

## SPECIAL TERMS & CONDITIONS (STC)

**These Special Terms & Conditions (STC) forms an integral part of Contract [\*] dated [\*] executed between [\*] (“[\*]”) and [\*] (“Contractor”) for execution of Scope of Works and other obligations as provided under the Contract Documents and amends the terms and conditions provided under the General Terms & Conditions (“GTC”) as per the agreements contained herein.**

### **1. Defined Terms (Article 1.1 of GTC):**

Unless the Contract requires/ provides otherwise, the following words shall have following meanings:

**“ABG”** has the meaning given to it in Article 5.1 of STC

**“Applicable Clearance”** shall mean all the approvals, permits and licenses that are required to be maintained by the Contractor for the due performance of this Contract.

**“Contractor’s Equipment”** shall mean all plant, equipment’s, machinery, tools, apparatus, appliance or things of every kind required in or for installation, completion and maintenance of Projects that are to be provided by the Contractor.

**“Commercial Operation Date (COD)” or “Completion Date”** means the date on which the construction of Project is physically complete and the Project is ready for charging/Commissioning to start commercial operations.

**“Commissioning”** means the date on which the project is ready for Commercial Operations.

**“CPBG”** has the meaning given to it in Article 5.2 of the STC

**“Deemed Operational Acceptance”** means in case of delay in commissioning of Project beyond 3 (Three) months from date of COD of the Project due to reasons not attributable to Contractor, then same is considered as Deemed Operational Acceptance.

**“Effective Date”** has the meaning given to in Article 2 of Contract

**“L 2 Schedule” or “Completion schedule”** is the schedule of timelines within which the Contractor shall execute the Works/Supplies and which has been agreed and appended as Appendix 2.

**“Latent Defects”** means the defects inherently lying within the material or arising out of design deficiency, which do not manifest themselves during the Defect Liability Period defined in this GTC Clause 14.2

**“Master Drawing list”** shall mean the list of drawing which are required for construction and completion of Project

**“Notice to Proceed”** means a Notice to Contractor for individual Sub-station, upon legal land acquisition and access thereto by [\*], in all respect and mentioning start date of individual Sub-station/Site.

**“Owner”** shall have the meaning ascribed to such term in Recital A of the Contract

**“Operational Acceptance”** means operational acceptance of the Project by [\*], which shall occur upon such Project being successfully operated, without any failures arising due to quality &

workmanship during such operation, for a continuous period of 30 days from COD. In case of delay in commissioning of Project beyond 3 months from date of COD of Project due to reasons not attributable to Contractor, then same is considered as Deemed Operational Acceptance.

**“Project”** shall mean **“[\*]”** as per RFP and subsequent amendments issued along with enquiry documents

**“PBG” or “Performance Bank Guarantee”** has the meaning given to it in Article 5.3 of STC

**“Project Documents”** Shall mean the documents which are required for construction and completion of Project

**“[\*] Supplied Material” (RSM)** means items supplied by **“[\*]”** under this Contract.

**“Site”** means the area where the Project is to be constructed and the Contractor has to perform the Scope of Work.

**“Scope of Work”** means the Scope of Work to be performed under this Contract and described in Article 2 of this STC

**“State Government”** Shall mean the state Government of **“[\*]”** where works are to be executed and Project to be constructed

**“[\*] Personal”** means each individual and the collective group of **“[\*]”**’s employees, other contractors who are engaged for testing, liaisoning, Inspection etc., for same scope of work being executed by Contractor (“Other Contractor”), licensees, invitees, advisors, Consultants, Owner’s engineer, agents, officers and representatives, who are provided and/or utilized by **“[\*]”** for the performance of its obligations under this Agreement and any other personnel notified to and agreed by the Contractor by **“[\*]”** as **“[\*]”**’s personnel

**“Technical Specifications”** shall mean the specifications of the Scope of Work which shall be strictly as per RFP of Power Finance Corporation and technical MOM agreed between **“[\*]”** and the Contractor and attached hereunder as Appendix 5

## **2. “SCOPE OF WORK”: Article 2.1 of GTC shall be read as follows:**

The scope of work/supplies under the Contract shall be the entire supplies and installation of the supplies to be performed for the completion and commissioning of the Project (hereinafter, referred to as the **“Scope of Work”** or **“Supplies”**) to be carried out by the Contractor in accordance with the terms of this Contract, RFP, RFP amendments & clarification, Technical Specification, section project and technical closure MOM. The Scope of Work includes but not limited to the following:

- 2.1.1 The Scope of the Work to be carried out by the Contractor includes civil works, erection, testing & commissioning of complete Project.
- 2.1.2 Site preparation based on design and drawings as approved by **“[\*]”**, including mobilization of manpower, machineries, labours, consumables, tools and plants required for construction of civil works and erection of substation equipment of the size and scope of the Project
- 2.1.3 Spares shall be provided by the Contractor if list provided by **“[\*]”**. Contractor shall provide

necessary tools and tackles for erection, testing and commissioning on returnable basis.

- 2.1.4 The complete responsibility of the Contractor is to deliver and unload the materials/equipment as per the Scope of Work till the location of the Project where the material is required to be installed including removal of obstruction, strengthening of bridges, widening of roads, passing tunnels (except the removal of buildings), etc. during transportation. If any design change is required to cater these hindrances the same shall be in the scope of the Contractor without any price implication to [\*].
- 2.1.5 Contractor to ensure the software used in SACDA is latest version and the Contractor shall support the service for minimum period of 10 years. Further, Contractor should ensure that the software is in compliance with the minimum requirement of cybersecurity norms against malware protection.
- 2.1.6 Contractor shall provide training at site as per the list of equipment provided by [\*] as per technical MOM. Any lodging & boarding facilities of [\*]'s representative for such training shall be borne by [\*]
- 2.1.7 Complete stores, site offices, communication medium, etc., shall be in the scope of Contractor for construction activities of its scope. Contractor have to provide facility for minimum Six (6) [\*]'s engineer seating arrangement separately at respective Site office for [\*] representative during execution stage of work along with necessary housekeeping arrangement including the operational cost till project completion.
- 2.1.8 Construction power and water for executing the Scope of Work of Contractor shall be in the Contractor's account.
- 2.1.9 Adherence to the "Insurance clause" as mentioned Clause No: 10 of STC
- 2.1.10 Supply of foundation bolts, etc. as per the requirement of the Project.
- 2.1.11 Supply of testing equipment required as per the requirements stated in Technical Specifications, if any.
- 2.1.12 The complete responsibility of technical support and co-ordination of drawings for approval with the existing substation owners shall be in the scope of Contractor. Whenever required for the timely execution of the Scope of Works, the Contractor shall depute the manpower for technical support and co-ordination
- 2.1.13 All other items/material/Scope of Work which are required for successful completion and commissioning of the said Project in accordance with this Contract, unless specifically excluded shall deemed to be included in the Order Value and in the scope of the Contractor.
- 2.1.14 Use of SPEX: Contractor shall use [\*] ([\*] Planning and excellence tool), for all planning activities, dashboards, DPR, WPR etc. [\*] training of Contractor's PMO and other staffs (duly approved by [\*]) will be organized by [\*] at least 30 days before execution at site. Roles & Responsibility has been attached as Annexure 12
- 2.1.15 Use of [\*]- Contractor shall use [\*] ([\*] Sourcing tool) for procurement and service fulfillment activities.
- 2.1.16 For effective utilization of [\*] and [\*], [\*] shall own all the licensing requirements and shall provide the necessary training to the Contractor at free of cost.

**Article 2.2 of GTC shall be read as follows:**

- 2.2 The Scope of Work/Supplies must be performed by the Contractor, with the Contract and other commercial understandings between the Parties with regards to the Scope of Work under this Agreement

**3. "COMPLETION SCHEDULE": Article 3.3.1. of GTC shall be read as follows:**

- 3.1 The Contractor shall commence the Scope of Works/Supplies immediately from the Effective Date in accordance with the terms and conditions of the Contract Documents. The execution period of complete Project shall be from Effective Date to Completion Date i.e., [\*] and accordingly L 2 Schedule detailing shall be prepared mapping the requirements of each activity. Completion of the Scope of Work including testing and commissioning of the Project shall be done on or before [\*] by the Contractor.
- 3.1.1 NTP shall be issued by [\*] as per L2 schedule.
- 3.1.2 The "Deemed Operational Acceptance" shall be considered to happen in case of delay in commissioning of Project by 3 (Three) months from date of COD of Project due to reasons not attributable to Contractor, then same is considered as Deemed Operational Acceptance. In such case, Contractor undertake to conduct Commissioning tests as per the requirements of this Contract, whenever the Project is ready for commissioning beyond COD. Then necessary manpower shall be provided by the Contractor for the same without any cost implication to the [\*].
- 3.1.3 All payments, Bank Guarantees, Defect Liability Period and any other financial implications related to Operational Acceptance shall be linked to Deemed Operational Acceptance in case commissioning is delayed as mentioned above.
- 3.1.4 In case of delays not attributable to the Contractor, the Contractor shall make their best effort to complete the Project within stipulated timelines. [\*] has clearly indicated that the completion time shall be strictly adhered to by both the Parties and in case of delay from either end; both Parties will put their best efforts to complete the Project/ Scope of Work by the scheduled Completion Date.

**4. ORDER VALUE & PAYMENT TERMS- Article 4.1.1 of the GTC shall be read as follows:**

- 4.1.1 In consideration for the Contractor performing its obligations in relation to the Scope of Work, [\*] shall pay to the Contractor Order Value as mentioned in the Article 4 of the Contract. However, Taxes and Duties are further given below:

**Taxes and Duties:**

- a. The Order Value is inclusive of all applicable taxes, duties, cess and custom duty, etc. applicable as on the Effective Date including the Goods & Service Tax ("GST"). Presently GST is considered @ 18%. However, GST shall be paid to the Contractor at actual against the submission of the GST invoice and applicable necessary supporting documents as per Appendix 7. TCS on supply value shall be paid extra on documentary evidence. BOCW cess is included on service scope only.
- b. Any statutory variation/amendment in the applicable taxes and duties and / or imposition / exemptions of any new tax / duty / levy after Effective Date on the items shall be [\*]'s account at actuals, provided that the complete breakup with taxes and duties shall be shared by Contractor in billing Breakup including bought out items with complete supporting documents in original.
- c. Any increase/decrease in Goods & Service tax beyond the Scheduled Completion Date shall be to the Contractor account, if the delay in completion of Works is due to reasons attributable to

- the Contractor. If the reason for delays are attributable to [\*], any increase in GST shall be to [\*]'s account
- d. In case of any change in legislation after the Effective Date resulting in tax exemption/ benefit/ reduction, the Contractor shall pass on to the [\*] all benefits of tax exemptions, tax concessions, tax remissions, tax rebates, set off, credits etc. pertaining to all Indirect Taxes (including those arising under the Foreign Trade Policy) applicable in respect of or arising out of the performance of all or any of the obligations of the Contractor. Contractor will be responsible for providing to the [\*] all the necessary documentation, wherever applicable, to enable the [\*] to claim the benefit of any exemptions, concessions, remissions, rebates, set off, credits or to claim any other benefits pertaining to all Indirect Taxes.'
  - e. The Contractor is also responsible to upload the details on the GST portal and undertake all other requisite compliances as per GST act to enable [\*] to avail input tax credit. However, in case any credit, refund or other benefit is denied or delayed to [\*] due to any non-compliance by the Contractor (such as failure to upload the details of the sale on the GSTN portal, failure to pay GST to the Government), then [\*] shall withhold the amount of GST paid to the Contractor till the time the compliance is done by the Contractor
  - f. All the necessary documents pertaining to taxes and duties, as required with Invoice as per Appendix 7 and under this Contract, should be complete in order to process the bills and release the payments
  - g. It is expressly agreed between the Contractor and [\*] that they would provide all documents as may be reasonably required by the other party to support the claim for refund/ input tax credit as per GST Act.
  - h. In case of imported items all necessary taxes and duties at the country of origin including import duties shall be borne by Contractor
  - i. [\*] shall be responsible to pay only such GST that will be appearing on the invoice raised by the Contractor
  - j. Tax deduction at source (TDS) as applicable shall be deducted from the Contractor's invoice as per Applicable Law and relevant certificates in relation to the same shall be furnished to the Contractor by [\*]
  - k. Contractor shall be responsible for the generation of e-way bill for the delivery of all materials/equipment's upto the site location, from the National E-way bill system or any other relevant mechanism in accordance with the provisions of GST Act and the Rules made there under the Contractor shall ensure the following:
    - i. Transporter should have either GSTIN or required Transporter ID generated from the portal by registering themselves. This will be applicable if the Transporter is generating E-way bill on behalf of Contractor
    - ii. Timely generation of e-way bill before movement of goods starts, up to the site locations.
    - iii. Timely delivery of material within the validity of e-way bill or in exceptional case, validity to be extended/fresh e-way bill to be issued, as applicable.
    - iv. Update the details of conveyance in e-way bill where movement to be caused by different conveyance if applicable as per E-way bill rule.

#### **Payment Terms:**

- i. **Stage-1:** 10% (Ten percent) of the Order Value shall be paid as Advance (Advance Payment) within 30 days after site mobilization and upon receipt of following documents:
  - a. Submission of Advance Bank Guarantee ("ABG-1") having 10% (Ten Percent) of the Order Value valid till Operational Acceptance plus 3 months additional claim period. ABG shall be submitted within 14 days from the Effective Date of the Contract.

- b. Submission of Contract Performance Bank Guarantee (“CPBG”) having 10% (Ten Percent) of the Order Value, valid till Operational Acceptance plus 3 months additional claim period. CPBG shall be submitted within 14 days from the Effective Date of the Contract
  - c. Submission of Pro-forma Invoice
  - d. Acceptance of the Contract
  - e. Appointment of Contractor’s Representative, its key personnel along with Project and Organization Organogram.
  - f. Approved L2 schedule by [\*] authorized representative
- ii. **Stage-3:** 80% (Eighty percent) of Order Value shall be paid on pro-rata basis as per the mutually agreed billing schedule through irrevocable Letter of Credit (LC) of 180 days usance period (With 30 days usance to Contractor’s A/c and 150 days in [\*]’s A/c) upon receipted Lorry Receipt (LR) of Materials/ Equipment/ Scope of Work (pro-rated) and submission of other supportive documents:
- a. Other supporting documents as per Appendix 7.
- iii. **Stage-4:** 10% (Ten percent) of Order Value, shall be paid upon operation acceptance and upon receipt of following documents:
- a. Submission of Performance Bank Guarantee (“PBG”) having 10% (Ten Percent) of the Order Value, valid till Defect Liability Period plus 3 months additional claim period. PBG shall be submitted before expiry of CPBG.

#### **Payment Procedure:**

Payment Schedule/Billing Break-up for Payments:

To facilitate the payments after Advance Payments, the billing break-up of the Order Value attached as Appendix-1 (“Billing Break-Up”) shall be used. Any payment under the Contract, subsequent to the Advance Payments, shall be made upon receipted LR by the [\*]’s Representative at site.

- b. All commercial invoices shall be accompanied with the supporting documents as mentioned above.
- c. Currency of Payment: The Order Value shall be paid in Indian Rupees (INR).
- d. All the Advances shall be adjusted with Running Account (RA) bill payments on pro-rata basis.
- e. Upon request of Contractor, ABGs shall be reduced pro-rata basis for the Quarterly (3 Months) period to the tune of supplied/Executed portion.

#### **LC Methodology:**

- i. LC format shall be mutually agreed between the parties. All Bank charges (In respect of LC Charges) pertaining to beneficiary’s bank (Contractor’s Bank) shall be on account of Contractor and all other bank charges pertaining to applicant’s bank ([\*]’s Bank) shall be on A/c of [\*].
- ii. Confirmation charges, Discrepancy charges attributable to Contractor of LC and other related documents shall be borne by Contractor. Any expenses towards extension of LC due to the default of Contractor shall be to the Contractor’s A/c.
- iii. LC Discounting rate should be discussed mutually by [\*] and Contractor. In case Contractor’s discounting rate is more than that of [\*], then [\*] shall facilitate the Contractor for discounting

- of the LC. In the interest of stringent timelines, [\*] and Contractor to agree on interest rates within 10 days, post which Contractor offered rates will be accepted.
- iv. Usance period starts from the date of Bill of Exchange (BOE) which shall be subsequent to the date of receipted LR of Materials/Equipment/Scope of Work (Pro-rata) at site
  - v. Negotiation/discounting of bills, franking/stamp duty charges under LC shall be in scope of Contractor.
  - vi. There shall be no GST added to Contractor in the interest part. For the interest part pertaining to credit period of [\*], discounting bank shall directly approach the LC opening bank/[\*] and settle the same directly without any applicability of GST. In case there is an implication of GST on interest, parties shall bear GST for their respective scope.
  - vii. Any certificate issued or payment released shall neither be considered as conclusive evidence of the satisfactory performance of the Scope of Work covered under the Contract, whether wholly in part or in part, nor shall any Certificate or Payment be construed as acceptance of defective or improper works or as relieving Contractor from their responsibility under the Contract.
  - viii. For Running bills, LC shall be established progressively two months prior to equipment delivery (GIS ) as per mutually agreed L2 schedule, for the balance portion quarterly LC to be established as per mutually agreed L2 schedule.

The aforementioned LC shall be issued from the following banks.

- a) By a Public Sector Bank located in India; or
- b) Scheduled Indian Bank or any other bank mutually acceptable to Parties

## **5. Bank Guarantees -Article 5.1. of GTC shall be read as follows:**

**5.1** In order to ensure and guarantee the due performance of its obligations and execution of the Scope of Work to the under this Agreement, the Contractor shall submit irrevocable and unconditional bank guarantee(s), as acceptable to [\*], , as provided below ("Bank Guarantee(s)") in accordance with Article 4 of this STC:

**5.1.1 Advance Bank Guarantees (ABGs)** - The Contractor shall submit ABG-1 & ABG-2 in accordance with Article 4.2 of STC for release of Advance Payment. The ABGs shall be irrevocable, unconditional and irreversible and in a format provided by [\*] in Appendix 6. The value of ABGs shall be proportionally reduced on quarterly basis for the amount adjusted against Advance Payment.

ABG shall be submitted within Fourteen (14) days from the Effective Date of the Contract. The validity of the ABGs shall be extended by the Contractor periodically (if required by [\*]) till the final recovery of the Advance Payments or occurrence of Operational Acceptance/Deemed Operational Acceptance in accordance with the Contract, whichever is later.

**5.1.2 Contract Performance Bank Guarantee (CPBG)-** The Contractor shall submit CPBG in accordance with Article 4.2 of these STC in order to guarantee the performance of Contractor's obligations under the Contract Documents by the Contractor. The CPBG shall be irrevocable, unconditional and irreversible and in a format provided by [\*] in Appendix 6

The validity of the CPBGs shall be extended by the Contractor periodically (if required by [\*]) till the actual date of Operational Acceptance/ Deemed Operational Acceptance of Project in accordance with the Contract.

The CPBGs shall be unconditional, irrevocable and irreversible and in format provided by [\*] in Appendix-6

**5.1.3 Performance Bank Guarantee (PBG)-** the Contractor shall submit an irrevocable and unconditional bank guarantee having value equivalent to 10% (Ten Percent) of the total Order Value in order to guarantee the performance of Contractor's obligations during the Defect Liability Period, valid till 24 months from the date of Operational Acceptance or Deemed Operational Acceptance plus 3 (Three) months additional claim period. Further if the DLP is required to be extended in accordance with Article 14.2 of GTC provided in Contract Documents, for any part of the Scope of Work, the PBG equivalent to 10% of the Order Value of that part only shall be extended for the period of extended DLP for the said part. This PBG shall be submitted at least 15 (fifteen) days prior to the expiry of CPBG and release of retention payment (if any). In the event, the Contractor fails to submit the PBG by the period as specified above, [\*] shall have a right to encash / invoke the CPBGs and appropriate the amount so received. The validity of the PBG shall be extended by the Contractor periodically (if required) at the request of [\*] as per the requirements of the Contract. The PBGs shall be as per format provided by [\*] in Appendix-6.

In case of enforcement of the Bank Guarantee(s) by [\*], the Contractor shall forthwith reinstate the Bank Guarantee(s) to their respective original value, in case the contractor decided to continue the execution of Contract.

## **6. Obligation of Contractor: Changes to Article 6 of GTC are described below:**

Following changes are agreed under Article 6 of the GTC

### **a. Article 6.1.8 of the GTC shall be read as follows:**

**Timeframe for Submission of Documents:** Documents to be submitted in accordance with Article 6.1.8 of the GTC, shall be submitted with-in 15 (Fifteen) days from Effective Date

### **b. Article 6.1.10.d of the GTC shall be read as follows:**

ensure that Operational Acceptance is successfully completed and acceptance in writing of the same is obtained from [\*] based on the fulfilment of all criteria in this regard in accordance with the Contract provided such written approval is given within a period of 15 (fifteen) Days from the written request from the Contractor or revert for further requirements

### **c. Article 6.5.1 of the GTC shall be read as follows:**

The Contractor, its directors, officers, employees, agents and subcontractors (collectively the "Authorized Representatives") must comply with the anti-bribery laws namely, the Indian Prevention of Corruption Act, 1988 ("PCA"); and the United States Foreign Corrupt Practices Act, 1977 ("FCPA"), and the United Kingdom Anti-Bribery Act, 2010 ("Anti-Bribery Act") (collectively "Anti-Bribery Laws") all of which require that:

All other sub-Articles under 6.5.1 of GTC shall remain unaltered.

### **d. Article 6.8.3 of the GTC shall be read as follows:**



The Contractor shall prepare and furnish to [\*] the documents as per the Master Drawing List approved by [\*] for its approval/ review. Any part of the Scope of Work covered by and/ or related to the documents in the Master Drawing List shall be executed only after [\*]'s written approval. Such approval or comments by [\*] shall be provided as per timelines agreed in L2 schedule after submission of the documents. In the event [\*] neither approves nor comments in the given period, in such case the Contractor shall use suitable escalation matrix and continue to execute the Scope or Work or any part thereof accordingly.

**e. Article 6.10.a of the GTC shall be read as follows:**

keep and maintain accurate and systematic Project specific accounts and records in respect of performance of its obligation under the Agreement, in accordance with generally accepted accounting principles of India; and

**7. Obligations of [\*] -Article 7 of GTC:**

Following Sub Article is added under Article 7.1 of the GTC:

**Article 7.1.4:**

Notwithstanding anything to the contrary in the event [\*] fails to perform any obligations under this Agreement, any extension of time and cost pertaining to this condition may call for mutual alignment between [\*] and Contractor, after providing [\*] notice period of 14 days.

**8. Representation and Warranties (Article 8 of GTC):**

**Article 8.2.i shall be read as follows:**

The Contractor represents that it has examined the conditions of the Site and has obtained for itself, on its own responsibility, all information as may be necessary for completion of the Scope of Work including all necessary information as mutually agreed in Technical Closure MoM,RFP and its amendments as to the risks, contingencies and all other circumstances which may influence or affect the Order Value and its obligations under this Agreement and shall not be entitled to any adjustment of the Order Value or Scope of Work due to the conditions of Site, except as expressly provided in this Agreement. Any subsequent changes to the conditions in Technical Closure MoM and read with specifications shall be dealt in accordance with the Clause 21 of the The final prices are based on the Soil Investigation report provided by [\*].

**9. Representative (Article 9 of GTC) is detailed as below:**

As per Article 9.1 of GTC, [\*] shall within 14 (fourteen) Days from the date of Contract notify the Contractor.

As per Article 9.3.1, Contractor shall No later than seven 7 (seven) Days from the Effective Date, the Contractor shall notify [\*] in writing of the appointment and identity of the Contractor's Representative, along with the director's certificate/ power of attorney authorizing such person as the Contractor's Representative.

**10. Article 11 of GTC with respect to INSURANCE the following clause are added:**

- 11.6 The Contractor shall take necessary insurance policies of appropriate value so as to cover the all risks and perils required to be covered under this article and Article 11 of GTC of Contract Documents, excluding the insurance policies which is not specifically mentioned in this Contract and shall include, but not be limited to, cover for fire and allied risks, miscellaneous accidents, loss or damage in transit, theft, pilferage, riot and strikes and malicious damages,

- civil commotion, weather conditions, accidents of all kinds 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 and other costs till the equipment is delivered at Site.
- 11.7 The Contractor shall issue an EAR Insurance certificate copy of the insurance policy indicating that, the Owner's Lender banks (which is first loss of payee/principal beneficiary), Owner and [\*] shall be the Loss Payee in the policy for the Insurance settlement along with the Contractor. The obligation of Contractor shall also include the necessary documentation task, detailed process of claim filling to be done by Contractor in any such event of claim.
- 11.8 The Contractor shall amend the policy certificate copy as per point no. 10.2 above as and when required on the request of [\*] for inclusion of Banker's/ lender's / Trustees' name and other necessary clauses as mutually agreed related to the same as per the suggestion of the same.
- 11.9 Applicable insurances as follows (Contractor to submit the Insurances whichever is applicable under this Contract):
- a) **Cargo/Transit Insurance during Transport:** Covering loss or damage occurring, while in transit from the Contractor's or Subcontractor's works or stores until arrival at the Site, to the Contractor Supplied Items (including spare parts therefor) and to the Contractor's Equipment including intra site movements and warehousing. The sum to be insured shall be 115% of the Order Value.
  - b) **Erection All Risks Insurance (EAR):** Covering physical loss or damage to the Facility at the stores and site, along with addon coverage as mention in annexure with an extended maintenance coverage for the Contractor's liability in respect of any loss or damage occurring during the Defect Liability Period. The sum to be insured shall be 110% of the Order Value with 20% escalation clause for both.
  - c) **Third Party Liability Insurance:** Covering bodily injuries, disabilities, diseases or death suffered by third parties and loss of or damage to property occurring in connection with the Supply and Installation of the facilities along with cross liability coverage. The insurance to be taken for a sum should be for INR 5 Crores per occurrence with maximum of 10 occurrences. However, beyond 10<sup>th</sup> occurrence Contractor shall pay at actuals for every occurrence. Incase contractor fails to pay such amount to [\*], then [\*] shall have right to recover from any of the ongoing bills or retention or encash the BGs to settle the same.
  - d) **Automobile Liability Insurance:** Covering use of all vehicles used by the Contractor or its Sub-Contractors (whether or not owned by them) in connection with the execution of the Contract.
  - e) **Workers' Compensation:** Covering all claims applicable under the Workmen's Compensation Act 1923 or any amendment thereof and other Applicable Laws in respect of all the Contractor's Personnel.
  - f) **[\*]'s Liability:** In accordance with the requirements under Applicable Laws in India.
  - g) All Insurances shall have mandatory clause of terrorism.
- 11.10 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. The insurance shall be submitted by Contractor with-in 30 days from Effective date of Contract.

- 11.11 In the event of loss or damage, the Contractor shall be solely responsible to lodge the claims and settle the same. The Contractor shall proceed with repair or replacement of the goods without waiting for settlement of the claim. It is further clarified that neither extension of completion schedule nor any extra claim shall be admissible on account of insurance.
- 11.12 Copy of such insurance policies shall be submitted to [\*] prior to commencement of the Supply or release of advance payment.
- 11.13 Without limiting any of its obligations under the Contract, the Contractor, at its cost, shall arrange, secure and maintain all insurance policies as may be pertinent to the Scope of Work and obligatory in terms of Applicable Law to protect its interest and interests of [\*] against all perils detailed herein within thirty (30) days from signing of the Contract.

**Article 11.2 shall be read as follows:**

The Contractor shall insure its liability under Applicable Laws during the currency of the Agreement that any persons are employed by it or by its sub-contractor(s) in connection with the performance of its obligation under or pursuant to the Agreement

**11. Indemnity (Article 12 of GTC):**

**Article 12.1.a shall be read as follows:**

Any loss or damage to any third party property which arises out of or in consequence of negligent performance of its obligation under this Agreement or any part thereof and remedying of any Defects therein

**Article 12.1.c shall be read as follows:**

negligent performance/ non-performance of its obligations by the Contractor or any of its subcontractor;

**12. Warranty and Defects Liability -Article 14 of GTC:**

As per Article 14.2.1, Defect Liability period shall be 24 (twenty four) months from date of Operational Acceptance of Project.

**Article 14.2.2 shall be read as follows:**

If during the Defects Liability Period, any Defect is found, the Contractor shall promptly, in consultation and agreement with [\*] regarding appropriate remedy of the Defects and at the cost of the Contractor, repair, replace or otherwise make good such Defect as well as any damage to any part of the Scope of Work caused by such Defect and losses suffered by [\*] thereby excluding consequential damages, and shall ensure that the Scope of Work is in accordance with the requirements of this Agreement

**Article 14.2.6 shall be read as follows:**

If the Contractor fails to commence the work necessary to remedy such Defect or any damage to the material(s) caused by such Defect within 14 (fourteen) Days of notifying such Defect by [\*], or if after having so commenced fails to remedy the Defect in the manner provided in this Article 14 under this Agreement within a reasonable period of time, [\*] may, following notice to the Contractor, proceed to carry out such work either by itself or through any other person at the risk and costs of the Contractor. In addition to its obligation to remedy Defects hereunder, the Contractor shall also be responsible for all costs incurred by [\*] in connection with such Defects as costs of dismantling any Items, clearing it from the Site and returning such Items to the Contractor and such costs shall be paid to [\*] by the Contractor or may be deducted by [\*] from any amount

due to the Contractor or by enforcement of the Bank Guarantee(s).

**Article 14.2.8 shall be read as follows:**

In the event, during the construction period or during the Defects Liability Period, any Defect, poor quality is detected by [\*] or the Contractor or [\*]'s Personnel or regulatory authority, then the tests and rectification shall be done at the Contractor's cost and expense, within the time as provided by [\*]. Any contrary report shall not absolve the Contractor from its liability. Notwithstanding anything contained hereinabove, acceptance of such tests or rectification by [\*] shall not absolve or relieve the Contractor of any of its obligations under this Agreement.

**Article 14.4.1 shall be read as follows:**

If the Contractor fails to commence and proceed diligently with the remedy of any such defect within 14 (fourteen days) of receipt of notification thereof from [\*], [\*] may proceed to remedy such Defect(s) at the Contractor's expense provided that it notifies the Contractor of its intention to do so. The actual costs so incurred by [\*] shall be deducted from the Order Value or be paid by the Contractor to [\*]. Disputed matters arising under this Article 14 shall be resolved by the Parties in accordance with the provisions set out in the Agreement. This shall not extinguish the Contractor's liability under the terms and conditions of the Agreement.

**13. Liquidated Damages: Article 15.2 of GTC shall be read as follows:**

- 15.2 If the Contractor fails to achieve, for the reasons attributable to it, completion of work as per the prescribed timelines in the Completion Schedule, the Contractor shall pay to [\*] a sum as set out below ("Liquidated Damages") for such default and not as penalty, without prejudice to SPGVL's other remedies available under the Contract Documents.
- 15.2.1 In the event of delayed Completion of the Scope of Work under the Scope of Work of the Contract due to the reasons attributable to the Contractor, the Contractor shall be liable to pay LD @ 0.5% of the Order Value for each completed week of delay or part thereof subject to a maximum of 5% of the Order Value.
- 15.2.2 The Parties hereto agree that the Liquidated Damages mentioned above are an agreed genuine pre-estimate of the loss/ damage which shall be caused to [\*] due to non-completion of the Scope of Work in accordance with the terms of this Contract and the compensation contemplated is not by way of penalty.
- 15.2.3 The maximum value of LD (for Delay Liquidated Damages and Milestone Liquidated Damages) under the Contract shall be 5% of Order Value. However, if there is any overall delay in the project completion, final Liquidated damage shall be imposed based on the overall incurred delay only.

**14. Assignment and Sub-contracting (Article 17 of GTC):**

**Article 17.2 shall be read as follows:**

The Contractor shall neither have a right to assign nor novate its' rights under the Agreement without prior written consent of [\*].

**15. Force Majeure (Article 18 of GTC):**

**Article 18.2 shall be read as follows:**

The term "Force Majeure" means an exceptional event or circumstance including but not limited to:

18.2.a: Act of God, including, but not limited to drought, fire and explosion (to the extent originating from a source external to the Site), earthquake, volcanic eruption, landslide, flood, cyclone, typhoon,

tornado, industrial level strikes epidemic, pandemic, or exceptionally adverse weather conditions which are in excess of the statistical measures for the last 30 (thirty) Years.

All other Sub-Articles shall remain unchanged

**Article 18.3.f shall be treated as deleted.**

**Article 18.4 shall be read as follows:**

If a Party is prevented, hindered or delayed from or in performing any of its obligations under the Agreement by a Force Majeure event ("Affected Party"), then it shall as soon as reasonably practicable notify the other Party of the occurrence of such event and the circumstances thereof including the obligations the performance of which could be delayed or prevented thereby, but no later than 21 (twenty one) Days after the date on which the Contractor knew or should reasonably have known of the commencement of the Force Majeure event. For the avoidance of doubt, it is clarified that if the Affected Party fails to provide the notice within the time specified in this clause 18.4, the relief on account of the occurrence of the Force Majeure event shall only be available to the Affected Party from the date on which the Affected Party actually notifies the other Party.

Notwithstanding anything contained herein, the Contractor shall submit all the relevant documents and evidences (duly certified by the relevant government departments and / or government authorities) which proves and establishes the occurrence of such event of the Force Majeure within 30 (thirty) Days from the date on which the Force Majeure event stops. In case the relief under this Article is claimed by the Contractor, on the basis of which Owner/ [\*] claims relief with the competent authority, but the same is rejected either fully or in part by such competent authority, then the Contractor will not be entitled to the relief under this Article to the extent it is rejected/denied. The Parties agree to put in best efforts, jointly while seeking relief with the competent authority. Both the parties shall mutually agree on expediting cost required to meet the revised Completion Date.

**Article 18.9 shall be read as follows:**

After the Force Majeure event has been cured, when the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party notice to that effect and shall, promptly and/ or upon written instruction by [\*], resume performance of its obligations hereunder. The Contractor agrees and undertakes that after resumption of the Scope of Work, it shall make good any Defect in, deterioration or loss in the Agreement that may have occurred during the suspension period due to such Force Majeure events. However, cost and time impact due to any Defect in, deterioration or loss of the work under Scope of Work that may have occurred during the suspension period due to Force Majeure shall be mutually agreed between [\*]'s Representative and the Contractor's Representative within a period of 14 (fourteen) Days. It is clarified that the no Party shall be responsible or liable for any such cost, Defect, deterioration as a result of Force Majeure events which are subject to the insurances listed in clause 11

## **16. Suspension (Article 19 of GTC)**

**Article 19.1 shall be read as follows:**

[\*] may, at any time, but providing not more than minimum 7 (seven) Days' notice to the Contractor, suspend or reinstate execution of performance the whole or any part of the Scope of Work by the Contractor. The aggregate period of suspension or reinstatement shall not be more than 30 (thirty) Days. Any orders for suspension or reinstatement of the Scope of Work will be issued by [\*] to the Contractor in writing. The time for completion of the Scope of Work will be extended for a period equal to duration of the suspension or as agreed between [\*] and Contractor. In the event of the Suspension is for more than 30 days, then the Contractor shall also be entitled to equitable cost compensation based on mutually agreed terms and condition between the Parties

**Addition of new Sub Article 19.4:**

Suspension by Contractor: Contractor may suspend performance of its obligations under the Contract if (i) the [\*] is in delay with any payment or in providing any payment security required under this Contract for more than 60 days

**17. Limitation of Liability (Article 20 of GTC)**

**Article 20.2 shall be read as follows:**

Neither Party shall be responsible for any indirect or consequential damages and for any loss of revenue, loss of profit, loss of use, loss of interest, costs of capital or loss resulting to any other person or for any financial or economic loss, resulting from any reason attributable to the performance of this Contract by such Party

**18. Termination (Article 21 of GTC)**

**Article 21.1.2 shall be treated as deleted**

**Article 21.1.3 shall be read as follows:**

In the event that the termination of the Regulatory Authority (TSA) is a result of material breach of the Contract, under this Agreement by the Contractor or any other person that the Contractor is responsible for including any sub-contractor appointed by the Contractor, then the Contractor shall not be entitled to any further payments under this Agreement

**Article 21.2.2.g shall be treated as deleted**

**Article 21.2.4 shall be read as follows:**

[\*] may subsequent to the termination pursuant to this clause 21.2, expel the Contractor and/or complete all obligations of the Contractor under this Contract, or employ a third party in this regard. If, the cost of procuring such completion of the services from a third party and any incidental expenses incurred by [\*] in relation to such procurement is in excess of the price of the obligations of the Contractor to be performed under this Agreement, then, such differential shall be payable by the Contractor to [\*] However, the Contractor is entitled to be paid for the Scope of Works completed after recovery of the cost incurred by [\*] for such termination.

**Article 21.4.1 shall be read as follows: Surviving Obligations**

The Parties agree that termination shall not relieve the Contractor of its obligations with respect to the confidential information and surviving clauses set forth in the Agreement. In case of termination of Agreement, [\*] shall have the right to recover the cost of unutilized raw material, Scope of Work in progress or lying at the Contractor's premises for which [\*] has made the payments to the Contractor or the Contractor's behalf; The Contractor shall transfer the ownership of the same at Zero value to [\*]

**19. Miscellaneous (Article 23 of GTC)**

**Article 23.1.a shall be read as follows:**

Neither this Agreement nor any other agreement or arrangement of which it forms neither part, nor the performance by the Parties of their respective obligations under any such agreement or arrangement, shall constitute a partnership or employer and employee relationship or agency between the Parties. For the avoidance of doubt, nothing in the Agreement shall prevent or restrict [\*] from entering into parallel agreements with other parties for scope of work similar or related to

other than the Scope of Work, in case delay/material breach on Contractor's performance

**Article 23.10 shall be read as follows:**

In the event Parties have entered into more than 1 (one) agreements regarding the Scope of Works for the subject Project contemplated under this Agreement, then a breach in the one by the Contractor will be considered as a breach of the remaining agreements. Further, [\*] shall have a right to recover any amount/ set off amount pending in one agreement from any amount/ set off from any other agreement for the subject Project

**Article 23.11 shall be read as follows: Survival**

The Parties agree and acknowledge that clause 10, 12, 16, 22, 23.10 and 23.11 shall survive the termination or expiry or cancellation of this Agreement

**Article 23.12.2.a shall be read as follows:**

After giving a cure period of 30 days neglects/ fails repeatedly (No cure Period) to execute the Agreement or any part item of the Agreement as notified by [\*] at any point of time during the Term to meet the Completion Schedule; Or

**Article 23.12.3 shall be read as follows:**

[\*] shall give 30 (thirty) Days' notice in writing to the Contractor to make good the default or breach. In the event, the Contractor fails to rectify the default or breach, [\*] shall, at its sole discretion, go for execution of the Scope of Work by any third party at the risk and cost of the Contractor ("Risk Purchase"), and the cost shall be deducted from the Contractor's monthly invoice, any other balance due and invocation of Bank Guarantee(s) (in that order). Additional 10% (ten percent) inclusive of Goods & Service Tax of the value of the part of the Scope of Work which is being procured from other sources under this clause 23.12, shall be charged as expenses for managing the said Risk Purchase over and above the Risk Purchase cost. If [\*] deems fit, it shall be lawful for [\*], without prejudice to any other rights it may have under this Agreement or under Applicable Laws, to take the part of the Scope of Work, either wholly or in part, out of the Contractor's scope and reorder the same to any other entity to complete the Scope of Work or any part thereof at the risk and cost of the Contractor, However, the Contractor is entitled to be paid for the Scope of Works completed after recovery of the cost incurred by [\*] for such termination.

**Article 23.12.4 shall be read as follows:**

[\*] shall be entitled to retain and supplement balance part of the Scope of Work, which may otherwise be due under this Agreement as the case may be. If the differential cost of completing the Scope of Work or any part thereof as aforesaid exceeds the balance due to the Contractor as per agreed schedule (which is 1.5 times of unit rate or less whichever is lower), the Contractor shall forthwith pay such excess amount incurred by [\*] without any protest, demur or delay. Such payment of excess amount shall be independent of the Liquidated Damages for delay, which the Contractor shall have to pay if the completion of the Scope of Work is delayed

**20. Addition of new Article 24 in GTC- Contractual Partner Employees**

"[\*] Shall reserve right to verify the critical resources (namely Project Manager, Head Quality/Safety, Head Projects etc.,) deployed by the Contractor in our project(s) through [\*] Process audit check or [\*] empaneled third party agency. However, the responsibility of performance of all obligations of the Contractor as per the requirements of the Contract Documents shall remain with the Contractor only.

Further, [\*] would reserve the right to select or deselect basis -

1. Review and approve profiles for positions in scope
2. Conducting reference checks which includes credentials and integrity check

3. This would be applicable for not just new contractual employees, but even in case of replacements/resignations

**21. QUANTITY VARIATION:**

- 21.1 The nature of this Contract is lump sum & Turnkey so any Quantity Variation (increase/decrease) shall be to Contractor's account but without any cost implication to the [\*].
- 21.2 Any quantity variation for Lot items which shall be mentioned in Billing Breakup shall be to the account of Contractor.
- 21.3 Notwithstanding the above, if there are any variations due to change in Scope of Work including but not limited to changes in specifications or due to any other instructions of [\*] resulting commercial benefit, the same shall be passed on to [\*] by the Contractor. In case of scope increase/decrease, then the same need be executed by Contractor based on the mutual agreed price time and duly approved by [\*]

**22.** The Word "Purchase Order" in GTC shall be read as "Letter of Award"

**23. Export Reservation clause:**

[\*] confirms that the material/goods being used under this Project shall be utilised for purpose mentioned in RFP documents by Resonia/Owner, its associates, group companies.

**24.** All other terms & conditions of GTC shall remain unchanged except the deviations as set out in the STC.

**25.** The Parties herein agrees to the terms as mentioned in this STC suitably amending the GTC

**SIGNED BY FOR AND ON BEHALF of [\*]**

Name:

Authorized Signatory

Designation:

**SIGNED BY FOR AND ON BEHALF of the [\*]**

Name:

Authorized Signatory

Designation: