1. INTRODUCTION

These General Terms and Conditions – Service Work (2019) (the “Conditions”) shall, unless otherwise agreed in writing, apply to all service work performed in the field (“Service Work”) by any authorized member, agent or representative of the Wärtsilä Group (the “Contractor”) to a customer (the “Customer”). The Contractor’s offers are non-binding until accepted and confirmed by a purchase order issued by the Customer in compliance with these Conditions which is acknowledged by the Contractor (any such acknowledgment, a “confirmation”). These Conditions shall form an integral part of the Contract. The Customer may not change or cancel any purchase order after it has been received by the Contractor unless the Contractor has agreed in writing to such change or cancellation.

2. CONFIDENTIALITY AND INTELLECTUAL PROPERTY

2.1 Neither party shall copy or disclose to a third party any document or data provided by the other party without the prior written consent of the other party or use them for purposes other than those for which they were provided.

2.2 Notwithstanding anything to the contrary, companies belonging to Wärtsilä Group shall have the right to collect data from sensors, instruments, monitors, data collectors, industrial control or SCADA devices located at Buyer’s sites or on the equipment delivered and use such data, including but not limited to, to support and develop its products, solutions and services. Data may be transferred within Wärtsilä Group and to third parties who act for or on its behalf for processing the data. Companies belonging to Wärtsilä Group shall own any enrichment, report or derivative work developed or derived from such data. The rights granted hereunder shall survive any termination or expiration of the Contract.

3. PERFORMANCE AND ACCEPTANCE OF WORK

3.1 The Customer shall be deemed to have accepted the Service Work performed by the Contractor as being in accordance with the Contract unless the Customer has notified the Contractor of any non-conformity within three (3) days following the last day on which the Service Work was performed. Any date or period for completion stipulated or quoted shall be deemed to be an estimate only, and there shall be no express or implied time limit in dispatching or completing any Service Work.

3.2 If the Customer anticipates that the Service Work cannot be commenced as agreed in the Contract due to reasons attributable to the Customer, the Customer shall notify the Contractor in writing stating the reason and the time when the Customer anticipates that the Service Work could commence. The Contractor may by notice require the Customer to set a final reasonable time for when the Service Work should commence. Any additional costs related to such delay shall be borne by the Customer as per Clause 6.2.

3.3 The Contractor has a right to suspend the performance of its obligations under the Contract if it is reasonably clear from the circumstances that the Customer will not be able to perform its obligations as stated in the Contract.

4. COMPENSATION, PAYMENT AND OWNERSHIP

4.1 If not expressly agreed otherwise in writing, the Contract’s price is based on the Service Work performed during normal working hours. Time sheets for each week shall be provided thereafter by the Contractor to the Customer and shall be promptly checked and attested by the Customer. The time sheets provided by the Contractor shall be deemed to be evidence of the working hours invoiced by the Contractor. Hourly rates, overtime rates and daily allowances shall be as specified in the Contractor’s standard rates then in effect (such rates are subject to change from time to time). The Customer will be charged a daily allowance for each of the Contractor’s personnel based on the number of working days from the date of departure of such personnel until their return. Unless otherwise agreed in writing, a normal working week is comprised of forty (40) hours; eight (8) hours per working day, spread over five (5) working days. Local holidays shall be observed. Unless otherwise agreed, any Service Work done outside normal working hours shall be charged to the Customer as overtime. Any waiting and/or stand-by time for which the Contractor is not responsible shall be charged to the Customer as normal working time. Time spent by the Contractor’s personnel travelling to and from the Contractor’s office, the work site and the Customer-provided lodging shall be for the Customer’s account. The daily remuneration and allowances shall be payable during incapacity caused by sickness of or accident to any of the Contractor’s personnel if caused by failure of the Customer to maintain safety in the work site environment.

4.2 All travel expenses, plus ten percent (10%) handling cost, incurred in connection with the Contract shall be for the account of the Customer. Travel expenses include: (a) fares for journey by rail, sea, air, car and/or bus; (b) carhire, freight and customs duties, as applicable to the parties, material, equipment, supplies, consumables or replacement and any other items furnished, provided or supplied by the Contractor in performance of the Service Work; (c) all costs related to the carriage, freight and customs duties as applicable to the parties, material, equipment, supplies, consumables or replacement and any other items furnished, provided or supplied by the Contractor in performance of the Service Work shall pass to the Customer only when payment in full has been received by the Contractor. The Contractor may at its sole option elect to repair, replace, or furnish such items in lieu of the obligations stated above. The Contractor may, at its sole option, elect to purchase any non-conforming parts or material, equipment, supplies, consumables or replacement and any other items furnished, provided or supplied by the Contractor in performance of the Service Work and furnish such items to the Customer as an alternative.

5. WARRANTY

5.1 The Contractor shall repair or re-perform, in whole or in part, at its sole discretion, any defective Service Work which appears during the warranty period. The Customer shall immediately take appropriate steps to prevent any defect from becoming more serious, and all warranty claims with respect to this warranty shall be made in writing without delay and not later than fourteen (14) days following discovery of such defect during the warranty period. The Customer shall have the responsibility to establish that its claim is covered by this warranty. Replaced parts shall become the Contractor’s property and upon the Contractor’s request, be returned to the Contractor. The Contractor shall be entitled to suspend or terminate the Contract by written notice to the Customer, and such remedies shall not be exclusive of the Customer’s other rights under the Contract. The Customer’s cost of repairs or re-performance of the Service Work shall pass to the Customer only when payment in full has been received by the Customer. The warranty for re-performed Service Work shall be subject to the same terms, conditions and limitations of liability, as those applicable to the originally performed Service Work. Under no circumstances shall the warranty period of any Service Work (whether original or re-performed) extend beyond the date the affected Service Work is performed. Delivery of repairs or re-performance under this warranty will be made in accordance with the original Contract delivery terms.

5.2 The warranty period for the Service Work begins on the date of delivery and ends six (6) months from the last day of performance of the applicable Service Work. The warranty period in respect of Service Work which has been re-performed under the warranty shall expire six (6) months following the last day on which the Service Work was re-performed under the warranty. The warranty for re-performed Service Work shall be subject to the same terms, conditions and limitations of liability, as those applicable to the originally performed Service Work. Under no circumstances shall the warranty period of any Service Work (whether original or re-performed) extend beyond the date the affected Service Work is performed. Delivery of repairs or re-performance under this warranty will be made in accordance with the original Contract delivery terms.

5.3 The Contractor shall have no liability for any defect due to or arising in connection with: (1) any materials, components, tools, designs or software provided by the Customer; (2) negligence or willful misconduct of the Contractor; (3) parts, accessories or attachments other than those supplied by the Contractor in the course of performance of the Service Work; (4) improper service work, installation or alterations carried out by the Customer; (5) normal
wear and tear; (6) use of unsuitable material or consumables by the Contractor;
(7) fluctuation in the grid; or (8) any use, service or operation of any equipment, parts or components upon which Service Work was performed which is not consistent with the specifications or practices of the OEM or other standards that qualify as good engineering practice, as qualified by any party or by the Contractor or which is otherwise not in accordance with normal industry practice. The Contractor’s warranty obligation does not include any craneage, electricity, scaffolding, docking, diving, sub-sea work, towage costs, demolition, impoundment, disassembly and expenses beyond the Contractor’s control, and all such costs and expenses shall be reimbursed by the Customer to the Contractor when applicable. If after the Contractor’s warranty investigation it is found that the Customer does not have a warranty claim within the scope of these Conditions, then the Customer shall be responsible for all applicable costs and expenses for such inspection, repaired or replaced parts or other service work.

5.4 This CLAUSE 5 SETS FORTH THE ONLY WARRANTY APPLICABLE TO THE SERVICE WORK AND IS IN LIEU OF ANY OTHER WARRANTIES, GUARANTEES, OBLIGATIONS AND LIABILITIES EXPRESS OR IMPLIED INCLUDING WARRANTIES, GUARANTEES, OBLIGATIONS OR LIABILITIES AGAINST NON-CONFORMITY OR DEFECTS, THE CUSTOMER HEREBY DISCLAIMS ALL OTHER REMEDIES, WARRANTIES AND LIABILITIES, EXPRESS OR IMPLIED, ARISING BY LAW OR OTHERWISE (INCLUDING WITHOUT LIMITATION FITNESS FOR PURPOSE, MERCHANTABILITY OR SATISFACTORY QUALITY).

6. CONTRACTOR’S LIABILITY

6.1 IN NO EVENT, WHETHER AS A RESULT OF BREACH OF CONTRACT, BREACH OF WARRANTY, TORT LIABILITY (INCLUDING NEGLIGENCE OR STRICT LIABILITY), OR OTHERWISE, SHALL THE CONTRACTOR BE LIABLE FOR ANY INDIRECT, CONTINGENT, SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES, HOWEVER CAUSED OR ARISING (WHETHER ACTUAL OR ANTICIPATED) NOR FOR LOSSES OR DAMAGES DUE TO SHUTDOWNS OR SERVICE INTERRUPTIONS, LOSS OF USE, LOSS OF PROFITS OR REVENUE, LOSS OF SAVINGS, LOSS OF REPUTATION, INVENTION OR USE CHARGES, PAID OR INCURRED, OR ANY OTHER CHARGES, REPLACEMENT POWER, INTEREST CHARGES OR COST OF CAPITAL OR ANY CLAIMS OF THE CUSTOMER’S CUSTOMERS PUNITIVE OR EXEMPLARY DAMAGES, THE COST OF SUBSTITUTED EQUIPMENT, SPARE PARTS, WHETHER ACTUAL OR ANTICIPATED, CAUSED OR REINSTALLATION, SERVICE WORK NOT ARISING FROM THE WARRANTY PROVIDED HEREIN, TOWAGE CHARGES, POLLUTION REMEDIATION COSTS, COSTS OF DOCKING, DIVING OR SUB-SEA WORK, STORAGE, REPAIR, REMOVAL OR DEMOUNTING OR MOUNTING COSTS AND EXPENSES OF ANY KIND OR DESCRIPTION OF PROPERTY OR GOODS CAUSED BY AN EVENT THAT QUALIFIES UNDER THIS CLAUSE 8.1, WHETHER THE CUSTOMER IS IN LIQUIDATION, OR AS A RESULT OF A REVERSAL OF DUTIES AND TAXES; (6) use of unsuitable material or consumables provided by the Contractor; or (3) Improper Service Work, installation or alterations carried out by the Contractor’s personnel that must: 

6.2 INTERRUPTIONS, LOSS OF USE, LOSS OF INVENTORY OR USE CHARGES, COST OF PURCHASED OR CONTRACTED SPARE PARTS OR SERVICES OR REPLACEMENT, REMOVAL OR DESTRUCTION OF UNUSED POWER, INTEREST CHARGES OR COST OF CAPITAL OR ANY CLAIMS OF THE CUSTOMER’S CUSTOMERS PUNITIVE OR EXEMPLARY DAMAGES, THE COST OF SUBSTITUTED EQUIPMENT, SPARE PARTS, WHETHER ACTUAL OR ANTICIPATED, CAUSED OR REINSTALLATION, SERVICE WORK NOT ARISING FROM THE WARRANTY PROVIDED HEREIN, TOWAGE CHARGES, POLLUTION REMEDIATION COSTS, COSTS OF DOCKING, DIVING OR SUB-SEA WORK, STORAGE, REPAIR, REMOVAL OR DEMOUNTING OR MOUNTING COSTS AND EXPENSES OF ANY KIND OR DESCRIPTION OF PROPERTY OR GOODS CAUSED BY AN EVENT THAT QUALIFIES UNDER THIS CLAUSE 8.1, WHETHER THE CUSTOMER IS IN LIQUIDATION, OR AS A RESULT OF A REVERSAL OF DUTIES AND TAXES; (6) use of unsuitable material or consumables provided by the Contractor; or (3) Improper Service Work, installation or alterations carried out by the Contractor’s personnel that must: 

6.3 The Contractor shall not be liable for any work carried out by the Customer or by any third party, even though carried out with assistance of the Contractor’s personnel. The Customer shall bear the risk of loss of its equipment, parts and other service work. The Contractor’s personnel shall only supervise, coordinate and advise the Customer’s personnel when applicable. The Contractor shall have the right to supervise and inspect the work performed.

6.4 The Contractor shall not be liable for any harm, injury or damages due to or arising in connection with: (1) software provided by the Customer; (2) monitoring, digital and/or cybersecurity-related systems other than those provided by the Contractor; or (3) Improper Service Work, installation or alterations carried out by the Customer on any monitoring, digital and/or cybersecurity-related systems. “Improper Service Work” is any act or failure to act which contradicts the OEM recommended maintenance, configuration and operational experiences related to equipment, systems or operations resulting in detrimental or increased possibility of failure.

7. INSURANCE

Each of the Contractor and the Customer shall at its own cost provide for and maintain comprehensive insurance coverage to protect its own property and personnel.

Each party shall obtain a waiver of all rights of recourse and subrogation against any other party from its insurers as well as indemnify and hold harmless the other party harmless for all claims of or by either of the parties’ insurers.

8. FORCE MAJEURE AND OTHER EXCUSABLE DELAYS

8.1 Neither the Contractor nor the Customer shall be liable for any failure or delay in performing its obligations hereunder, for any loss or damage resulting therefrom, caused by or arising from an event of force majeure ("Force Majeure"), which includes without limitation acts of God, wars, whether declared or not, or any events involving commotion of war, civil wars and riots, hostilities, public disorder, acts of terrorism and severe threat of terrorism, any measures taken by public authorities in connection with threat of terrorism, embargos, acts of civil or military authorities, fire, flood, accidents, strikes, failure of a subcontractor or sub-supplier to provide manpower, materials or equipment required under these Conditions, or for any other reasons beyond the Contractor’s control, and all such costs and expenses shall be reimbursed by the Customer to the Contractor when applicable. If after the Contractor’s warranty investigation it is found that the Customer does not have a warranty claim within the scope of these Conditions, then the Customer shall be responsible for all applicable costs and expenses for such inspection, repaired or replaced parts or other service work.

8.2 If the Service Work cannot be commenced as agreed due to reasons attributable to the Customer or is interrupted by Force Majeure or for other reasons not attributable to the Contractor, the costs for maintaining personnel and off site equipment plus all other costs due to the suspension of the work site (including, without limitation wages and lodging) will be borne by the Customer. If the interruption continues for more than one week, the Contractor’s personnel may be returned to the Contractor’s country. All expenses in relation to such withdrawal and/or subsequent return shall be borne by the Customer. If the period of suspension exceeds two (2) months, either party may terminate the Contract by three (3) days’ notice in writing to the other party without prejudice to the rights of either party up to the date of termination. All reasonable additional costs incurred by the Contractor as a consequence of the suspension and any subsequent resumption or completion of the Service Work shall be reimbursed by the Customer.

9. SECURITY AGREEMENT

To the extent permitted by law, the Customer hereby grants to the Contractor a lien on and a continuing security interest, and when applicable a maritime lien for necessary, in and to all equipment, parts and components upon which the Service Work is performed and all products and proceeds derived from the sale or lease thereto as security for the payment in full of all amounts due and owing for the Service Work. The Customer hereby waives any and all claims, defenses, and causes of action that the Customer may have in connection with the exercise of any such lien rights by the Contractor.

10. CUSTOMER’S ADDITIONAL PERFORMANCE OBLIGATIONS

The Customer shall comply with all rules, laws and regulations applicable at the work site, arising out of the performance of the Service Work. The Customer shall provide at no cost to the Contractor all of the following facilities and services which must be of sufficient quality and/or quantity for the Contractor’s performance of the Service Work, unless otherwise agreed to in writing by the parties:

10.1 Ancillary manpower equipped with appropriate tools (such as drills and hand lamps), heavy duty hoisting and transport facilities along with the necessary fuel, lubricants, water, electricity, compressed air and cleaning facilities for the Contractor’s performance of the Service Work;

10.2 Heated and/or air-conditioned facilities with available drinking water for the Contractor’s personnel;

10.3 Furnished offices with locks, equipped with telephones, facsimile, internet and other communication requirements of the Contractor’s personnel;

11. ENVIRONMENTAL, HEALTH AND SAFETY RESPONSIBILITIES

11.1 The Customer shall maintain safe working conditions at the work site, including, without limitation, implementing appropriate procedures regarding asbestos, lead or any other waste material or hazardous substances as defined by any legislation or international convention relevant or applicable to the Service Work provided ("Hazardous Materials") and confined space lighting labels or plates containing warnings and/or safety and operating procedures and instructions as required by applicable laws and regulations.

11.2 The Customer shall timely advise the Contractor in writing of all health, safety, security and environmental requirements procedures and instructions applicable at the work site. Without limiting the Contractor’s responsibilities
under this Clause 11, the Contractor has the right, but not the obligation to, from time to time, inspect and investigate, applicable health, safety, security and environmental conditions at the work site.

11.5 The Contractor has no responsibility or liability for the pre-existing condition of the Customer’s equipment or the work site. Prior to the Contractor starting any work at the work site, the Customer will provide documentation that the work site is free from any hazardous conditions. The Customer shall reasonably assist in any such inspection.

11.6 The Contractor shall disclose to the Contractor’s insurance company, and environmental monitoring data regarding conditions that may affect the Contractor’s work or personnel at the work site. The Customer shall immediately inform the Contractor of any hazardous conditions.

11.7 The Customer will make its medical facilities and resources at the work site available to the Contractor’s personnel who need medical attention. If there are no medical facilities or resources available, the Customer will assist in bringing the Contractor’s personnel medical attention.

11.8 The Contractor represents and warrants to the Contractor and agrees to ensure that the work site, surrounding environment, all equipment provided or otherwise made available to the Contractor’s representative in connection with the Service Work rendered in connection with this Contract and all products and equipment serviced or otherwise worked on by the Contractor’s representatives in connection with this Contract, shall at all times be free of Hazardous Materials and/or contaminated substances, elements or waste of any kind that are restricted by applicable laws or regulations, existing in or about the Customer’s equipment or the work site that the Contractor may encounter while performing services under this Contract.

11.9 The Contractor shall not notify the Customer if the Contractor becomes aware of: (i) conditions at the work site differing materially from those ordinarily encountered and generally recognized as inherent in Service Work of the character provided for in the Contract; or (ii) previously unknown physical conditions at work site differing materially from those ordinarily encountered and generally recognized as inherent in Service Work of the character provided for in the Contract; or (iii) work assignment extends beyond the acceptable limit of safety and security for the Contractor’s personnel, including risks related to hazardous conditions.

11.10 If the Contractor encounters Hazardous Materials in the Customer’s equipment or at the work site that require special handling or disposal, the Contractor is not obligated to continue Service Work affected by the hazardous conditions. In such an event, the Customer shall eliminate the hazardous conditions in accordance with applicable laws and regulations so that the Contractor’s Service Work under the Contract may safely proceed, and the Contractor shall be entitled to an equitable adjustment of the price and schedule to compensate for any increase in the Contractor’s cost of, or time required for, performance of any part of the Service Work.

11.11 If the Contractor encounters Hazardous Materials and/or contaminated substances, elements or waste of any kind as defined by applicable laws and regulations or applicable to the Service Work supplied.

11.12 CYBERSECURITY PROTECTION

12.1 Unless otherwise agreed, upon delivery of any equipment provided by the Contractor, the Customer shall be solely responsible for system setup, installation, and acceptance testing, and shall be responsible for system maintenance, safety, and security, including approvals for any equipment not provided by the Contractor. It is the Customer’s sole responsibility to protect the equipment and its logic-bearing system components (e.g., hardware, firmware, and software) from unauthorized access, use, or tampering.

12.2 The Customer’s representatives and employees shall be responsible for the security of any external computer network. The Contractor shall not be responsible for the security of any external computer network.

12.3 All such documentation and related information will be maintained under the control of the Customer.

12.4 Upon request by the Contractor, the Customer shall furnish the Contractor with all the relevant certification and approval documentation provided to the Contractor and any data made available to the Contractor regarding security and environmental monitoring data regarding conditions that may affect the Contractor’s equipment or the work site.

13. DUTIES, TAXES AND FEES

The Customer shall pay, where applicable, all duties, withholding and other taxes, customs fees and charges and all charges and fees by a classification society. The Customer shall be responsible for the security of any external computer network.

14. EXPORT CONTROLS AND TRADE SANCTIONS

14.1 The parties agree that the Service Work shall be provided subject to all applicable export controls, sanctions or restrictions imposed on services by any country or organization or nation which are enforceable in the jurisdiction of the Contractor, its affiliates or parent company, including the Contractor’s equipment, products, services and technology, and the United States of America. The Customer acknowledges that the Service Work and all related technical information, documents and materials may not be imported or re-exported, re-exported, re-exported, traded, diverted or transferred, directly or indirectly, contrary to such controls, sanctions or restrictions.

14.2 Upon request by the Contractor, the Customer shall furnish the Contractor with all the relevant certification and approval documentation provided to the Contractor and any data made available to the Contractor regarding security and environmental monitoring data regarding conditions that may affect the Contractor’s equipment or the work site.

15. GOVERNING LAW AND ARBITRATION

15.1 The Contract shall be governed by, and interpreted under the law of

15.2 All disputes arising out of or in connection with the Contract shall be submitted to arbitration in accordance with the Rules of Arbitration of the International Chamber of Commerce with three (3) arbitrators appointed in accordance with the said Rules. The arbitration proceedings shall be conducted in English language.

16. ENTIRE AGREEMENT

These Conditions, plus the additional agreed upon terms of the Contract (relating only to price, time and location for performance, and all terms and conditions of any software license agreement executed in writing between the Contractor and the Customer pertaining to software or other data provided in connection with the Service Work (“License Agreement”) contain the entire agreement and understanding between the parties and supersede all prior agreements and understandings relating to the subject matter hereof.

16.1 All terms, conditions, representations, warranties or covenants contained in any present, future, prior, or present orders or documentation, or any other form shall be applicable unless incorporated herein by express written agreement of the parties hereto.