1. INTRODUCTION

These General Terms and Conditions – Service Work (2020) (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 is a “Confirmation”). The 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. Intellectual property rights associated with the Service Work or any document or data provided by the Contractor in connection therewith shall remain the Contractor's property. The Customer shall defend, indemnify and hold harmless the Contractor against all claims, losses and damages, including reasonable attorneys' fees, arising out of or resulting from any reuse, modification, reproduction or publication of the Contractor's intellectual property documents or data. To the extent there is a conflict between the foregoing provisions regarding confidentiality and intellectual property rights and any software license agreement, the terms and conditions of such software license agreement shall prevail.

2.2 Notwithstanding anything to the contrary, companies belonging to Wärtsilä Group have the right to collect data from sensors, instruments, monitors, data collectors, industrial control or SCADA devices located in 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 the behalf of 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 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 5.2.3.

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 or bus; (b) wardrobe, freight under contract or law; (c) all in-plant, job travel, subsistence and pocket expenses incurred by the Contractor for the Service Work ordered by the Contractor; such expenses are subject to the Contractor's approval.

4.3 In the event of any illness or accident affecting any of the Contractor’s personnel, whether during the performance of Service Work or otherwise, necessitating medical attention or hospital treatment, the Customer shall ensure that the best and appropriate medical facilities and medications are available and accessible to the Contractor personnel. If it is necessary to repatriate an ill, injured or deceased member of the Contractor’s personnel, the Customer shall assist the Contractor in arranging for such repatriation in the safest and most expedient manner. All costs incurred under this Clause 4.3 shall be borne by the Contractor.

4.4 Unless otherwise agreed, payment shall be made by bank remittance in the currency and to the bank account set forth in the invoice within twenty (20) days following the date of the invoice. Payment shall be made in full without any set off, counterclaim or deduction. The Customer shall pay interest on overdue payments from the maturity date until the actual date of payment at the rate of one and one quarter percent (1.25%) per month, compounded monthly. The Customer shall pay the Contractor all costs related to the collection of overdue amounts including reasonable attorneys’ fees. In the event any payment is more than thirty (30) days late, 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 Contractor's rights under contract law. Title to any parts, machines, 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, as a precondition for the performance of the Service Work, request that the Customer provides the Contractor with security covering any unpaid amount already owed to the Contractor or one of its affiliates.

4.5 Any assistance or work performed by the Contractor outside the scope of the Contract shall be charged as extra work in accordance with the Contractor's standard rates then in effect and with these Conditions.

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 Contractor shall have the responsibility to establish that its claim is covered by this warranty. Replacement parts shall become the Contractor's property and upon the Contractor's request, be returned at the Contractor's cost. 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 commencement of the original warranty period as stipulated above in the first sentence of this Clause.

5.3 The Contractor shall not be liable 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 in 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 Customer; (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, in the opinion of an engineer or representative designated 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, demurrage, sanctions, boycotts, fire, flood, accidents, strikes, failure of a subcontractor or sub-supplier of the Contractor to provide manpower, materials or goods required for the work site, arising out of the performance of the Service Work, unless otherwise agreed to in writing by the parties:

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 OR ARISING (WHETHER ACTUAL OR ANTICIPATED) CAUSED BY REASON OF UNAVAILABILITY OF THE EQUIPMENT OR THE FACILITY, SHUTDOWN OR SERVICE INTERRUPTIONS, LOSS OF USE, LOSS OF PROFITS OR REVENUE, LOSS OF SAVINGS, LOSS OF REPUTATION, INVOICE CHARGES, PURGING CHARGES, PUNISHMENT, EXEMPLARY DAMAGES, THE COST OF SUBSTITUTED EQUIPMENT, SPARE PARTS OR SERVICES OR REPLACEMENT, REMOVAL OR REINSTALLATION SERVICE WORK NOT ARISING FROM THE WARRANTY PROVIDED HEREIN, TOWAGE CHARGES, POLLUTION REMEDIATION COSTS, COSTS OF DOCKING, DIVING OR SUB-SEA WORK, LAY-UP OR DECOMMISSIONING OF THE VESSEL, ENCLOSED ROOM OR PORTABLE ENCLOSURE OR SITE YARD OR OTHER PROPERTY (INCLUDING DAMAGE TO GOODS OWNED BY THE CUSTOMER), DAMAGE TO ANY EQUIPMENT OR PROPERTY OTHER THAN THE EQUIPMENT, COMPONENTS AND PARTS ON WHICH SERVICE WORK WAS PERFORMED HEREUNDER, COSTS FOR ANY ADDITIONAL TESTS, SEA TRIALS, DEBRIS REMOVAL OR FOR LOSS OF TIME OR USE OF ANY EQUIPMENT, INSTALLATION SYSTEM, OPERATION OR SERVICE.

6.2 NOTWITHSTANDING ANY OTHER PROVISION OF THE CONTRACT, IN NO EVENT SHALL THE CONTRACTOR’S AGGREGATE LIABILITY TO THE CUSTOMER UNDER THIS CONTRACT, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY) OR ANY OTHER LEGAL THEORY OR EQUITY, EXCEED THIRTY PERCENT (30%) OF THE CONTRACT PRICE.

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 Contractor shall bear the risk of loss of its equipment or materials resulting from connection or disconnection to the Service Work, even if such equipment or goods are in facilities used by the Contractor.

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 advisable operations resulting in detrimental liability 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 the other party from its insurers as well as indemnify and hold 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, or 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 undeclared, threats of war, civil disturbances, acts of terrorism, war, civil strife, insurrection, civil or military hostilities, public disorder, acts of terrorism and severe threat of terrorism, any measures taken by public authorities in connection with threat of terrorism, embargos and import or export restrictions, acts of civil or military authorities, sanctions, boycotts, fire, flood, accidents, strikes, failure of a subcontractor or sub-supplier of the Contractor to provide manpower, materials or goods required for the work site, arising out of the performance of the Service Work, the imposition of transport restrictions or customs clearance problems or transportation or customs clearance problems arising out of the withdrawal of the United Kingdom from the European Union or any predecessor measure (“Brexit”), epidemics, pandemics or other severe weather affecting either party, or causes beyond their control.

8.2 Once a Party is aware that its performance under the Contract is affected by Force Majeure, the affected Party shall, without undue delay, give written notice to the other Party setting out relevant details of the delay.

8.3 If the Service Work cannot be commenced as agreed due to reasons attributable to the Customer or as a result of Force Majeure, or is interrupted by Force Majeure or for other reasons not attributable to the Contractor, the preparer maintaining personnel at or near 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 may, at its own discretion, withdraw such personnel to return to the Contractor’s country. All expenses in connection with such withdrawal shall be borne by the Contractor. 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.

8.4 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. Any termination as a result of Force Majeure shall not affect a Party’s right to recover payment in respect of all costs incurred, as at the date of the termination notice, in pursuit of its obligations.

9. SECURITY AGREEMENTS

The Customer shall comply with all laws, rules 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 which which are necessary to and in connection with the Contractor’s performance of the Service Work, unless otherwise agreed to in writing by the parties:

10. ANCILLARY EQUIPMENT

10.1 Ancillary equipment powered 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 in close proximity to the work site, arising out of the performance of the Service Work; 10.3 Heated and/or air-conditioned boarding and lodging facilities for the Contractor’s personnel that must be safe, secure, clean, free of health risks; 10.4 Assistance requested by the Contractor with the customs formalities required for the import and export of the Contractor’s equipment and tools, including, without limitation, implementing appropriate procedures regarding arsenic, asbestos, lead or any other waste material or hazardous substances

11. ENVIRONMENTAL, HEALTH AND SAFETY RESPONSIBILITIES

11.1 The Contractor shall maintain safe working conditions at the work site, including, without limitation, implementing appropriate procedures regarding arsenic, 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 entry affixing labels or plates containing warnings and/or safety and operation procedures required by any laws and regulations required by the work site prior to the commencement of the Contractor’s Service Work; (ii) improperly handled or disposed of by the Customer or the Customer’s employees, agents, contractors or subcontractors; or (iii) brought, generated, produced or released on the work site by parties other than the Contractor.

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 integrations and/or system security engineering 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 hereinafter referred to as the “Critical Components”) from any External Cybersecurity Threat or Internal Cybersecurity Threat, including against hardware and software vulnerabilities. In recognition of the foregoing, the Customer agrees and covenants that it shall use the degree of care appropriate to prevent unauthorized access, use, or hacking of the Critical Components provided in connection with any equipment provided by the Contractor and shall do so in a manner that is no less rigorous than any recommendations provided by the Contractor and accepted industry practices.

12.2 “External Cybersecurity Threat” is any threat, act, attack or other incident which negatively affects the reliable workings of any equipment provided by the Contractor, which originated outside of the physical site housing such equipment.

12.3 “Internal Cybersecurity Threat” is any threat, act, attack or other incident which negatively affects the reliable workings of any equipment provided by the Contractor, which originated inside of the physical site housing such equipment.

13. DUTIES, TAXES AND FEES

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 country, the United Nations, the European Union 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 exported, re-exported, transhipped, traded, diverted or transferred, directly or indirectly, contrary to such controls, sanctions or restrictions.

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 country, the United Nations, the European Union 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 exported, re-exported, transhipped, traded, diverted or transferred, directly or indirectly, contrary to such controls, sanctions or restrictions.

14.4 Upon request by the Contractor, the Customer shall furnish the Contractor with all the relevant certificates relating to export control laws, equipment, sanctions and restrictions.

14.3 The Contractor has no liability resulting from any delay, cancellation or amendment of the Service Work resulting from export controls, sanctions or other applicable restrictive measures.

15. GOVERNING LAW AND ARBITRATION

15.1 The Contract shall be governed by and interpreted in accordance with the laws in Finland, excluding the conflict of law rules applicable in such jurisdiction. Any controversy, claim or dispute between the parties hereto arising out of or related to this Contract shall be submitted to the International Court of Arbitration of the International Chamber of Commerce for final and binding arbitration in accordance with the Rules of Arbitration of the International Chamber of Commerce by three (3) arbitrators appointed in accordance with the said Rules. The arbitration proceedings shall be in the English language and shall take place in Helsinki, Finland.

15.2 Nothing contained in this Clause shall preclude the Contractor from pursuing legal action or proceeding against the Customer for purposes of enforcement, injunctive relief or interim or remedial measures in the courts of any jurisdiction where the Customer or any of its property or assets may be found or located, and the Customer hereby irrevocably submits to the jurisdiction of any such court.
16. ENTIRE AGREEMENT
These Conditions, plus the additional agreed upon terms of the Contract (relating only to price, time and location for performance, and technical specifications and scope of Service Work to be performed) and the terms and conditions of any software license agreement executed in writing by the Contractor and the Customer and pertaining to software or other data provided in connection with the Service Work ("License Agreement") contain the entire agreement and understanding between the parties hereto with respect to the subject matter hereof and supersede all prior agreements and understandings relating to such subject matter. The sale of any parts purchased from the Contractor by the Customer shall be in accordance with the Contractor's General Terms and Conditions – Parts (latest version then in effect). If a provision of these Conditions is at variance with necessary requirements of applicable law, then these Conditions shall be deemed to be amended to the minimum extent necessary to comply with such applicable law. No terms, conditions, representations, warranties or covenants contained in any correspondence, catalogue, or in any other form shall be applicable unless incorporated herein by express written agreement of the parties hereto.