute the Confidential Information:
  - 15.2.1 At the time of disclosure is already in the public domain or public knowledge; and the Seller can establish by reasonable competent written proof was in its possession at the time of disclosure and was not acquired, directly or indirectly, from the Purchaser; or
  - 15.2.2 Is disclosed to the employees, agents, consultants or persons engaged in connection with the supplies under this Agreement acting on a strictly need-to-know basis; or
  - 15.2.3 Is disclosed pursuant to a requisition made by a regulatory authority in accordance with Applicable Laws, provided that the Seller shall notify the Purchaser of such requisition and proposed disclosure prior to the making of such disclosure.
  - 15.2.4 The Seller shall not make any announcements in any manner in respect of the execution of the works or any matter pertaining to the supplies without the prior consent of the Purchaser.

## **16 SUSPENSION**

- 16.1 The Purchaser may, at any time, suspend and reinstate execution of performance the whole or any part of the scope of supplies by the Seller. Any orders for suspension or reinstatement will be issued by the Purchaser to the Seller in writing. The time for completion of the supplies will be extended for a period equal to duration of the suspension or as agreed between Purchaser and Seller.
- 16.2 Upon the issuance of instructions to suspend the supplies as contemplated in this Agreement, the Seller shall:
  - 16.2.1 Suspend the supplies to the extent specified by the Purchaser and store, preserve, protect and otherwise secure the item/work affected to the extent reasonably practicable in the circumstances;
  - 16.2.2 Place no further sub order or purchase orders for materials, services, with respect to those parts of the item/work suspended except to the extent expressly requested by the Purchaser; and
  - 16.2.3 Use all reasonable endeavors to suspend the supplies, on the most favorable terms available to the Seller including all sub orders and purchase orders, to the extent affected by such suspension and otherwise to minimize the additional costs associated with such suspension.
- 16.3 At any time after such suspension, the Purchaser may instruct the Seller to resume execution of the suspended supplies. Upon receipt of such instructions, the Seller shall examine the items/work affected by the suspension and shall remedy any deterioration or defect in or loss of such item/work that may have occurred during the suspension. The suspended supplies shall resume as expeditiously as possible after the receipt of such withdrawal of suspension notice in accordance with the instructions of the Purchaser in respect of the resumption.

- 16.4 If the suspension of supplies is not attributable to Seller's default, the Purchaser shall be liable to pay to the Seller, the price for the supplies completed and additional cost or expenses incurred by Seller due to this suspension against submission of documentary evidence and proof to the satisfaction of the Purchaser. For the supplies in progress the payments will be made as mutually agreed after taking into account any possibility of utilization of the WIP material by either of the Party.
- 16.5 The Purchaser instructions under sub-clauses above shall be treated as instructions to carry out a variation except to the extent that the suspension instructed by the Purchaser is necessary by reason of default on the part of the Seller.

## **17 TERMINATION**

### **17.1 Term**

The term of this Agreement commences on the Effective Date and continues up to completion of Latent Defect Period, unless it is earlier terminated pursuant to the terms of this Agreement or Applicable Law or termination of the transmission services agreement executed by the Purchaser for the project for which supplies are made hereunder (the "Term").

### **17.2 Termination**

17.2.1 This Agreement may be terminated for cause by either Party by issuing a notice of termination if:

- (a) any representation or warranty of the other Party made herein was or becomes materially incorrect or misleading and such Party has failed to remedy the same within thirty (30) days of receipt of notice from the non-breaching Party; or
- (b) any proceeding is instituted against the other Party seeking to adjudicate such Party as a bankrupt or insolvent and such proceeding is not stayed or dismissed within sixty (60) days of filing, or if such Party makes a general assignment for the benefit of its creditors, or if a receiver is appointed on account of the insolvency of such Party, or if such Party files a petition seeking to take advantage of any other Applicable Law relating to bankruptcy, insolvency, reorganization, winding up or composition, or adjustment of debts, or if such Party admits in writing its inability to pay its debts when due, or such Party dissolves or is liquidated or takes or authorizes any action in respect of such a dissolution or liquidation.

17.2.2 This Agreement may be terminated for cause by the Purchaser by issuing a notice of termination:

- (a) if the Seller materially breaches any term of this Agreement, and the Purchaser has given the Seller written notice of the alleged breach, and the Seller has not cured the breach within 15 (fifteen) days after delivery of such notice;
- (b) if Seller repudiates, or threatens to repudiate, any of its obligations under this Agreement;
- (c) if Seller fails to, or threatens not to, timely deliver ERS conforming to the requirements of, and otherwise in accordance with, the terms and conditions of this Agreement;
- (d) if Seller fails to provide Purchaser, within a commercially reasonable time after Purchaser's request (but in no case exceeding 14 (fourteen) days after such request) with adequate and reasonable assurance of Seller's financial and operational capability to perform timely any of Seller's obligations under this Agreement;
- (e) if, without obtaining Purchaser's prior written consent, (i) Seller sells, leases or exchanges a material portion of Seller's assets, (ii) Seller merges or consolidates with or into another Person, or (iii) a change in control of Seller occurs, unless in the case of a merger or consolidation of Seller

with another Person, the surviving entity has a net worth greater than or equal to Seller's net worth immediately prior to the merger or consolidation;

- (f) if the Seller takes any action that results in any and/or potentially results in termination or suspension of the transmission services agreement executed by the Purchaser for the project for which supplies are made hereunder; and/or
- (g) pursuant to any other provisions in this Agreement under which the Purchaser has the right of terminate this Agreement.

17.2.3 This Agreement may be terminated for convenience by the Purchaser by issuing a notice of termination to the Seller on the expiry of fifteen (15) days from the date of the notice of termination.

17.2.4 Unless otherwise specified in the notice of termination, this Agreement shall stand terminated vis-à-vis the ERS which have not been delivered by the Seller; or (ii) which have not been dispatched for delivery to the Purchaser, on the expiry of the notice period set out in the notice of termination or where a cure period has been provided and the default has not been remedied to the satisfaction of the non-defaulting party, on expiry of such cure period.

17.2.5 On the issuance of the notice of termination under this Agreement, unless such notice specified otherwise, the Seller shall:

- (a) subject to (b) below, not transport any ERS which have not been dispatched as on the date of the notice of termination;
- (b) complete delivery of ERS which have been dispatched for delivery to the delivery point or are in transit, as on the date of the notice of termination (provided that the Purchaser shall be entitled to: (A) reject any such ERS if they do not meet the requirements referred to hereunder; or (B) return such ERS to the Seller, where the ERS does not meet the requirements, and the Seller shall refund an amount equal to aggregate prices of all such ERS within fifteen (15) days after the issuance of an invoice by the Purchaser);
- (c) pickup, take away and transport from the Site all Rejected ERS, at its cost and expense;
- (d) immediately discontinue the production and manufacture of the ERS;
- (e) place no further order and enter into no additional orders or subcontracts, and terminate all existing orders or subcontracts;
- (f) provide the Purchaser with an inventory of all ERS in production, storage or transit; and
- (g) bear all costs and expenses in relation to the ERS that have been dispatched by the Seller after the provision of the notice of termination by the Purchaser.

17.2.6 On termination of this Agreement:

- (a) by the Purchaser pursuant to Clause 17.2.1 or Clause 17.2.2, the Purchaser may procure the required ERS from a third party and in the event the price of such ERS is higher than the price payable for such ERS under the mutually agreed Order Value unit price agreed hereunder, the Seller shall pay to the Purchaser the difference between: (i) the price paid by the Purchaser to procure the ERS from a third party; and (ii) the price payable for such ERS under this Agreement, within fifteen (15) days after the Seller's receipt of proof of payment for such ERS from the Purchaser;
- (b) the Seller shall continue to remain liable for all costs and expenses incurred in relation to the Rejected ERS or defective ERS, the replacement of the Rejected ERS and replacement of the defective ERS in accordance with the terms of this Agreement;

- (c) the Purchaser shall pay the Seller all amounts due and payable in respect of the ERS delivered as on the date of the notice of termination in accordance with the terms of this Agreement; and

17.2.7 On termination of this Agreement under Clause 17.2.3, the Purchaser shall pay the Seller all amounts due and payable in respect of the ERS delivered as on the date of the notice of termination in accordance with the terms of this Agreement.

### **17.3 Effect of Termination**

17.3.1 Termination of this Agreement shall not relieve either Party of any obligation incurred prior thereto or for any obligation, which by its terms is to take effect upon termination or survive termination. The ERS which have been dispatched to the Purchaser pursuant to this Agreement for delivery to the designated delivery point will not be affected by the termination of this Agreement and all the provisions in respect of the same shall continue to apply.

17.3.2 In no event shall Purchaser be liable for and will not be required to make payments to Seller, directly or on account of claims by Seller's subcontractors, for loss of anticipated profit, unabsorbed overhead, interest on claims, product development and engineering costs, facilities and equipment rearrangement costs or rental, unamortized depreciation costs, and general and administrative burden charges.

### **17.4 Survival**

The following terms and provisions shall remain in effect and be enforceable following the expiration or termination of this Agreement: (*Termination*), (*Confidentiality*), (*Intellectual Property Rights*), (*Indemnity*), (*Warranties*), (*Arbitration*) and (*Governing Law & Severance*).

## **18 CERTAIN OBLIGATIONS OF SELLER**

### **18.1 Quality**

18.1.1 Seller shall meet or exceed Purchaser's quality standards for the ERS as adopted by Purchaser from time to time, and which are provided by Purchaser to Seller in writing.

18.1.2 Seller shall provide reasonable support as requested by Purchaser to address and correct quality concerns. In addition to its other rights and remedies, Purchaser may hold Seller responsible for costs associated with quality-issue investigation and containment to the extent caused by Seller's acts or omissions.

18.1.3 Seller shall, on a continuous basis, identify ways to improve the quality, service, performance standards and technology for the ERS, including through participation in Purchaser's quality improvement initiatives.

### **18.2 Protection Against Supply Interruptions**

Seller shall, at Seller's sole cost and expense, take such actions as are necessary or appropriate to ensure the uninterrupted supply of ERS to Purchaser during any foreseeable or anticipated event or circumstance that could interrupt or delay Seller's performance under this Agreement, including any labor disruption, whether or not resulting from the expiration of Seller's labor contracts (excluding any Force Majeure event hereunder).

### **18.3 Duty to Advise**

Seller shall promptly provide written notice to Purchaser of any of the following events or occurrences, or any facts or circumstances reasonably likely to give rise to any of the following events or occurrences: (a) any failure by Seller to perform any of its obligations under this Agreement; (b) any delay in delivery of ERS; (c) any Defects or quality problems relating to ERS; (d) any change in control of Seller; (e) any deficiency in Purchaser specifications, samples, prototypes or test results relating to this Agreement; or (f) any failure by Seller, or its subcontractors or common carriers, to comply with Applicable Law. In addition, Seller shall promptly notify Purchaser in writing of any change in Seller's authorized representatives, insurance coverage or professional certifications.

#### **18.4 Seller's Financial Condition**

- 18.4.1 Each acceptance of a delivery of ERS by Seller will constitute Seller's representation and warranty that Seller is not insolvent on a balance sheet basis, is paying all debts as they become due, is in compliance with all loan covenants and other obligations to which it is subject, and that all financial information provided to Purchaser concerning Seller is true and accurate, fairly represents Seller's financial condition, and has been prepared in accordance with GAAP, uniformly and consistently applied.
- 18.4.2 Seller shall furnish Purchaser with statements accurately and fairly evidencing Seller's financial condition as Purchaser may, from time to time, reasonably request.
- 18.4.3 Seller shall promptly notify Purchaser, in writing, of any and all events that have had or may have a material adverse effect on Seller's business or financial condition, including any change in management, sale, lease or exchange of a material portion of Seller's assets, a change in control of Seller, or the breach of any loan covenants or other material obligations of Seller to its creditors.

#### **18.5 Compliance with Laws**

- 18.5.1 Seller shall at all times comply with all Applicable Laws applicable to this Agreement, Seller's operation of its business and the exercise of its rights and performance of its obligations hereunder. Without limitation of the foregoing, Seller shall ensure the ERS and any related packaging, conform fully to, any Applicable Law. Upon Purchaser's reasonable request, Seller shall provide Purchaser with: (a) written certification of Seller's compliance with Applicable Laws; (b) written certification of the origin of any ingredients or materials in the ERS; and (c) any additional information regarding the ERS requested by Purchaser such that Purchaser may comply in a timely manner with its obligations under Applicable Law.
- 18.5.2 Seller shall obtain and maintain all permits necessary for the exercise of its rights and performance of Seller's obligations under this Agreement.

### **19 DISPUTE RESOLUTION**

#### **19.1 Dispute Resolution**

- 19.1.1 Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the "**Dispute**") shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 19.2.
- 19.1.2 The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith.

#### **19.2 Conciliation**

In the event of a Dispute arises under this Agreement, any Party shall give a notice to the other Party requesting an amicable settlement of such Dispute. Upon receipt of notice each Party shall appoint its representative for discussing the Dispute. The body of representatives of each Party shall agree on a schedule of meetings and meet to discuss the Disputes in detail. During such meetings of the body of representatives, each Party shall present its clarifications and additional documents supporting its case and interpretation of the Dispute. If the Parties fail to constitute the body of representatives or such body of representatives fail to arrive at a resolution within 15 (fifteen) Business Days of the first meeting of the body of representatives, the Dispute shall be referred to the senior management of each Party. Upon the Dispute being referred to the senior management of each Party, the senior management authorized by the Board of Directors of each Party shall meet as soon as possible and attempt to resolve the Dispute. If such meeting of the senior management does not take place within the 10 (ten) Business Days or the Dispute is not amicably settled within 15 (fifteen) days of the meeting of the senior management each Party may refer the Dispute to arbitration in accordance with the provisions of Clause 19.3. The Parties upon reaching an amicable solution under this Clause 19.2, shall evidence such resolution by the signing of written terms of settlement within 5 (five) Business

Days of the resolution of the Dispute pursuant to a meeting of the body of representatives or the senior management of the Parties.

### **19.3 Arbitration**

19.3.1 Any Dispute which is not resolved amicably by conciliation, as provided in Clause 19.2, shall be finally decided by reference to arbitration to be conducted by an Arbitration Tribunal appointed in accordance with Clause 19.3.2. Such arbitration shall be held in accordance with the Indian Arbitration and Conciliation Act, 1996 and any amendments thereto. The venue and seat of such arbitration shall be [Mumbai], and the language of arbitration proceedings shall be English.

19.3.2 There shall be constituted a tribunal consisting of three arbitrators ("**Arbitration Tribunal**"), of whom each Party shall select one, and the third arbitrator shall be appointed by the two arbitrators so selected and in the event of disagreement between the two arbitrators shall be appointed as per provisions of Indian Arbitration and Conciliation Act, 1996.

19.3.3 The Arbitration Tribunal shall make a reasoned award (the "**Award**"). Any Award made in any arbitration held pursuant to Clause 19 shall be final and binding on the Parties as from the date it is made, and the Parties agree and undertake to carry out such Award without delay.

19.3.4 This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.

### **19.4 Governing Law & Severance**

This Agreement, including non-contractual rights and obligations arising out of or in connection with this Agreement, shall be governed by the laws of [India], without recourse to conflicts of laws rules. If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement, unless such above mentioned contravening provision relates to a material part of this Agreement and / or is not severable, in which case, the whole Agreement would be terminated by way of the parties' agreement or an arbitral award.

## **20 FORCE MAJEURE**

### **20.1 Excused Performance**

Each Party shall be excused from performance and shall not be considered to be in default with respect to any obligation hereunder, except the obligation to pay money in a timely manner, if and to the extent that its failure of, or delay in performance is due to an event of Force Majeure. An event of force majeure means an occurrence, circumstance and/or continuation of an act of God or an event that is beyond the control of the Affected Party and was unforeseeable at the time of occurrence, and may include:

20.1.1 Fire, flood, lightning, storm, typhoon, tornado, earthquake, landslide, subsidence, washout, pandemic health issues or epidemic or similar acts of God;

20.1.2 War, hostilities (whether war to be declared or not), invasion, act of foreign enemies, riots, civil war;

20.1.3 rebellion, revolution, insurrection, or military or usurped power (defined as "**Force Majeure**")

### **20.2 Notice**

The Party affected by the event of Force Majeure (the "**Affected Party**") shall give notice of any event of Force Majeure to the other Party as soon as reasonably practicable, but not later than five (5) business days after the date on which it knew or should reasonably have known of the commencement of the event of Force Majeure. Such notice shall include full particulars of the event of Force Majeure, its effects on the Affected Party and the remedial measures



proposed. The Affected Party shall give the other Party regular (and not less than monthly) reports on the progress of those remedial measures and such other information as the other Party may reasonably request about the event of Force Majeure. The Affected Party shall also give notice to the other Party of:

- 20.2.1 the cessation of the relevant event of Force Majeure; and
- 20.2.2 the cessation of the effects of such event of Force Majeure on the performance of its rights or obligations under this Agreement, as soon as practicable after becoming aware of each such cessation.

In the event the Affected Party fails to provide the written notices required under this Clause 20.2 within the time periods specified therein, such Party shall forfeit its right to claim such specific occurrence or event constitutes an event of Force Majeure under this Agreement.

### **20.3 Obligation to Mitigate**

20.3.1 To the extent not prevented by an event of Force Majeure, the Affected Party shall continue to perform its obligations pursuant to this Agreement. The Affected Party shall use its reasonable efforts to mitigate the effect of any event of Force Majeure as soon as practicable.

20.3.2 The Affected Party shall be excused from the performance or punctual performance of its obligations under the Agreement for so long as the relevant event of Force Majeure continues.

### **20.4 Burden of Proof**

20.4.1 In the event that the Parties are unable in good faith to agree that an event of Force Majeure has occurred or performance hereunder is excused as a result thereof, the Parties shall submit the dispute for resolution pursuant to Clause 19 and the Party claiming relief from Force Majeure shall have the burden of proof as to whether such Force Majeure has occurred and whether performance hereunder is excused as a result thereof.

20.4.2 If the performance of the Agreement is substantially prevented, hindered or delayed for a single period of more than 90 days or an aggregate period of more than 120 days, whichever occurs earlier, on account of one or more events of Force Majeure during the currency of the Agreement, the Parties will attempt to develop a mutually satisfactory solution, failing which either Party may terminate the Agreement by giving a thirty (30) days' notice to the other Party.

20.5 The Seller acknowledges that it is aware of all Applicable Laws resulting from and relating to the pandemic COVID-19. Accordingly, in addition to the Seller agreeing to comply with all such Applicable Laws and notwithstanding anything to the contrary, it shall not be entitled to claim COVID-19 as a Force Majeure event, and an excuse for non-performance of work unless such Applicable Laws or rules/ regulations/guidelines/directives imposed by a Governmental Authority, that are more onerous than the Applicable Laws or rules/regulations/guidelines/directives existing as on date of this Agreement. Further, in the event of imposition of more onerous Applicable Laws or rules/regulations/guidelines/directives than those existing as on date of this Agreement, which prevents the Seller from carrying out its obligations as agreed herein, Seller shall be entitled to claim COVID 19 as a the Force Majeure event. Seller further agrees that it shall in addition to its obligations under this Clause 20, provide all documents evidencing the imposition of such more onerous Applicable Laws or rules/regulations/guidelines/directives.

## **21 CHANGES**

### **21.1 Purchaser Requested Changes**

The Purchaser may, at least thirty (30) days before the shipment date, direct changes within the general scope of this Agreement, including additions, deletions, revisions or other changes such as: (a) changes to the specifications, (b) additions to or deletions from the quantities of ERS ordered, (c) changes to the Purchaser's desired date(s) of delivery (each a "**Change**"). If the Purchaser so desires to direct one or more Changes, it shall submit a change request to the Seller in writing. Within ten (10) Business Days after its receipt of any such request, the Seller shall submit a detailed proposal to the Purchaser stating (x) the increase or decrease, if any, in the price of any ERS which would

result from such Change, and (y) the effect, if any, upon the delivery schedule by reason of such proposed Change. The Purchaser shall have five (5) days from receipt of Seller's detailed proposal to accept or reject in writing the Seller's proposal in relation to the requested Change. If the Purchaser agrees with the Seller's proposal, the Purchaser and Seller shall execute a change order reflecting the requested Changes and proposed adjustments, if any, in the prices of the ERS and the delivery schedule. In the event the Purchaser disagrees with the Seller's proposal, the Purchaser shall promptly notify the Seller that the Purchaser has decided to withdraw its requested Change. Should the Purchaser fail to respond to the Seller in writing within the foregoing five (5) days period, the Purchaser shall be deemed to have withdrawn its requested Change.

**21.2 Changes Caused by a Force Majeure**

- 21.2.1 If an event of Force Majeure occurs that adversely affects the Seller's delivery obligations hereunder and provided that the Seller complies with the terms and conditions of Clause 20, the Seller shall be entitled to a change order reflecting an extension of the delivery date, subject to the corresponding extension of time granted to the Purchaser if it is affected by such event of Force Majeure, to the extent of the actual and verifiable delay in delivery solely due to such event of Force Majeure, and the delivery schedule shall be updated to reflect such change order.
- 21.2.2 In the case of an event of Force Majeure, the Seller must provide written notice to the Purchaser of its intent to request a change order within seven (7) days; after the Seller advises the Purchaser of an occurrence of an event of Force Majeure. The Purchaser shall within seven (7) days from the receipt of the notice provided by the Seller, accept or reject the request for the change order in writing. Should the Purchaser fail to respond to the Seller in writing within the foregoing seven (7) days period, the Purchaser shall be deemed to have rejected the Seller's request for the change order.
- 21.2.3 If the Purchaser accepts the Seller's request, the Seller and the Purchaser shall execute the change order, outlining, with reasonable specifications, the requested Changes within seven (7) Business Days after the acceptance of the notice by the Purchaser.

**22 INTELLECTUAL PROPERTY**

- 22.1 Seller represents that it owns and/or has valid rights to all Intellectual Property rights in the ERS being supplied hereunder.
- 22.2 Seller grants to and/or procure for Purchaser an irrevocable, non-exclusive, worldwide, perpetual, royalty-free license, with the right to grant sublicenses, to use Intellectual Property rights in the ERS to use the ERS.

**23 MISCELLANEOUS**

**23.1 Notice**

- 23.1.1 Any notice or other information required under or in connection with this Agreement to be given by either Party to the other Party, must be in writing and may be given by courier, facsimile transmission, email or comparable means of communication, to the other Party at the following address:

**TO THE SELLER:**

\_\_\_\_\_

Attention: \_\_\_\_\_  
Email: \_\_\_\_\_

**TO THE PURCHASER:**

IndiGrid Trust Limited, 101, First Floor, Windsor , Village Kole, Kalyan, Off CST Road, Vidyanagari Marg, Santacruz (East), Mumbai , Maharashtra -400098, India

Attention: Rahul Bhadoria  
Email: rahul.bhadoria1@indigrid.com

- 23.1.2 Any notice or other information given by courier shall be deemed to have been given on signature of a delivery receipt or on the fifth (5th) day after the envelope containing the same was so sent by courier, and proof that the envelope containing any such notice or information was properly addressed and sent by courier and that it has not been so returned to the sender.
- 23.1.3 Any notice or other information sent by facsimile transmission or e-mail or any other comparable means of communication (with confirmation of transmission) shall be deemed to have been duly given on the next business day after transmission.
- 23.1.4 Service and any legal proceedings concerning or arising out of this Agreement shall be effected by causing the same to be delivered to the Party to be served, at its registered office, or to such other address as may from time to time be notified in writing by the Party concerned.

### **23.2 Legal Relationship**

- 23.2.1 This Agreement does not in any respect make Seller an agent or a partner of Purchaser, nor does it establish any joint venture between the parties or authorize Seller to transact any business in the name of Purchaser or to incur any obligation or liability for or on behalf of Purchaser.
- 23.2.2 Each Party confirms it is acting on its own behalf and not for the benefit of any other person.

### **23.3 Construction**

If any provisions of this Agreement shall be found unenforceable under any particular law, such provisions shall be of no force and effect and this Agreement shall be construed as if such provisions were not contained herein. In the event that any material provision of this Agreement shall be stricken or declared invalid, the Parties shall use their best efforts to negotiate a mutually satisfactory amendment to this Agreement to replace the material provision declared to be invalid or in conflict with any law and replace the same by mutually acceptable provisions, which, being valid, legal and enforceable, come closest to the intention of the Parties underlying the invalid or unenforceable provision.

### **23.4 Headings**

The provisions, headings and paragraphs contained in this Agreement are for general reference and guidance and shall not be conclusive as to the meaning or interpretation of this Agreement.

### **23.5 One Instrument**

This Agreement has been executed in two (2) counterparts, each of which shall be deemed an original, and each of which shall constitute one and the same instrument. The Agreement shall not be binding upon the Purchaser until a copy, signed by the Seller, is signed by and executed by the Seller.

### **23.6 Waiver**

Failure or delay of either Party at any time to require performance of any provision of this Agreement shall not affect the right to require full performance thereof at any time thereafter and the waiver by either Party of a breach of any provision shall not be taken or held to be a waiver of any subsequent breach thereof or as nullifying or restricting the effectiveness of such provision.

### **23.7 No Verbal Agreements or Changes in Agreement**

It is mutually agreed by the Parties that no amendment or variation of this Agreement shall be effective unless it is in writing and duly executed by both Parties hereto.

### **23.8 Agreement not Assignable**

Seller shall not transfer or assign the same, or any part thereof or any rights or responsibilities there under without the prior written consent of Purchaser.

**23.9 No Third Party Beneficiaries**

Any agreement herein contained, express or implied, shall be only for the benefit of the parties to this Agreement and their respective successors and permitted assigns, and such agreements shall not inure to the benefit of any other party, whomsoever, it being the intention of the parties to this Agreement that no one shall be deemed to be a third party beneficiary of this Agreement. Notwithstanding anything to the contrary, all provisions of this Agreement shall be considered to benefit the Purchaser, its affiliates and Indigrid Investment Managers Limited.

**23.10 Entire Agreement**

This Agreement, including and together with any related annexures, sets forth the entire agreement and understanding between the Parties with respect to the subject matter hereof and supersedes and cancels all earlier discussions and negotiations of understandings, agreements, representations, warranties, whether written or oral, express or implied, between them.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed by their duly authorized and empowered officers or Representatives as of the date first above written.

[ **SELLER NAME** ]

By:

Name:

Title:

**Parbati Koldam Transmission Company Limited**

By:

Name:

Title: