MODEL

AGREEMENT

FOR

PROCUREMENT OF POWER (FOO)

Ministry of Power
Government of India

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Overview of the Model Agreement for Procurement of Power framework

To meet the infrastructure deficit, the Twelfth Five Year Plan envisages a renewed thrust on investment in infrastructure, with greater participation from the private sector. Of the projected investment in infrastructure, about 29 per cent is envisaged in the power sector, of which about 47 per cent is expected from the private sector. Bulk of the private investment in power sector will be in the generation segment.

A comprehensive framework is a pre-requisite for PPP in electricity generation

Power projects have been witnessing a significant interest from both domestic as well as foreign investors following the policy initiatives taken by the Government of India. However, the actual inflow of investment has been slower than expected, and future prospects would depend significantly on adoption of a comprehensive policy and regulatory framework necessary for addressing the complexities of Public Private Partnerships (PPP), especially for balancing the interests of Utilities and investors. To this end, a precise policy and regulatory framework is being spelt out in this Model Power Agreement for Procurement of Power (MAPP).

The framework contained in the MAPP addresses the issues which are important for producers who supply electricity to the Utilities through medium-term contracts. These issues include mitigation and unbundling of risks; allocation of risks and rewards; symmetry of obligations between the principal parties; precision and predictability of costs and obligations; reduction of transaction costs; force majeure; and termination. It also addresses other important concerns such as consumer protection, independent monitoring and dispute resolution.

This MAPP provides the basis for optimal utilisation of resources on the one hand and adoption of international best practices on the other. The objective is to secure value for public money while providing reliable and cost effective electricity to the consumers.

This MAPP is a base document to be used by procuring utilities for inviting bids from producers for supply of electricity over the medium term. The MAPP can be customised for base-load as well as peak hour procurement of electricity. It is based on Finance, Own, and Operate (FOO) model. Variations required for procurement of coal-based, gas-based and hydro-electric power stations have been provided within the MAPP.

Elements of financial viability

Need to reduce capital costs

The three critical elements that determine the financial viability of generation projects are the contract period, fuel costs and capital costs. The contract period for a generation project should be fixed keeping in view the requirement of power by the Utility. It could be fixed between one and five years, with provision for extension of this period for the lower of 25% of the initial contract period and one year, with mutual consent.

Fixed Charge

Fixed Charge to be competitive

The Utility shall pay to the Supplier a Fixed Charge determined through competitive bidding for availability of the Power Station. The Fixed Charge determined for each accounting year shall be revised annually to reflect 20 per cent of the variation in wholesale price index (WPI). Since repayment of debt would be substantially neutral to inflation, the said indexation of 20 per cent is considered adequate. A higher level of indexation is not favoured, as that would impose an unjustified burden on the consumers.

Variable Charge

Variable Charge to be a pass through

Variable Charge is the amount payable by the Utility to the Supplier for the fuel utilised in generation of electricity. Since the risk of variation in fuel price cannot normally be managed by the Supplier, it must be passed on to the Utility, which, in turn, will have to reflect it in the distribution tariff. Since pass through of Variable Charge affords full protection to the Supplier against potential losses on account of a rise in fuel prices, it follows that the benefit of reduced fuel prices cannot be retained by the Supplier. As a result, Variable Charge cannot be a profit centre for the Supplier and the principles for determination of Variable Charge must ensure that costs are recovered on the basis of actuals, assuming that the Supplier would function with the efficiency expected of a prudent and diligent operator.

The framework contained in the MAPP provides alternative formulations for determination of fuel costs depending on the source and pricing of fuel supplies. Each category of supply is, therefore, covered through its respective formulation. In case where fuel is to be procured from domestic market, the cost of fuel shall be linked to the monthly average of a Fuel Price Index as may be mutually agreed upon.

When imported fuel is to be used, reliance should be placed on pre-selected coal indices used widely in international supplies of coal, but always subject to the actual cost incurred by the Supplier. For supply of electricity procured, the lump sum tariff option has been provided. Options for fuel imported under a fixed-price gas contract and for gas procured from ONGC/GAIL have also been stipulated with provisions for ‘take or pay’ supply of fuel. However, if bids are invited from producers having captive mines abroad, the prevailing price could be prescribed with appropriate indexation over the supply period. In all cases of imported fuel, the foreign exchange risk would have to be borne by the Utility as the Supplier would have no means to hedge such risk on a long-term basis.

Concessional Fuel

Fuel which is procured by the Supplier through any form of concessional, preferential or captive allocation or sale by a Government Instrumentality shall be deemed as Concessional Fuel and shall not be used for production of electricity for supply under a medium term contract. However, in case gas is supplied by ONGC/GAIL on concessional terms, it may be used for supply under a medium-term contract with approval of the Government.

Availability and Despatch of Power Station

Fixed Charge to be paid for Availability of Power Station

The Supplier shall operate the Power Station such that it is available for generation to the extent of 85 per cent of the Contracted Capacity which shall be deemed to be the Normative Availability for each accounting year. Any shortfall in the Normative Availability will attract damages. The Supplier shall declare the availability of the Power Station at frequent intervals and the Utility shall be free to direct the Supplier to produce and despatch electricity in accordance with the despatch instructions given by it from time to time. Payment of Fixed Charge shall be computed on the basis of availability of the Power Station while the Variable Charge shall be payable only for the electricity actually produced and despatched.

Penalties for mis-declaration

Normally, the Power Station shall be deemed as available to the full extent. In the event of any defect or deficiency, the Supplier must declare the actual availability so that its Fixed Charge is computed accordingly. The MAPP stipulates stiff damages in case of mis-declaration by the Supplier.

Technical parameters

Technical parameters for level of service

Unlike the normal practice of focusing on construction specifications, the technical parameters proposed in the MAPP are based mainly on output specifications, as these have a direct bearing on the level of power generation. Only the core requirements of operation have been specified, leaving enough room for the Supplier to innovate and add value. In sum, the framework focuses on the 'what' rather than the 'how' in relation to the production and supply of power by the Supplier. This would also provide the requisite flexibility to the Supplier to innovate and optimise in a way normally denied under conventional input-based procurement specifications.

Outcome orientation

Outcome orientation is the key

The efficiency of the Supplier would normally be reflected in the quality and reliability of power supply. In particular, the Supplier shall be required to ensure the availability of Contracted Capacity at pre-determined normative levels.

Selection of Supplier

Competitive bidding on Fixed Charge will be the norm

Selection of the Supplier will be based on a two-stage process of competitive bidding. All project parameters such as the concession period, technical parameters and performance standards are to be clearly stated upfront. Based on these terms, the short-listed bidders will be required to specify their financial offer in terms of a unit Fixed Charge, without any qualifications. In some cases, the financial offer may also have to include the Variable Charge based on the landed cost of fuel. The bidder who seeks the lowest unit charge should win the contract. The financial offer for the unit charge shall be made only for the initial year and the actual tariff payable to the Supplier will be revised annually based on pre-determined indexation.

Risk allocation

As an underlying principle, risks have been allocated to the parties that are best suited to manage them. Project risks have, therefore, been assigned to the private sector to the extent it is capable of managing them. These risks have also been mitigated to the extent possible. The transfer of these risks and responsibilities to the private sector would increase the scope of innovation leading to efficiencies in costs and services.

Risk allocation and mitigation are critical

The commercial and technical risks relating to construction, operation and maintenance are being allocated to the Supplier, as it would be best suited to manage them. On the other hand, all direct and indirect political risks are being assigned to the Utility.

Commercial risks to be borne by Supplier

Conditions Precedent

Procuring approval of the Appropriate Commission for payment of Tariff by the Utility to the Supplier has been proposed as condition precedent to be satisfied by the Utility. Access to the transmission system for carrying electricity from power station to delivery point and procurement of applicable permits have been proposed as conditions precedent to be satisfied by the supplier. The Utility would provide reasonable support and assistance to the Supplier in procuring the applicable permits. Damages have been prescribed for delay in fulfilling the conditions precedent by the Utility as well as the Supplier.

Fulfilment of conditions precedent

Operation of the Power Station

The Supplier is expected to demonstrate a high standard of operation and maintenance of the Power Station with a view to ensuring the requisite level of reliability and availability. Any violations would attract damages. In sum, operational performance would be the most important test of service delivery as it would have a direct bearing on the supply of electricity to the Utility.

Force majeure

The MAPP contains the requisite provisions for dealing with force majeure events. In particular, it affords protection to the Supplier against political actions that may have a material adverse effect on the project.

Termination

In the event of termination, the MAPP provides for a calibrated termination payment by the Supplier or the Utility, as the case may be.

Pre-determined termination payments should provide predictability

Termination payments have been quantified precisely as compared to the complex formulations in most such agreements relating to infrastructure projects. Political force majeure and defaults by the Utility would qualify for adequate compensatory payments to the Supplier and will thus guard against any discriminatory or arbitrary action by the Utility.

Miscellaneous

The MAPP addresses other important issues such as dispute resolution, suspension of rights, change in law, insurance, indemnity, and disclosure of

An effective dispute resolution mechanism is critical

project documents. It incorporates the best practices that would enable a fair and transparent framework for private participation.

Conclusion

Together with the Schedules, the proposed contractual framework addresses the issues that are likely to arise in operation of generation projects on FOO basis. The proposed policy and regulatory framework contained in the MAPP is critical for attracting competitive supply of electricity with the concomitant efficiencies and lower costs, necessary for accelerating growth and making electricity affordable.

Part I

Preliminary

AGREEMENT FOR PROCUREMENT OF POWER [1]

THIS AGREEMENT is entered into on this the …… day of....., 20…..

BETWEEN

1 The *** Distribution Company represented by its Managing Director and having its principal offices at ***** (hereinafter referred to as the "**Utility**" which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) of One Part;

AND

2 ..... LIMITED, a company incorporated under the provisions of the Companies Act, 1956/2013 and having its registered office at ....., (hereinafter referred to as the "**Supplier**" which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns and substitutes) of the Other Part.

WHEREAS:

(A) The Utility had resolved to procure electricity from a power generating station that would dedicate a contracted capacity of *** MW for production of electricity and supply thereof to the Utility on finance, own and operate (the "**FOO**") basis in accordance with the terms and conditions to be set forth in an agreement for procurement of power to be entered into under and in accordance with the provisions of the Electricity Act, 2003.

(B) The Utility had accordingly invited proposals by its Request for Qualification dated *** (the "**Request for Qualification**" or "**RFQ**") for short listing of Bidders who offer to supply electricity from power generating station, and had shortlisted certain Bidders including, *inter alia*, the selected bidder.

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[1] **Instructions for project-specific customisation of this document**
This Model Agreement for procurement of Power (the "MAPP) may be customised for project-specific use in accordance with the instructions below:
Note 1: Serially numbered footnotes in this MAPP are for guidance of the Utility and should be omitted from the draft Agreement for Procurement of Power forming part of Bidding Documents. (See Appendix-II) **Note 2**: All Project-specific provisions in this MAPP have been enclosed in square parenthesis and may be modified, as necessary, before issuing the draft Agreement for Procurement of Power to Bidders. (See Appendix-II)
Note 3: The Asterisks in this MAPP should be substituted by project-specific particulars before issuing the draft Agreement for Procurement of Power to Bidders. (See Appendix-II)
Note 4: The provisions in curly brackets are to be retained in the draft Agreement for Procurement of Power forming part of Bidding Documents and shall be suitably modified after the issuance of Letter of Award (LOA) in order to reflect the bid specific particulars in the Agreement for Procurement of Power. (See Appendix-I)
Note 5: Blank spaces are to be retained in the draft Agreement for Procurement of Power and shall be suitably filled after the issuance of LOA in order to reflect bid specific particulars in the Agreement for Procurement of Power. However, blank spaces shall be retained in all schedules, which contain formats that are to be used after the Agreement for Procurement of Power is executed. (See Appendix-I)
Note 6: Footnotes marked "£" are to be retained in the draft Agreement for Procurement of Power. These Footnotes are for the Guidance of the selected Bidders and shall be omitted before executing the Agreement for Procurement of Power. However, Footnotes marked "$" or "$$" shall be retained in the Agreement for Procurement of Power as a part thereof. (See Appendix-I)
Note 7: the draft agreement for Procurement of Power issued as part of Bidding Document shall retain Notes 4, 5 and 6, to be renumbered as Notes 1, 2 and 3 respectively. The remaining instructions shall be omitted.

(C) The Utility had prescribed the technical and commercial terms and conditions, and invited bids in accordance with the Guidelines issued by the Central Government under Section 63 of the Act vide Notification No. *** dated *** (the "**Request for Proposals**" or "**RFP**") from the Bidders shortlisted pursuant to the RFQ for undertaking the Project.

(D) After evaluation of the Bids received, the Utility had accepted the Bid of the selected bidder and issued its Letter of Award No. …….. dated ……. (hereinafter called the "**LOA**") to the selected bidder requiring, *inter alia*, the execution of this Agreement for Procurement of Power within 30 (thirty) days of the date of issue thereof.

(E) In pursuance of the LOA, the Parties have agreed to enter into this Agreement for Procurement of Power on the terms and conditions set forth hereinafter.

NOW, THEREFORE, in consideration of the foregoing and the respective covenants and agreements set forth in this Agreement for Procurement of Power, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

ARTICLE 1

DEFINITIONS AND INTERPRETATION

1.1 Definitions

The words and expressions beginning with capital letters and defined in this Agreement (including those in Article 26) shall, unless the context otherwise requires, have the meaning ascribed thereto herein, and the words and expressions defined in the Schedules and used therein shall have the meaning ascribed thereto in the Schedules.

1.2 Interpretation

1.2.1 In this Agreement, unless the context otherwise requires,

(a) references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;

(b) references to laws of the State, laws of India or Indian law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications which have the force of law in the territory of India and as from time to time may be amended, modified, supplemented, extended or re-enacted;

(c) references to a "**person**" and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and shall include successors and assigns;

(d) the table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;

(e) the words "**include**" and "**including**" are to be construed without limitation and shall be deemed to be followed by "**without limitation**" or "**but not limited to**" whether or not they are followed by such phrases;

(f) references to "**construction**" or "**building**" include, unless the context otherwise requires, investigation, design, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction, and "**construct**" or "**build**" shall be construed accordingly;

(g) references to "**development**" include, unless the context otherwise requires, construction, renovation, refurbishing, augmentation, upgradation and other activities incidental thereto, and "**develop**" shall be construed accordingly;

(h) any reference to any period of time shall mean a reference to that according to Indian Standard Time;

(i) any reference to "hour" shall mean a period of 60 (sixty) minutes commencing either on the hour or on the half hour of the clock, which by way of illustration means 5.00 (five), 6.00 (six), 7.00 (seven) and so on being hours on the hour of the clock and 5.30 (five thirty), 6.30 (six thirty), 7.30 (seven thirty) and so on being hours on the half hour of the clock;

(j) any reference to day shall mean a reference to a calendar day;

(k) reference to a "**business day**" shall be construed as reference to a day (other than a Sunday) on which banks in the State where the Power Station is situate are generally open for business;

(l) any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;

(m) references to any date, period or Project Milestone shall mean and include such date, period or Project Milestone as may be extended pursuant to this Agreement;

(n) any reference to any period commencing "**from**" a specified day or date and "**till**" or "**until**" a specified day or date shall include both such days or dates; provided that if the last day of any period computed under this Agreement is not a business day, then the period shall run until the end of the next business day;

(o) the words importing singular shall include plural and vice versa;

(p) references to any gender shall include the other and the neutral gender;

(q) "**kWh**" shall mean kilowatt hour and "**kCal**" shall mean kilo calories;

(r) "**lakh**" shall mean a hundred thousand (100,000) and "**crore**" shall mean ten million (10,000,000);

(s) "**indebtedness**" shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;

(t) references to the "**winding-up**", "**dissolution**", "**insolvency**", or "**reorganisation**" of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganisation, dissolution, arrangement, protection or relief of debtors;

(u) save and except as otherwise provided in this Agreement, any reference, at any time, to any agreement, deed, instrument, licence or document of any

description shall be construed as reference to that agreement, deed, instrument, licence or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this Sub-clause (u) shall not operate so as to increase liabilities or obligations of the Utility hereunder or pursuant hereto in any manner whatsoever;

(v) any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party shall be valid and effective only if it is in writing under the hand of a duly authorised representative of such Party, in this behalf and not otherwise;

(w) the Schedules and Recitals to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;

(x) references to Recitals, Articles, Clauses, Sub-clauses, Provisos or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-clauses, Provisos and Schedules of or to this Agreement; reference to an Annex shall, subject to anything to the contrary specified therein, be construed as a reference to an Annex to the Schedule in which such reference occurs; and reference to a Paragraph shall, subject to anything to the contrary specified therein, be construed as a reference to a Paragraph of the Schedule or Annex, as the case may be, in which such reference appears;

(y) the damages payable by either Party to the other of them, as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the "**Damages**");

(z) time shall be of the essence in the performance of the Parties' respective obligations. If any time period specified herein is extended, such extended time shall also be of the essence; and

(za) capitalised terms used in the Agreement, but not defined herein, shall have the meaning ascribed to such terms in the Electricity Act, 2003.

1.2.2 Unless expressly provided otherwise in this Agreement, any Documentation required to be provided or furnished by the Supplier to the Utility shall be provided free of cost and in three copies, and if the Utility is required to return any such Documentation with its comments and/or approval, they shall be entitled to retain two copies thereof.

1.2.3 The rule of construction, if any, that a contract should be interpreted against the parties responsible for the drafting and preparation thereof, shall not apply.

1.2.4 Any word or expression used in this Agreement shall, unless otherwise defined or construed in this Agreement, bear its ordinary English meaning and, for these purposes, the General Clauses Act, 1897 shall not apply.

1.3 Measurements and arithmetic conventions

All measurements and calculations shall be in the metric system and calculations done to 2 (two) decimal places, with the third digit of 5 (five) or above being rounded up and below 5 (five) being rounded down.

1.4 Priority of agreements, clauses and schedules

1.4.1 This Agreement, and all other agreements and documents forming part of or referred to in this Agreement are to be taken as mutually explanatory and, unless otherwise expressly provided elsewhere in this Agreement, the priority of this Agreement and other documents and agreements forming part hereof or referred to herein shall, in the event of any conflict between them, be in the following order:

(a) this Agreement; and

(b) all other agreements and documents forming part hereof or referred to herein,

i.e. the Agreement at (a) above shall prevail over the agreements and documents at (b) above.

1.4.2 Subject to the provisions of Clause 1.4.1, in case of ambiguities or discrepancies within this Agreement, the following shall apply:

(a) between two or more Clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in other Clauses;

(b) between the Clauses of this Agreement and the Schedules, the Clauses shall prevail and between Schedules and Annexes, the Schedules shall prevail;

(c) between any two Schedules, the Schedule relevant to the issue shall prevail;

(d) between the written description on the drawings and the Specifications and Standards, the latter shall prevail;

(e) between the dimension scaled from the drawing and its specific written dimension, the latter shall prevail; and

(f) between any value written in numerals and that in words, the latter shall prevail.

Part II

The Procurement Contract

ARTICLE 2

SCOPE OF THE PROJECT

2.1 Scope of the Project

The scope of the Agreement (the "**Scope of the Agreement**") shall mean and include, during the Contract Period:

(a) ensure the operation and maintenance of the Power Station, situated at the Site described in Schedule-A and having the principal features stated therein, in accordance with the provisions of this Agreement;

(b) supply of electricity to the Utility in accordance with the provisions of this Agreement; and

(c) performance and fulfilment of all other obligations of the Supplier and the Utility, as the case may be, in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Supplier under this Agreement.

ARTICLE 3

GRANT OF PROCUREMENT CONTRACT

3.1 The Procurement Contract

3.1.1 Subject to and in accordance with the provisions of this Agreement, Applicable Laws and the Applicable Permits, the Utility hereby awards to the Supplier the procurement contract set forth herein [for producing electricity at the Power Station" if Supplier is NOT a Trading Licensee] for supply thereof to the Utility (the "**Procurement Contract**") for a period of 5 (Five)[1] years commencing from the Appointed Date, and the Supplier hereby accepts the Procurement Contract and agrees to implement the same subject to and in accordance with the terms and conditions set forth herein.

Provided that at any time 3 (three) months, prior to the expiry of the Contract Period specified hereinabove, the Parties may with mutual agreement extend the Contract Period for such further period as they may determine, but not exceeding the lower of 25% (twenty five per cent) of initial contract period or one year whichever is lower .

3.1.2 Subject to and in accordance with the provisions of this Agreement, the Procurement Contract hereby awarded shall oblige or entitle (as the case may be) the Supplier to:

(a) finance, own, operate and maintain the Power Station in accordance with this Agreement" if Supplier in NOT a Trading Licensee, or ensure that the Developer finances, owns, operates and maintains the Power Station in accordance with this Agreement" if Supplier is a Trading Licensee];

(b) [procure if Supplier is NOT a Trading Licensee, or ensure that the Developer procures if Supplier is a Trading Licensee] Availability of the Contracted Capacity for production of electricity and supply thereof to the Utility under and in accordance with the provisions of this Agreement, save and except as expressly provided in the Agreement;

(c) to receive Fixed Charge from the Utility in respect of the Availability of Contracted Capacity;

(d) to receive Variable Charge in accordance with the provisions of this Agreement;

(e) perform and fulfil all of the Supplier's obligations under and in accordance with this Agreement;

(f) save as otherwise expressly provided in this Agreement, bear and pay all costs, expenses and charges in connection with or incidental to the performance of the obligations of the Supplier under this Agreement; and

[1] To be fixed between 1 (one) and 5 (five) years. The definition of Contract Period and other timelines may be modified accordingly. While fixing the contract Period, the Utility may take into account the likely availability of transmission corridors in accordance with the extant regulations

(g) [neither assign, transfer or sub-let or create any lien or Encumbrance on this Agreement, or the Procurement Contract hereby granted or on the whole or any part of the Power Station nor sell, transfer, exchange, lease or part possession thereof, save and except as expressly permitted by this Agreement" if Supplier is NOT a Trading Licensee, or neither assign, transfer or sub-let or create any lien or Encumbrance on this Agreement, or the Procurement Contract hereby granted or allow the Developer to assign, transfer or sub-let or create any lien or Encumbrance on the whole or any part of the Power Station nor sell, transfer, exchange, lease or part possession thereof, save and except as expressly permitted by this Agreement if Supplier is a Trading Licensee.

3.2 Extension of Contract Period

Notwithstanding anything to the contrary contained in this Agreement, save and except the extension of Contract Period specified in the Proviso of Clause 3.1.1, in the event that extension of the Contract Period due to the Supplier in accordance with the provisions of this Agreement is not granted by the Utility for any reason, the Utility shall, within 30 (thirty) days of the expiry of this Agreement, pay to the Supplier a lump sum amount computed in accordance with this Clause 3.2 in lieu of the Fixed Charge that would have been payable to the Supplier if the Contract Period shall have been extended in accordance with this Agreement. For computation of the aforesaid lump sum amount payable hereunder, the Fixed Charge due and payable for and in respect of the last month of the Contract Period shall be deemed as the base and the amount so determined shall be reduced by 10% (ten per cent) for the following month and the same computation shall be repeated for every subsequent month for the purposes hereof. For the avoidance of doubt and by way of illustration, if the Fixed Charge for the last month of the Contract Period is Rs. 1 crore (Rupees one crore) and the period of foregone extension is 2 (two) months, the amount payable for and in respect of the first and second months shall be a sum of Rs. 90 lakh (Rupees ninety lakh) and Rs. 81 lakh (Rupees eighty one lakh) respectively. It is further clarified that payment for a part month shall be computed on a proportionate basis. The Parties further agree that the payment of such amount shall be deemed to form part of the Secured Obligations and may be recovered by the Supplier under and in accordance with Article 13.

3.3 Substitution of the Utility

The Parties expressly agree that the Utility may, in pursuance of any re-organisation or restructuring undertaken in pursuance of Applicable Laws, or if it is unable to discharge its liabilities and obligations under this Agreement, substitute itself by another Distribution Licensee(s) and upon such substitution, all the functions, rights and obligations of the Utility under this Agreement shall be deemed to be transferred to the substituted entity in accordance with and subject to Applicable Laws. Provided, however, that prior to any substitution hereunder, the Parties shall, on a best endeavour basis, make such arrangements and enter into such further agreements as may be necessary for performance of their respective obligations hereunder, including the rights and obligations arising out of the provisions of Article 13. Provided further that the creditworthiness of the substituted entity shall be substantially similar or greater as compared to the

Utility and in the event of any shortfall therein, credit enhancement shall be provided by the substituted entity to bridge the gap.

ARTICLE 4

CONDITIONS PRECEDENT

4.1 Conditions Precedent

4.1.1 Save and except as expressly provided in Articles 4, 5, 6, 7, 8, 9, 17, 19, 23 and 25, or unless the context otherwise requires, the respective rights and obligations of the Parties under this Agreement shall be subject to the satisfaction in full of the conditions precedent specified in this Clause 4.1 (the "**Conditions Precedent**"). Provided, however, that a Party may grant waiver from satisfaction of any Condition Precedent by the other Party in accordance with the provisions of Clauses 4.1.2 or 4.1.3, as the case may be, and to the extent of such waiver, that Condition Precedent shall be deemed to be fulfilled for the purposes of this Clause 4.1.1.

4.1.2 The Supplier may, upon providing the Performance Security to the Utility in accordance with Article 9, at any time after 15 (fifteen) days from the date of this Agreement or on an earlier day acceptable to the Utility, by notice require the Utility to satisfy any or all of the Conditions Precedent set forth in this Clause 4.1.2 within a period of 30 (thirty) days of the notice, and the Conditions Precedent required to be satisfied by the Utility shall be deemed to have been fulfilled when the Utility shall have:

(a) executed and procured execution of the Default Escrow Agreement in accordance with the provisions of Clause 13.1;

(b) executed the Deed of Hypothecation in accordance with the provisions of Clause 13.1.2;

(c) procured approval of the Commission for payment of Tariff by the Utility to the Supplier in accordance with the provisions of this Agreement;

Provided that upon request in writing by the Utility, the Supplier may, in its discretion, grant extension of time, not exceeding 180 (one hundred and eighty) days, for fulfilment of the Conditions Precedent set forth in this Clause 4.1.2.

4.1.3 The Conditions Precedent required to be satisfied by the Supplier within a period of 90 (ninety) days from the date of this Agreement shall be deemed to have been fulfilled when the Supplier shall have:

(a) provided Performance Security to the Utility;

(b) delivered to the Utility a legal opinion from the legal counsel of the Supplier with respect to the authority of the Supplier to enter into this Agreement and the enforceability of the provisions thereof;

(c) deposited a certified true copy of this Agreement with the RLDC and SLDC having jurisdiction and obtained a receipt thereof, in accordance with the provisions of Clauses 14.3.3 and 19.4.1;

(d) submitted the Capacity Certificate and evidence of the capacity of the Power Station; and

(e) procured access to the transmission system required for carrying electricity from the Power Station to the Delivery Point.

Provided that upon request in writing by the Supplier, the Utility may, in its discretion, waive any of the Conditions Precedent set forth in this Clause 4.1.3 or grant extension of time, not exceeding 90 (ninety) days, for fulfilment thereof, as the case may be. For the avoidance of doubt, the Utility may, in its sole discretion, grant any waiver hereunder, with such conditions as it may deem fit.

4.1.4 Each Party shall make all reasonable endeavours to satisfy the Conditions Precedent within the time stipulated and shall provide the other Party with such reasonable cooperation as may be required to assist that Party in satisfying the Conditions Precedent for which that Party is responsible.

4.1.5 The Parties shall notify each other in writing at least once a fortnight on the progress made in satisfying the Conditions Precedent. Each Party shall promptly inform the other Party when any Condition Precedent for which it is responsible has been satisfied.

4.2 Damages for delay by the Utility

In the event that (i) the Utility does not procure fulfilment or waiver of any or all of the Conditions Precedent set forth in Clause 4.1.2 within the period specified in respect thereof, and (ii) the delay has not occurred as a result of breach of this Agreement by the Supplier or due to Force Majeure, the Utility shall pay to the Supplier Damages in an amount calculated at the rate of 0.1% (zero point one per cent) of the Performance Security for each day's delay until the fulfilment of such Conditions Precedent, subject to a maximum of 20% (twenty per cent) of the Performance Security.

4.3 Damages for delay by the Supplier

In the event that (i) the Supplier does not procure fulfilment or waiver of any or all of the Conditions Precedent set forth in Clause 4.1.3 within the period specified in that Clause and (ii) the delay has not occurred as a result of failure to fulfil the obligations under Clause 4.1.2 or other breach of this Agreement by the Utility or due to Force Majeure, the Supplier shall pay to the Utility Damages in an amount calculated at the rate of 0.3% (zero point three per cent) of the Performance Security for each day's delay until the fulfilment of such Conditions Precedent, subject to a maximum amount equal to the Bid Security, and upon reaching such maximum, the Utility may, in its sole discretion, terminate the Agreement. Provided that in the event of delay by the Utility in procuring fulfilment of the Conditions Precedent specified in Clause 4.1.2, no Damages shall be due or payable by the Supplier under this Clause 4.3 until the date on which the Utility shall have procured fulfilment of the Conditions Precedent specified in Clause 4.1.2.

4.4 Deemed Termination upon delay

Without prejudice to the provisions of Clauses 4.2 and 4.3, and subject to the provisions of Clause 9.2, the Parties expressly agree that in the event the Appointed Date does not occur, for any reason whatsoever, 120 (one hundred twenty) days from the date of this Agreement or the extended period provided in accordance with this Agreement, all rights, privileges, claims and entitlements of the Supplier under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Supplier, and the Agreement for Procurement of Power shall be deemed to have been terminated by mutual agreement of the Parties. Provided, however, that in the event the delay in occurrence of the Appointed Date is for reasons attributable to the Supplier, the Performance Security of the Supplier shall be encashed and appropriated by the Utility as Damages thereof.

ARTICLE 5

OBLIGATIONS OF THE SUPPLIER

5.1 Obligations of the Supplier

5.1.1 Subject to and on the terms and conditions of this Agreement, the Supplier shall, [at its own cost and expense" if Supplier is NOT a Trading Licensee, or insert "through the Developer" if Supplier is a Trading Licensee], procure finance for and undertake the development, operation and maintenance of the Power Station and observe, fulfil, comply with and perform all its obligations set out in this Agreement or arising hereunder. [further in case Supplier is a Trading Licensee; The Supplier shall further ensure that the Developer maintains all consents, clearances and permits as required under Applicable Law for the operation and maintenance of Power Station and production of power, in full force and effects during the Term of this Agreement]

5.1.2 The Supplier shall comply [and shall cause the Developer to comply if Supplier is a Trading Licensee] with all Applicable Laws and other Applicable Permits (including renewals as required) in the performance of its obligations under this Agreement.

5.1.3 Save and except as otherwise provided in this Agreement or Applicable Laws, as the case may be, the Supplier shall, in discharge of all its obligations under this Agreement, conform with and adhere to Good Industry Practice at all times.

5.1.4 The Supplier shall [ensure that the Developer shall if Supplier is a Trading Licensee] operate and maintain the Power Station in accordance with the Specifications and Standards and the Maintenance Requirements such that the Availability of the Contracted Capacity of the Power Station is at least 85% (eighty five per cent) thereof during [Peak Hours of][2] each year of the Contract Period (the "**Normative Availability**").

Explanation:

Availability of the Power Station to its full capacity shall, in respect of any hour, mean the capacity of the Power Station to the extent it is offered by the Supplier for producing and supplying electrical energy equal to [][*] kWh per mega watt of Contracted Capacity over a period of one hour, after accounting for auxiliary consumption, and transmission losses upto the Point of Grid Connection, and for any month or year, as the case may be, the hours during that month or year when the Contracted Capacity of the Power Station is fully available for production of electricity shall be expressed as a percentage of total hours in that month or year, as the case may be, (the "**Availability**"). For the avoidance of doubt, the Parties agree that Availability shall, during the months when Appointed Date or the date of Termination occurs, be determined with reference to the number of days when the Power Station was in operation, and shall be determined likewise for any single day of operation. The Parties further agree that if the Contracted Capacity

[2] The words in square parenthesis may be omitted if the procurement of electricity is not to be confined to Peak hours.

[*] To be filled up by Utility before calling the Bids. This figure to be specified considering type of fuel source for power generation and prevailing CERC Regulations

of the Power Station is not Available for production of electricity to its full capacity during any hour, or part thereof, not being less than a quarter of an hour, such hour or part thereof shall, in the computation of Availability, be reduced proportionate to the Non-Availability during that hour. The Parties also agree that the determination of Availability hereunder shall be solely for the purposes of this Agreement and shall not in any manner affect the rights and obligations of the Supplier for and in respect of scheduling and despatch of electricity under Applicable Laws and the rules and regulations thereunder.

5.1.5 The Supplier shall, at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out in this Agreement:

(a) make, or cause to be made, necessary applications to the relevant Government Instrumentalities with such particulars as may be required for obtaining Applicable Permits, and obtain and keep in force and effect such Applicable Permits in conformity with Applicable Laws; Non-grant of long term open access shall be mutually decided by the Utility and Supplier;

(b) procure, or cause to be procured, as required, the appropriate proprietary rights, licences, agreements and permissions for materials, methods, processes, know-how and systems used or incorporated into the Power Station;

(c) [perform and fulfil its obligations in respect of debt service for the Project" if Supplier is NOT a Trading Licensee, "ensure performance and fulfilment of Developer's obligation in respect of debt service for the Project" if Supplier is a Trading Licensee;

(d) [make reasonable efforts to maintain harmony and good industrial relations among the personnel employed by it or its Contractors in connection with the performance of its obligations under this Agreement if Supplier is NOT a Trading Licensee];

(e) ensure and procure that its [Contractors" if Supplier is NOT a Trading Licensee, or insert "Developer" if Supplier is a Trading Licensee] comply with all Applicable Permits and Applicable Laws in the performance by them of any of the Supplier's obligations under this Agreement;

(f) always act in a manner consistent with the provisions of this Agreement and not cause or fail to do any act, deed or thing, whether intentionally or otherwise, which may in any manner be violative of any of the provisions of this Agreement or Applicable Laws;

(g) [procure that all equipment and facilities comprising the Power Station are operated and maintained in accordance with Good Industry Practice if Supplier is NOT a Trading Licensee];

(h) support, cooperate with and facilitate the Utility in the implementation of this Agreement;

(i) comply with the provisions of Applicable Laws with regard to metering of supply of electricity;

(j) comply with the directions of the Commission issued from time to time under the Act.

5.2 Obligations relating to Project Agreements

It is expressly agreed that the Supplier shall, at all times, be responsible and liable for all its obligations under this Agreement notwithstanding anything contained in the Project Agreements or any other agreement, and no default under any Project Agreement or agreement shall excuse the Supplier from its obligations or liability hereunder.

5.3 Obligations relating to Change in Ownership

The Supplier shall not undertake or permit any Change in Ownership, except with the prior written approval of the Utility.

[*In case the Supplier is a Trading Licensee* "The provisions of Clause 5.3 shall be applicable if the Supplier is a Trading Licensee. In addition, the Supplier in such case shall also ensure that similar provisions as contained in Clause 5.3 are incorporated in the exclusive Power Purchase Agreement submitted by the Supplier. In such case, the aforesaid provisions shall be applicable with respect to …….. (name of the majority investor in the Developer as specified in the Power Purchase Agreement submitted by the Supplier as a part of the Bid). The Supplier shall ensure the compliance of the provisions mentioned in this Clause 5.3. and any default on the part of the Supplier in compliance of the same shall be a Supplier Default in terms of Article 19.1. The Utility(s) shall have the right to verify the compliance of the provision as mentioned in this Clause 5.3."]

5.4 Obligations relating to operation of the Power Station

5.4.1 The Supplier shall [ensure that the Developer shall if Supplier is a Trading Licensee] at all times operate the Power Station in accordance with Applicable Laws and the provisions of the Grid Code and shall comply with such directions as the SLDC may give from time to time in accordance with the provisions of the Act.

5.4.2 The Supplier shall [enter if Supplier is NOT a Trading Licensee, or cause the Developer to enter if Supplier is a Trading Licensee] into and comply with agreements for interconnection of the Power Station to the grid, sub-stations, licensees or consumers, as the case may be, under and in accordance with Applicable Laws.

5.5 Obligations relating to transmission charges

The Supplier shall be liable for payment of all charges, due and payable under Applicable Laws, for inter-state and intra-state transmission of electricity from the Point of Grid Connection to the Delivery Point. For the avoidance of doubt, the Parties expressly agree that inter-state and intra-state transmission of electricity

shall be undertaken solely at the risk and cost of the Supplier and all liabilities arising out of any failure of inter-state and intra-state transmission shall, subject to the provisions of Clause 11.4.4, be borne by the Supplier. The Parties further agree that the obligation of the Supplier to pay the regulated charges for transmission of electricity shall be restricted to the tariffs and rates applicable on the Bid Date for and in respect of the Contracted Capacity and any differential arising from revision of the regulated tariffs and rates thereafter shall be payable or recoverable, as the case may be, by the Utility. The Parties also agree that the regulated charges applicable for transmission of electricity referred to hereinabove as on the Bid Date shall be deemed to be Rs. ..... (Rupees .....) for and in respect of the Contracted Capacity[$], which charges shall at all times be due and payable by the Supplier.

5.6 Obligations relating to transmission losses

5.6.1 The Supplier shall be liable for the transmission losses in all inter-state and intra-state transmission of electricity from the Point of Grid Connection to the Delivery Point. For the avoidance of doubt, the Parties expressly agree that transmission of electricity shall be undertaken solely at the risk and cost of the Supplier and all liabilities arising out of any transmission losses on inter-state and intra-state transmission lines shall be borne by the Supplier. The Parties further agree that the obligation of the Supplier to bear the transmission losses shall be restricted to the level of losses determined by the Central Commission as on the Bid Date for this Project and any differential (higher or lower) arising from revision in the level of losses thereafter by the Central Commission shall be borne by the Utility.

5.6.2 The Supplier represents and warrants that it has ascertained and assessed the applicable transmission losses from the Point of Grid Connection to the Delivery Point as determined by the Appropriate Commission for and in respect of the Bid Date, and expressed in the form of their proportion to the electricity supplied hereunder at the Point of Grid Connection. The Supplier acknowledges, agrees and undertakes that the product of such transmission losses (expressed in kWh) and the Tariff shall be due and payable by the Supplier to the Utility and shall be adjusted in the relevant Monthly Invoice. For the avoidance of doubt and by way of illustration, the Parties agree that if the transmission losses in any month are equivalent to 1 (one) lakh units and the Tariff payable for that month is Rs. 3 (Rupees three) per kWh, an amount of Rs. 3,00,000/- (Rupees three lakh) shall be due and payable by the Supplier to the Utility and shall be adjusted in the Monthly Invoice for that month.

5.7 Obligations relating to SLDC and RLDC charges

The Supplier shall be liable for payment of all the charges, due and payable under Applicable Laws by the Supplier to the SLDC and RLDC for and in respect of all its supplies to the Utility.

[$] This amount shall be determined in accordance with the regulated rates and charges for inter-state and intra-state transmission of electricity from the point of Grid Connection to the Delivery point as on the Bid Date.

5.8 Obligation relating to Concessional Fuel

Without prejudice to the provisions of clause 12.5, the Supplier acknowledges, agrees and undertakes not to use any concessional Fuel for production of electricity and supply thereof in pursuance of the provisions of this Agreement.

5.9 Obligations relating to taxes

The Supplier shall pay, at all times during the subsistence of this Agreement, all taxes, levies, duties, cesses and all other statutory charges payable in respect of the Power Station. Provided, however, that all payments made by the Supplier with respect to service tax, value added tax, general sales tax or electricity duty, if any, levied on or in respect of the supply of electricity to the Utility under this Agreement shall be reimbursed by the Utility upon receipt of particulars thereof.

5.10 Obligations relating to reporting requirements

All information provided by the Supplier to the SLDC and RLDC as a part of its operating and reporting requirements under Applicable Laws, including the Grid Code, shall also be provided by it to the Utility simultaneously.

[The Trading Licensee shall ensure that wherever applicable, the obligations of the Supplier shall be fulfilled through the Developer.][3]

[3] Insert if the Supplier is a Trading Licensee

ARTICLE 6

OBLIGATIONS OF THE UTILITY

6.1 Obligations of the Utility

6.1.1 The Utility shall, at its own cost and expense undertake, comply with and perform all its obligations set out in this Agreement or arising hereunder.

6.1.2 The Utility agrees to provide support to the Supplier and undertakes to observe, comply with and perform, subject to and in accordance with the provisions of this Agreement and Applicable Laws, the following:

(a) upon written request from the Supplier, and subject to the Supplier complying with Applicable Laws, provide reasonable support and assistance to the Supplier in procuring the Applicable Permits required from any Government Instrumentality for operation of the Project; Non-grant of long term open access shall be mutually decided by the Utility and Supplier;

(b) not do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement;

(c) support, cooperate with and facilitate the Supplier in the implementation and operation of the Project in accordance with the provisions of this Agreement and Applicable Laws.

6.1.3 The Utility shall provide and facilitate non-discriminatory open access to its network for enabling the Supplier to supply electricity to Buyers in the licence area of the Utility in accordance with the provisions of sections 42 and 49 of the Act.

ARTICLE 7

REPRESENTATIONS AND WARRANTIES

7.1 Representations and warranties of the Supplier

The Supplier represents and warrants to the Utility that:

(a) it is duly organised and validly existing under the laws of India, and has full power and authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;

(b) it has taken all necessary corporate and other actions under Applicable Laws to authorise the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;

(c) along with its Associates, [it if Supplier is NOT a Trading Licensee, or insert the Developer if Supplier is a Trading Licensee] has the financial standing and capacity to operate the Project in accordance with the terms of this Agreement;

(d) this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement will be legally valid, binding and enforceable obligations against it in accordance with the terms hereof;

(e) it is subject to the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising thereunder including any obligation, liability or responsibility hereunder;

(f) the information furnished in the Bid and as updated on or before the date of this Agreement is true and accurate in all respects as on the date hereof;

(g) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of its Memorandum and Articles of Association or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;

(h) there are no actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its obligations under this Agreement;

(i) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or Government Instrumentality which may result in any material adverse effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;

(j) it has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a material adverse effect on its ability to perform its obligations under this Agreement;

(k) it shall at no time undertake or permit any Change in Ownership except in accordance with the provisions of Clause 5.3; and that its promoters together with their Associates, hold not less than 51% (fifty one per cent) of its issued and paid up Equity as on the date of this Agreement;

(l) the selected bidder and [its Associates if Supplier is NOT a Trading Licensee, or the Developer if Supplier is a Trading Licensee] have the financial standing and resources to fund the required Equity and to raise the debt necessary for undertaking and implementing the Project in accordance with this Agreement;

(m) the selected bidder is duly organised and validly existing under the laws of the jurisdiction of its incorporation or registration, as the case may be, and has requested the Utility to enter into this Agreement with {itself/the Supplier} pursuant to the Letter of Award, and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;

(n) [it has entered into a Fuel Supply Agreement for assured supply of Fuel required for meeting obligations under this Agreement if Supplier is NOT a Trading Licensee, or the Developer has entered into a Fuel Supply Agreement for assured supply of Fuel required for meeting obligations under this Agreement if Supplier is a Trading Licensee];

(o) it shall at no time use Concessional Fuel for production of electricity and supply thereof to the Utility under this Agreement;

(p) [it has a good and valid right to the Station Premises if Supplier is NOT a Trading Licensee, or the Developer has a good and valid right to the Station Premises and the Power Purchase Agreement executed between the Supplier and the Developer is valid and shall remain valid during the Contract Period" if Supplier is a Trading Licensee];

(q) no representation or warranty by it contained herein or in any other document furnished by it to the Utility or to any Government Instrumentality in relation to Applicable Permits contains or will contain any untrue or misleading statement of material fact or omits or will omit to

state a material fact necessary to make such representation or warranty not misleading;

(r) no sums, in cash or kind, have been paid or will be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for securing the Supply Contract or entering into this Agreement or for influencing or attempting to influence any officer or employee of the Utility in connection therewith;

(s) all information provided by the selected bidder in response to the Request for Qualification and Request for Proposals or otherwise, is to the best of its knowledge and belief, true and accurate in all material respects; and

(t) all undertakings and obligations of the Supplier arising from the Request for Qualification and Request for Proposals or otherwise shall be binding on the Supplier as if they form part of this Agreement.

7.2 Representations and warranties of the Utility

The Utility represents and warrants to the Supplier that:

(a) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Agreement, exercise its rights and perform its obligations, under this Agreement;

(b) it has taken all necessary actions under Applicable Laws to authorise the execution, delivery and performance of this Agreement;

(c) it has the financial standing and capacity to perform its obligations under this Agreement;

(d) this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof;

(e) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Instrumentality which may result in any material adverse effect on the Utility's ability to perform its obligations under this Agreement; and

(f) it has complied with Applicable Laws in all material respects.

7.3 Disclosure

In the event that any occurrence or circumstance comes to the attention of either Party that renders any of its aforesaid representations or warranties untrue or incorrect, such Party shall immediately notify the other Party of the same. Such notification shall not have the effect of remedying any breach of the representation or warranty that has been found to be untrue or incorrect nor shall

it adversely affect or waive any right, remedy or obligation of either Party under this Agreement.

ARTICLE 8

DISCLAIMER

8.1 Disclaimer

8.1.1 The Supplier acknowledges that prior to the execution of this Agreement, the Supplier has, after a complete and careful examination, made an independent evaluation of the Request for Qualification, Request for Proposals, Scope of the Agreement, Specifications and Standards, transmission network, Site, existing structures, local conditions, and any information provided by the Utility or obtained, procured or gathered otherwise, and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder. The Utility makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy, adequacy, correctness, reliability and/or completeness of any assessment, assumption, statement or information provided by it and the Supplier confirms that it shall have no claim whatsoever against the Utility in this regard.

8.1.2 The Supplier acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Clause 8.1.1 above and hereby acknowledges and agrees that the Utility shall not be liable for the same in any manner whatsoever to the Supplier, and its Associates or any person claiming through or under any of them.

8.1.3 The Parties agree that any mistake or error in or relating to any of the matters set forth in Clause 8.1.1 above shall not vitiate this Agreement, or render it voidable.

8.1.4 In the event that either Party becomes aware of any mistake or error relating to any of the matters set forth in Clause 8.1.1 above, that Party shall immediately notify the other Party, specifying the mistake or error; provided, however, that a failure on part of the Utility to give any notice pursuant to this Clause 8.1.4 shall not prejudice the disclaimer of the Utility contained in Clause 8.1.1 and shall not in any manner shift to the Utility any risks assumed by the Supplier pursuant to this Agreement.

8.1.5 Except as otherwise provided in this Agreement, all risks relating to the Project shall be borne by the Supplier and the Utility shall not be liable in any manner for such risks or the consequences thereof.

Part III

Operations

ARTICLE 9

PERFORMANCE SECURITY

9.1 Performance Security

9.1.1 The Supplier shall, for the performance of its obligations hereunder, provide to the Utility no later than 30 (thirty) days from the date of this Agreement, an irrevocable and unconditional guarantee from a Schedule Bank for a sum equivalent to Rs. ***** crore (Rupees ***** crore)[4] in the form set forth in Schedule-B (the "**Performance Security**") for a period of 6 (six) months.

9.1.2 Until such time the Performance Security is provided by the Supplier pursuant hereto and the same comes into effect, the Bid Security shall remain in force and effect, and upon such provision of the Performance Security pursuant hereto, the Utility shall release the Bid Security to the Supplier.

9.1.3 Notwithstanding anything to the contrary contained in this Agreement, in the event Performance Security is not provided by the Supplier within a period of 30 (thirty) days from the date of this Agreement, the Utility may encash the Bid Security and appropriate the proceeds thereof as Damages, and thereupon all rights, privileges, claims and entitlements of the Supplier under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Supplier, and this Agreement, shall be deemed to have been terminated with the consent of the Supplier.

9.2 Appropriation of Performance Security

Upon occurrence of a Supplier Default or failure to meet any Condition Precedent, the Utility shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate from the Performance Security the amounts due to it for and in respect of such Supplier Default or for failure to meet any Condition Precedent. Upon such encashment and appropriation from the Performance Security, the Supplier shall, within 15 (fifteen) days thereof, replenish, in case of partial appropriation, to the original level of the Performance Security, and in case of appropriation of the entire Performance Security provide a fresh Performance Security, as the case may be, failing which the Utility shall be entitled to terminate this Agreement in accordance with Article 19. Upon such replenishment or furnishing of a fresh Performance Security, as the case may be, the Supplier shall be entitled to an additional Cure Period of 120 (one hundred and twenty) days for remedying the Supplier Default or to meet any Condition Precedent, and in the event of the Supplier not curing its default or meeting such Condition Precedent within such Cure Period, the Utility shall be entitled to encash and appropriate the Performance Security as Damages, and to terminate this Agreement in accordance with Article 19.

[4] To be calculated @ Rs. 10,00,000 (Rs. ten lakh) per MW of Contracted Capacity. This may be increased to Rs. 15,00,000 (Rs. Fifteen lakh) per MW of Contracted Capacity if Contracted Capacity is less than 500 MW and Rs. 8,00,000 (Rs. eight lakh) per MW of Contracted Capacity if Contracted Capacity is more than 1000 MW.

9.3 Release of Performance Security

The Performance Security shall remain in force and effect until expiry of 6 (six) months after the Appointed Date, and shall be released upon the Deemed Performance Security taking effect in accordance with the provisions of Clause 9.4.

9.4 Deemed Performance Security

The Parties expressly agree that upon release of Performance Security in accordance with the provisions of Clause 9.3, a substitute Performance Security for a like amount shall be deemed to be created under this clause 9.4, as if it is a Performance Security under clause 9.1 for and in respect of the entire Contract Period (the "**Deemed Performance Security**"). The Deemed Performance Security shall be unconditional and irrevocable, and shall constitute the first and exclusive charge on all amounts due and payable by the Utility to the Supplier, and the Utility shall be entitled to enforce the Deemed Performance Security by making a deduction from the amounts due and payable by it to the Supplier in accordance with the provisions of Clause 9.5. For the avoidance of doubt, the Parties agree that no amounts shall be earmarked, frozen or withheld in the Escrow Account for securing payment of any potential Damages that may fall due at a subsequent date, and only the amounts which shall have become due and payable by the Supplier upon occurrence of Supplier Default shall be liable to appropriation hereunder.

9.5 Appropriation of Deemed Performance Security

Upon occurrence of a Supplier Default, the Utility shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to appropriate the relevant amounts from the Deemed Performance Security as Damages for such Supplier Default. For the avoidance of doubt, the Parties expressly agree that upon the Deemed Performance Security being appropriated, in whole or in part, it shall be deemed to be replenished to the extent of such appropriation.

9.6 References to Performance Security

References to Performance Security occurring in this Agreement for and in respect of any period prior to the delivery of the Performance Security by the Supplier to the Utility, or in respect of any period subsequent to the expiry or release thereof, as the case may be, shall be construed solely for the purposes of calculating the amount of Damages payable by the Supplier, and the amount so determined shall be appropriated from the Bid Security or Deemed Performance Security, as the case may be.

ARTICLE 10
ALLOCATION OF CAPACITY

10.1 Contracted Capacity

Pursuant to the provisions of this Agreement, the Supplier shall dedicate a generating capacity of *****MW to the Utility as the capacity contracted hereunder [for and in respect of Peak Hours] (the "**Contracted Capacity**")[5] and the Contracted Capacity shall at all times be operated and utilised in accordance with the provisions of this Agreement.

10.2 Dispatch of unutilised Contracted Capacity

10.2.1 In the event that the Utility does not require the supply of the whole or part of the Contracted Capacity for a continuous period of 24 (twenty four) hours or more, it may, by a notice of at least 72 (seventy two) hours prior to such period, specify the reduction in dispatch of the Contracted Capacity and for such reduction in supply, it shall be entitled to a rebate equal to 25% (twenty five percent) of the Fixed Charge payable for Availability thereof and the waived Fixed Charge under Clause 10.2.2. Provided, however, that any reduction in supply under Clause 10.2.1 shall be uniform for a block of at least 24 (twenty four) hours and shall not vary between Peak Hours and Off-Peak Hours.

10.2.2 In the event that any part of the Contracted Capacity, which is not utilised by the Utility or its nominees, and is, therefore, utilised for production of electricity and sale thereof to any Buyer, the Fixed Charge due and payable for and in respect of such Contracted Capacity shall deemed to be waived and accordingly, no Fixed Charge shall be due or payable by the Utility in respect thereof; provided that Utility may, in its sole discretion, agree to pay to the Supplier such proportion of the waived Fixed Charge, and in such manner, as it may determine from time to time. For the avoidance of doubt, the Parties agree that supply of electricity to a nominee of the Utility shall be subject to provisions of adequate payment security either by the nominee or by the Utility.

10.3 Substitute Supply

In the event the Availability of the Power Station is reduced on account of scheduled maintenance, unscheduled maintenance, shortage of Fuel or Force Majeure, the Supplier may, with prior consent of the Utility, which consent the Utility may deny in its sole discretion or convey acceptance with such conditions as it may deem fit, supply electricity from any alternative source, and such supply shall, for payment of Fixed Charge and Variable Charge, be deemed to be supply under and in accordance with the provisions of this Agreement. For the avoidance of doubt, the Parties agree that in the event the Utility rejects any supply of electricity offered hereunder from an alternative source, the Supplier shall be deemed to be in compliance with this Agreement for the purpose of determination of Availability and payment of Fixed Charge.

[5] The words enclosed in square parenthesis in clause 10.1, the entire Clause 10.4 and the definition of Peak Hours in Article 26 may be omitted if the procurement of electricity is not confined to Peak Hours.

10.4 Supply during Peak Hours[6]

The Supplier shall procure the Availability of the Power Station during peak hours of the day comprising [2 (two) hours upto or before 10:00 (ten hundred) hours] in the morning and [4 (four) hours from or after 17:00 (seventeen hundred) hours] in the evening, at the timing to be specified by the Utility with a notice of 30 (thirty) days to the Supplier (the "**Peak Hours**"), and shall be entitled to payment of Fixed Charge for such Availability. Provided, however, that in the event the Utility does not Despatch the full capacity comprising the Availability during any hour or part thereof and the whole or part thereof is sold to Buyers, the provisions of Clause 10.2 shall apply.

10.5 Supply during Off-Peak Hours[7]

The Supplier shall procure a reduced Availability of the Power Station during Off-Peak hours at night comprising [8 (eight) hours between 20:00 (twenty hundred) hours and 06:00 (zero six hundred) hours] (the "**Off-Peak Hours**"), and shall be entitled to payment of Fixed Charge only for such reduced Availability. The Parties expressly agree that Normative Availability for and in respect of Off-Peak hours shall be deemed to be equal to [42.5% (forty two point five percent)] of the Contracted Capacity. Provided However, that the Utility may, with a notice of 30 (thirty) days, require the Supplier to increase the Availability during Off-Peak hours upto a level not exceeding 85% (eighty five per cent) of the Contracted Capacity on payment of Fixed Charge as specified in Clause 11.4 or at such reduced Fixed Charge as the Parties may mutually determine.

[6] Clause 10.4 may be omitted if the procurement of electricity is not to be confined to Peak Hours.

[7] Clause 10.5 may be omitted if supply during Off-Peak hours is not to be reduced. This Clause may also be omitted if the Procurement of the electricity is confined to Peal Hours.

Part IV

Financial Covenants

ARTICLE 11

TARIFF

11.1 Tariff

11.1.1 The Utility shall pay to the Supplier tariff comprising the sum of Fixed Charge and Variable Charge payable by the Utility to the Supplier for Availability and for supply of electricity, as the case may be, in accordance with the provisions of this Agreement (the "**Tariff**").

11.1.2 As a part of the Tariff, the Utility shall pay to the Supplier an amount, determined in accordance with the provisions of this Article 11, as the Fixed Charge for Availability of the Power Station to the extent of Normative Availability thereof (the "**Fixed Charge**").

11.2 Base Fixed Charge

The Parties agree that the fixed charge payable for Availability [during Peak Hours][8] shall, in accordance with the offer of the Supplier for the Base Year, be Rs. ..... (Rupees .....)[$] per kWh (the "**Base Fixed Charge**"), which shall be revised annually in accordance with the provisions of Clause 11.3 to determine the Fixed Charge for the relevant Accounting Year.

11.3 Fixed Charge

For determining the Fixed Charge due and payable to the Supplier, the Base Fixed Charge shall be revised annually to reflect 20% (twenty per cent) of the variation in WPI occurring between January 31 immediately preceding the Bid Date and January 31 immediately preceding the Accounting Year for which such revision is undertaken. For the avoidance of doubt and by way of illustration, if (a) the Bid Date occurs in March 2015; (b) the appointed date occurs in May 2019; and (c) WPI increases by 20% (twenty per cent) between January 31, 2015 and January 31, 2019, the Fixed Charge for the Accounting Year commencing from April 1, 2019 shall be 104% (one hundred and four per cent) of the Base Fixed Charge.

11.4 Computation of Fixed Charge

11.4.1 Subject to the provisions of this Clause 11.4, the Base Fixed Charge, as corrected for variation in WPI Index in accordance with Clause 11.3 shall be the Fixed Charge payable for Availability in each month of the relevant Accounting Year.

11.4.2 The obligations of the Utility to pay Fixed Charges in any Accounting Year shall in no case exceed an amount equal to the Fixed Charge due and payable for and in respect of the Normative Availability of 85% (eighty five per cent) [during Peak Hours][9] computed with reference to the Contracted Capacity (the "**Capacity**

[8] The words in square parenthesis may be omitted if the procurement of electricity is not to be confined to Peak Hours.

[$] This amount shall be the amount specified in the Bid, which shall not less than Re. 1 (Rupee one) per kWh in any case or such minimum amount as may be specified in the RFP.

[9] The words in square parenthesis in Clauses 11.4.2 and 11.4.3 may be added if procurement of electricity is to be confined to Peak Hours.

Charge"). Provided, however, that in the event of Despatch of the Power Station beyond such 85% (eighty five per cent) [during Peak Hours], Incentive shall be payable in accordance with the provisions of Clause 11.6.1.

11.4.3 Pursuant to the provisions of Clause 11.4.4, the Supplier shall not, for and in respect of any day, be entitled to receive payment of Fixed Charge for Availability exceeding 85% (eighty five per cent) thereof [during Peak Hours], and in the event it supplies electricity to the Utility in excess of such 85% (eighty five per cent), such excess supply shall be eligible only for payment of Variable Charge, save and except the payment of Incentive due under the provisions of Clause 11.4.2.

11.4.4 In the event that any shortfall in supply of electricity to the Utility occurs on account of deficiency in transmission between the Point of Grid Connection and Delivery Point, Availability shall be deemed to be reduced in accordance with the provisions of Clause 11.5.2 and the Non-Availability arising as a consequence thereof shall, for the purposes of payment of Fixed Charge, be deemed to be Availability to the extent of 50% (fifty per cent) of the Non-Availability hereunder. Provided, however, that the Supplier may, in its sole discretion, Despatch the Power Station to the extent of full or part Non-Availability hereunder for supply to other Buyers, and to the extent of full or part Non-Availability hereunder for supply to other Buyers, and to the extent of such Despatch, the Utility shall not be liable to payment of any Fixed Charge due and payable in accordance with the provisions of this Clause 11.4.4. For the avoidance of doubt, the Parties expressly agree that if such deficiency in transmission is caused by an action or omission attributable to the Supplier, it shall not be reckoned for the purposes of computing Availability hereunder. The Parties further agree that any and all revenues received from Buyers shall be applied first towards reduction of Fixed Charge payable by the Utility hereunder and only the balance remaining shall be appropriated by the Supplier.

11.4.5 In the event that any shortfall in supply of electricity to the Utility occurs on account of shortage of Fuel, Availability shall be deemed to be reduced in accordance with the provisions of Clause 11.5.3. Provided, however, that the Non-Availability arising as a consequence of shortage of Fuel caused by any event of Force Majure shall, for the purpose of payment of Fixed Charge, be deemed to be availability to the extent of 30% (thirty per cent) of the Non-Availability hereunder.

11.5 Declaration of Availability

11.5.1 Unless otherwise notified by the [Supplier *if Supplier is NOT a Trading Licensee, or* Developer through the Supplier *if Supplier is a Trading Licensee*], the declared Availability shall, be deemed to be 100% (one hundred per cent) thereof at all times.

11.5.2 In the event that any shortfall in supply of electricity to the Utility occurs on account of any deficiency in transmission between the Point of Grid Connection and Delivery Point, the Availability shall be deemed to be reduced to the extent of reduction in transmission of electricity, and the reduction referred to hereinabove shall be deemed as Non-Availability on account of deficiency in transmission. For

the avoidance of doubt and by way of illustration, the Parties agree that if such deficiency in transmission is equal to 20% (twenty per cent) of the Contracted Capacity, the Availability shall be deemed to be 80% (eighty per cent) and the Non-Availability hereunder shall be notified by the [Supplier *if Supplier is NOT a Trading Licensee, or* Developer through the Supplier *if Supplier is a Trading Licensee*] to the Utility forthwith.

11.5.3 In the event that any shortfall in supply of electricity to the Utility occurs on account of shortage of Fuel, the Availability shall be deemed to be reduced to the extent of reduction in generation of electricity, and such reduction shall be deemed as Non-Availability on account of shortage of Fuel. For the avoidance of doubt and by way of illustration, the Parties agree that if the deficiency in generation is equal to 20% (twenty per cent) of the Contracted Capacity, the Availability shall be deemed to be 80% (eighty per cent) and the Non-Availability hereunder shall be notified by the [Supplier *if Supplier is NOT a Trading Licensee, or* Developer through the Supplier *if Supplier is a Trading Licensee*]to the Utility forthwith.

11.5.4 The Supplier shall notify, no later than 15 (fifteen) days prior to the commencement of a month, [its *if Supplier is NOT a Trading Licensee, or* Developer's *if Supplier is a Trading Licensee*] maintenance schedule for that month and any reduction in Availability arising as a result thereof. The Supplier shall, as soon as may be, notify any modifications of [its *if Supplier is NOT a Trading Licensee, or* Developer's *if Supplier is a Trading Licensee*] maintenance schedule and shall confirm, with or without modifications, the reduction in Availability no later than 48 (forty eight) hours prior to its occurrence.

11.5.5 In the event that the Availability at any time is determined to be lower than 100% (one hundred per cent) of the Contracted Capacity or the reduced Availability notified hereunder, an event of mis-declaration of Availability (the "**Mis-declaration**") shall be deemed to have occurred. In such an event, the Availability for the relevant month shall, for the purposes of payment of Fixed Charge, be deemed to be reduced by the same proportion that Availability bears to Mis-declaration, as if the Mis-declaration had occurred for a period of one month. For the avoidance of doubt, the Parties agree that deductions on account of Mis-declaration shall be made from the subsequent payments due to the Supplier under this Agreement.

11.5.6 Notwithstanding the provisions of Clause 11.5.5, any reduction in Availability arising out of de-commissioning due to Emergency or a Force Majeure Event shall not be deemed to be Mis-declaration if the Supplier shall have notified the Utility in accordance with the provisions of Clauses 17.5.

11.6 Incentive and Damages

11.6.1 In the event that the Availability in any month exceeds the Normative Availability, the Supplier shall, in lieu of a Fixed Charge, be entitled to an Incentive which shall be calculated and paid at the rate of 50 % (fifty per cent) of the Fixed Charge for Availability in excess of Normative Availability. Provided, however, that any Incentive hereunder shall be due and payable only to the extent of Despatch of the Power Station. For the avoidance of doubt and by way of

illustration, in the event the Availability in any month shall exceed the Normative Availability by 3% (three per cent) of the Contracted Capacity but the Despatch during that month shall exceed 1% (one per cent) of the Contracted Capacity, the Incentive payable hereunder shall be restricted to such 1% (one per cent) only.

11.6.2 In the event that Availability in any month is less than the Normative Availability, the Fixed Charge for such month shall be reduced to the extent of shortfall in Normative Availability and in addition, any reduction below the Normative Availability shall be multiplied by a factor of 0.25 (zero point two five) to determine the Damages payable for such reduction in Availability. For the avoidance of doubt, the Parties agree that the Damages to be deducted for any reduction in Normative Availability shall be 25% (twenty five per cent) of the Fixed Charge which is reduced on account of shortfall in Availability below Normative availability.

11.6.3 The Parties expressly agree that within 30 (thirty) days of the close of every Accounting Year, the cumulative monthly Availability for such year shall be determined and the Incentive or Damages, as the case may be, shall be computed with reference to the Normative Availability for that year. The amount so arrived at shall be adjusted against the Incentives or Damages determined for the respective months of the year and the balance remaining shall be adjusted in the following Monthly Invoice.

11.7 Variable Charge

The Utility shall pay to the Supplier, as part of Tariff, a Variable Charge to be determined in accordance with the provisions of Article 12.

11.8 Taxes and duties

11.8.1 The Parties expressly agree that the Tariff shall be inclusive of all taxes and duties, save and except the taxes and duties specified in Clause 11.8.2. It is further agreed that the Supplier shall pay all taxes and duties, including the taxes and duties specified in Clauses 11.8.2, in accordance with Applicable Laws.

11.8.2 The Tariff and Incentives payable by the Utility under this Article 11 shall be exclusive of Service Tax, Electricity Duty, Value Added Tax or General Sales Tax, Custom Duty on Fuel or any replacement thereof, if applicable, and any Service Tax, Electricity Duty, Value Added Tax or General Sales Tax and Custom Duty on fuel thereon shall be paid by the Supplier and reimbursed by the Utility upon submission of necessary particulars by the Supplier.

11.8.3 Any payment to be made by the Utility shall be subject to any tax deduction at source, if required to be made by the Utility as per Applicable Laws.

11.9 Billing and Payment

11.9.1 Commencing from the month following the month in which the Appointed Date occurs, the Supplier shall, by the 5th (fifth) day of such and each succeeding month (or, if such day is not a Business Day, the immediately following Business Day), submit in triplicate to the Utility, an invoice in the agreed form (the

"**Monthly Invoice**") signed by the authorised signatory of the Supplier setting out the computation of the Fixed Charge and Variable Charge to be paid by the Utility to the Supplier in respect of the immediately preceding month in accordance with the provisions of this Agreement.

11.9.2 The Supplier shall, with each Monthly Invoice submit, (a) a certificate that the amounts claimed in the invoice are correct and in accordance with the provisions of the Agreement; (b) proof of Availability for the period billed, comprising evidence of communications regarding the extent of Non-Availability from time to time; (c) official documents in support of the variation in WPI as specified in Clause 11.3; (d) detailed calculations of the Fixed Charge for Availability in accordance with this Article 11; (e) detailed calculations of the Variable Charge, in respect of the electricity dispatched, computed in accordance with Article 12; (f) detailed calculations of the Incentives and/or Damages in accordance with the provisions of Clause 11.6; (g) details in respect of taxes/duties payable/reimbursable in accordance with the provisions of this Agreement; (h) details of the Fixed Charge to be adjusted by the Supplier in respect of sale of power to Buyers; (i) details in respect of Damages or Incentives payable in accordance with the provisions of this Agreement; (j) adjustments, if any, on account of revision of the transmission charges referred to in Clause 5.5; (k) proportionate adjustment on account of transmission losses to be determined in accordance with Clause 5.6; and (l) the net amount payable under the Monthly Invoice.

11.9.3 The Utility shall, within 30 (thirty) days of receipt of a Monthly Invoice in accordance with Clause 11.9.1 (the "**Payment Due Date**"), make payment of the amount claimed directly, through electronic transfer, to the nominated bank account of the Supplier, save and except any amounts which it determines as not payable or disputed (the "**Disputed Amounts**").

11.9.4 All Damages and any other amounts due and payable by the Supplier in accordance with the provisions of this Agreement may be deducted from the Tariff due and payable to the Supplier and in the event the deductions hereunder exceed the Tariff in that month, the balance remaining shall be deducted from the Tariff due and payable to the Supplier for the immediately following month.

11.10 Disputed Amounts

11.10.1 The Utility shall, within 10 (ten) days of receiving an invoice, notify the Supplier of the Disputed Amounts, with particulars thereof. Within 7 (seven) days of receiving such notice, the Supplier shall present any information or evidence as may reasonably be required for determining that such Disputed Amounts are payable. The Utility may, if necessary, meet a representative of the Supplier for resolving the dispute and in the event that the dispute is not resolved amicably, the Dispute Resolution Procedure shall apply. For the avoidance of doubt, even if a dispute is resolved amicably, any amount paid after the Payment Due Date shall be deemed as delayed payment for the purposes of payment of interest thereon. For the avoidance of doubt, the Utility shall be entitled to raise a dispute regarding any Disputed Amounts, whether due or already paid in accordance with this Agreement, at any time.

11.10.2 If any amount is payable by either Party to the other Party upon determination of a dispute regarding any Disputed Amount under the Dispute Resolution Procedure, such amount shall be deemed to be payable on the date when it first became due under this Agreement, and interest for the period of delay shall be due and payable at the rate specified in Clause 25.4.

11.11 Discount for early payment

The Parties expressly agree that in the event the Utility pays the Tariff within 5 (five) days of the date of submission of the invoice thereof, it shall be entitled to deduct 1% (one per cent) of the amount comprising the Tariff by way of discount for early payment.

ARTICLE 12

Variable CHARGE

12.1 Variable Charge

As part of the Tariff, the Utility shall pay to the Supplier for and in respect of the Fuel utilised for supply of a kWh of electricity to the Utility, a Variable Charge determined from time to time in accordance with the provisions of this Article 12 and expressed in Rupees per kWh (the "**Variable Charge**").

12.2 Base Variable Charge

The Parties agree that the variable charge, in accordance with the offer of the Supplier for the Base Year, shall be Rs. .... (Rupees ....)[$] per kWh, [comprising Rs....(Rupees...)[10] per kWh as the cost of Fuel/generating cost and Rs....(Rupees....) per kWh as the cost of transportation of which Rs.....(Rupees....) per kWh shall be in respect of domestic transportation, Rs....(Rupees.....) per kWh as the cost of transmission charges and Rs.....(Rupees.....) per kWh as the cost of transmission loss][11] (the "**Base Variable Charge**") which shall be revised in accordance with the provisions of Clause 12.3 to determine the Variable Charge for the relevant period. For the avoidance of doubt, the Parties expressly agree that the Variable Charge shall include the transmission charges and transmission losses as on Bid Date upto the Delivery Point.

12.3 Computation of Variable Charge[12]

[Option a: Coal from Domestic market other than Coal Mine/Blocks]

12.3.1 The Supplier represents and warrants that it shall procure Fuel from the domestic market at the prevailing price. The Parties agree that the cost of Fuel payable by the Utility to the Supplier under the provisions of Clause 12.2 shall be linked to the monthly average of the auction price of CIL for such Fuel, or such other index as the Parties may mutually agree upon (the "**Fuel Price Index**"). The cost of Fuel specified in Clause 12.2 shall be deemed to be based on the average Fuel Price Index of the month preceding the Bid Date and the cost of Fuel payable for and in respect of any month during the Supply Period shall be revised in the same proportion that the average Fuel Price Index of the month preceding the Bid Date bears to the average Fuel Price Index for the month preceding the month in which electricity is supplied.

[$] The amount shown as blank in clause 12.2 shall be specified in the Bid.

[10] In case electricity is procured through Option f, gI, h, i of Clause 12.3, the cost of Fuel may be specified in US Cents.

[11] In case electricity is procured through Option g or i of Clause 12.3 pertaining to imported Gas, the cost of Transportation may be specified separately for shipping cost and for domestic transportation cost of Gas as per the Bid submitted by the Supplier. The Domestic Transportation cost of Gas specified in US cents shall be converted from US Cents to Indian rupees using the exchange rate prevailing one day prior to the Bid date. The exchange rate for this purpose shall be the mean of the buying and selling rate as notified by the State Bank of India or any substitute thereof.

[12] The Utility may retain one of the ten Options specified herein and omit the rest. However, the Utility may retain Option f or g in addition to another relevant Option if only a part of the Fuel is to be imported at market prices. The proportion of electricity to be generated from imported Fuel under Option f or g may also be specified in the Bidding Documents.

12.3.2 The Supplier represents and warrants that it shall transport Fuel from the collieries situate at ..... The Parties agree that the cost of transportation to be paid by the Utility to the Supplier under the provisions of Clause 12.2 shall be linked to the notified freight of Indian Railways and in the event of any revision in the notified freight after the Bid Date, the cost of transportation specified in Clause 12.2 shall be revised in the same proportion that the notified freight, as on the Bid Date, bears to be revised freight, as and when notified, and such revision in cost of transportation shall take effect for and in respect of the electricity supplied from the 1st (first) day of the month following the date of revision in notified freight. For the avoidance of doubt, the Parties agree that the provisions of this Clause 12.3.2 shall apply even if the Fuel is transported by road instead of rail, and the cost of transportation hereunder shall always be computed as if the fuel was transported by rail. The Parties further agree that in the event Fuel is transported from a shorter distance compared to the location specified hereinabove, the cost of transportation will be reduced in proportion to the reduction in railway freight on account thereof. The Parties further agree that the cost of transportation due and payable by the Utility to the Supplier shall in no case exceed the actual cost incurred by the Supplier.]

[Option b: Coal from Coal Mine/Blocks allocated through auction by Governmental Instrumentality[13]

12.3.1 The Supplier represents and warrants that it shall procure Fuel from Coal Mine/Blocks allocated through auction by Governmental Instrumentality. The price of Fuel procured from Coal Mine/Blocks shall be the indicative price of Fuel in Rs./tonne which shall be derived from the cost of Fuel in Rs./kWh forming part of the Fuel Charge specified in the Bid. The price of Fuel so determined[14] hereunder shall be increased for every Accounting Year subsequent to COD, at a compounded annual rate of 2% (two percent), and the amount so arrived at shall be revised annually to reflect 60% (sixty per cent) of the variation in WPI occurring between January 31 immediately preceding the Bid Date and January 31 immediately preceding the Accounting Year for which such revision is undertaken[15]. For the avoidance of doubt, the Parties agree that the price of Fuel referred to hereinabove shall include all costs for and in respect of Fuel, including taxes, royalties, applicable reserve price, or any other charges in connection with procurement or production of Fuel. By way of illustration, if (i) the price of Fuel specified hereinabove is assumed as 80 paise (eighty paise), (ii) the WPI between the two aforesaid dates, the latter being 5 (five) years after the first such date increases by 30% (thirty per cent),and (iii) the relevant Accounting Year falls immediately after the Accounting Year in which COD occurred, the price of Fuel in the aforesaid relevant Accounting Year following COD shall be 96.29 paise (ninety six point two nine paise).

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[13] This option may be used when the Supplier is sourcing Fuel from Coal Mine/Blocks. In this case, the Bidders may be asked to indicate the break-up of their bid price into Fixed Charge and Variable Charge. This option may be used only if it conforms with the extant policy of the Central Government in respect of use of coal from such Coal Mine/Blocks.

[14]The price of Fuel so arrived shall not be more than Ron-of-Mine (ROM) price of coal quoted for the said block during the Coal Mine/Block auction plus Rs. 100 per metric tonne as basis on which the Coal Mine/Block has ben awarded to the Bidder along with escalation as per prescribed formula.

[15] For the purposes for revision the reference made to captive mines in the Coal Mine/Blocks Tender Document shall be constituted as reference to Coal Mine/Blocks.

12.3.2 The cost of transportation shall be the lower of (a) the benchmark cost of transportation specified by the Utility in the RFQ and (b) the cost of transportation specified by the Bidder in the Bid. The cost of transportation shall be revised in proportion to the increase in the cost of transportation by rail, road and other modes as applicable, by Indian Railways, concerned authorities as compared to applicable cost of transportation of Indian Railways, concerned authorities as on Bid Due Date. The Parties further agree that the cost of washing shall be the lower of, (a) the benchmark washery charges as specified by the Utility in the RFQ, and (b) the washery charges specified by the Bidder in the Bid; and the washing charge shall be revised only in proportion to the increase in the average CIL cost as compared to the average CIL cost as on Bid Due Date. The Parties also agree that the cost of crushing shall be the lower of (a) the benchmark crushing charges, as specified by the Utility in the RFQ and (b) the crushing charges, specified by the Bidder in the Bid. The Crushing charge shall be revised only in proportion to the increase in the average CIL cost as compared to the average CIL cost as on Bid Due Date. The Parties mutually agree that the cost of each of the other charges shall be the lower of (a) the benchmark of each of the other charges, as specified by the Utility in the RFQ and (b) the charges of each of the other charges, specified by the Bidder in the Bid. The charges of each of the Other Charges shall be revised in proportion to the increase in the charges by the CIL/CERC/SERC/Appropriate Authority, as the case may be, as compared to charges as on Bid Due Date.]

[Option c: Gas from domestic market

12.3.1 The Supplier represents and warrants that it shall procure Fuel from the domestic market at the prevailing price. The Parties agree that the cost of Fuel payable by the Utility to the Supplier under the provisions of Clause 12.2 shall be linked to price thereof, based on monthly average of the applicable index of such Fuel, as the Parties may mutually agree upon (the "**Fuel Price Index**"). The cost of Fuel specified in Clause 12.2 shall be deemed to be based on the average Fuel Price Index of the month preceding the Bid Date and the cost of Fuel payable for and in respect of any month during the Supply Period shall be revised in the same proportion that the average Fuel Price Index of the month preceding the Bid Date bears to the average Fuel Price Index for the month preceding the month in which electricity is supplied.

12.3.2 The Supplier represents and warrants that it shall transport Fuel from the gas fields/LNG terminal situate at ..... The Parties agree that the cost of transportation to be paid by the Utility to the Supplier under the provisions of Clause 12.2 shall be linked to the charge notified by the Petroleum and Natural Gas Regulatory Board and in the event of any revision in the notified charged after the Bid Date, the cost of transportation specified in Clause 12.2 shall be revised in the same proportion that the notified freight, as on the Bid Date, bears to be revised freight, as and when notified, and such revision in cost of transportation shall take effect for and in respect of the electricity supplied from the 1st (first) day of the month following the date of revision in notified freight. For the avoidance of doubt, the Parties agree that the provisions of this Clause 12.3.2 shall apply even if the Fuel is transported by rail or road instead of pipelines, and the cost of transportation

hereunder shall always be computed as if the fuel was transported by pipelines. The Parties further agree that in the event Fuel is transported from a shorter distance compared to the location specified hereinabove, the cost of transportation will be reduced in proportion to the reduction in charges on account thereof. The Parties further agree that the cost of transportation due and payable by the Utility to the Supplier shall in no case exceed the actual cost incurred by the Supplier.]

[*Option d: Gas from ONGC/GAIL*

12.3.1 The Supplier represents and warrants that it has entered into an agreement with ONGC/GAIL for supply of Fuel at the notified price from its gas fields/LNG terminal situate at…., or any substitute thereof. The Parties agree that the cost of Fuel payable by the Utility to the Supplier under the provisions of Clause 12.2 shall be linked to the price notified by ONGC/GAIL for that Fuel and in the event of any revision in the notified price after the Bid Date, the cost of Fuel specified in Clause 12.2 shall be revised in the same proportion that the notified price of ONGC/GAIL, as on the Bid Date, bears to the revised price, as and when notified, and such revision in the cost of Fuel shall take effect for and in respect of the electricity supplied from the date of such revision in the notified price. For the avoidance of doubt, the Parties expressly agree that the use of Fuel hereunder for proportion and supply of electricity during Peak Hours shall not be deemed to be use of Concessional Fuel and the restrictions on Concessional Fuel as specified in this Agreement shall not apply to such production and supply.

12.3.2 The Supplier represents and warrants that it shall transport Fuel from the gas field/LNG terminal specified in Clause 12.3.1. The Parties agree that the cost of transportation to be paid by the Utility to the Supplier under the provisions of Clause 12.2 shall be linked to the notified charge for pipelines and in the event of any revision in the notified charge after the Bid Date, the cost of transportation specified in Clause 12.2 shall be revised in the same proportion that the notified freight, as on the Bid Date, bears to the revised freight, as and when notified, and such revision in cost of transportation shall take effect for and in respect of the electricity supplied from the 1st (first) day of the month following the date of revision in the notified freight. For the avoidance of doubt, the Parties agree that the provisions of this Clause 12.3.2 shall apply even if the Fuel is transported by rail or road instead of pipelines, and the cost of transportation hereunder shall always be computed as if the Fuel was transported by pipelines. The Parties further agree that in the event Fuel is transported from a shorter distance compared to the location specified hereinabove, the cost of transportation will be reduced in proportion to the reduction in charges on account thereof. The Parties further agree that the cost of transportation due and payable by the Utility to the Supplier shall in no case exceed the actual cost incurred by the Supplier.]

[Option e: Supply from Hydro-electric Power Station

12.3.1 The Supplier represents and warrants that it shall supply electricity to the Utility at the Delivery Point for a lumpsum Tariff which shall comprise: (a) a Base Variable Charge referred to in Clause 12.2, which shall include the generating cost of electricity, the transmission charges thereof and the transmission losses, and (b) a Base Fixed Charge which shall be equal to the Base Variable Charge

excluding transmission charges and transmission losses specified in Clause 12.2. For the avoidance of doubt, the Parties agree that the Base Fixed Charge and Base Variable Charge shall be revised in accordance with the provisions of Clauses 11.3 and 12.3.2 respectively.

12.3.2 The Parties agree that the generating cost component of Base Variable Charge specified in Clause 12.2 shall be increased for every Accounting Year following the Base Year so as to reflect 20% (twenty per cent) of the variation in WPI occurring between January 31 immediately preceding the Base Year and January 31 immediately preceding the Accounting Year for which such revision is undertaken. For the avoidance of doubt and by way of illustration, if (a) the Variable Charge specified hereinabove is assumed as 80 paise (eighty paise) and (b) WPI between the two aforesaid dates, the letter being 1 (one) year after the first such date, increase by 6.25% (six point two five per cent), the Variable Charge in the Accounting Year following first Accounting Year shall be 81 paise (eighty one paise).]

[*Option f: Coal imported from international market*

12.3.1 The Supplier represents and warrants that it shall import Fuel under its own arrangements. The Parties agree that the cost of Fuel payable by the Utility to the Supplier under the provisions of Clause 12.2 shall be linked to the price thereof, Free on Board (FOB), as specified in US cents, based on the monthly arithmetic mean of coal price indices, namely, (a) AP14 (South Africa), (b) Coal fax (Australia), and (c) Global Coal (Australia)[16], or any substitute thereof, which the Parties may mutually agree upon (the "**Fuel Price Index**"). The cost of Fuel specified in Clause 12.2 shall be deemed to be based on the average Fuel Price Index of the month preceding the Bid Date and the cost of Fuel payable for and in respect of any month during the Supply Period shall be revised in the same proportion that the average Fuel Price Index of the month preceding the Bid Date bears to the average Fuel Price Index for the month preceding the month in which the Fuel is loaded at the port of origin, as evidenced by the documents to be furnished by the relevant shipping company. The Parties further agree that the cost of Fuel shall be converted from US cents to Indian rupees at the commencement of every month and the exchange rate used for this purpose shall be the mean of the buying and selling rate at the beginning of such month, as notified by the State Bank of India or any substitute thereof.

12.3.2 The total cost of transportation of imported Fuel, shall be the lower of , (a) the indicative cost of transportation as specified in the Bid, in US cents, and (b) [20% (twenty percent)] of the price of Fuel, as specified in the Bid in US cents, to which 110% (one hundred and ten percent) of the freight payable to the Indian Railways shall be added for inland transportation, if any, and the total freight charges so determined as on the Bid Date shall be revised from time to time to reflect the variation occurring in the Freight Index:

Provided that the Supplier shall normally undertake shipment of Fuel, comprising no less than 90% (ninety percent) of its annual import, under long term contracts

[16] The Utility may either specify the aforesaid indices or substitute the same by other indices. It may, in its discretion, also specify a single index in the Bid documents. The same approach may be followed in respect of indices relating to gas price.

which have a duration of one year or more, and the cost of transportation hereunder shall be computed and paid at the rate specified in such contracts.

Provided further that the freight charges payable under such long term contracts shall not exceed the lower of, (i) the freight charge determined as on the Bid Date and adjusted to reflect the variation in Freight Index from time to time, and (ii) the average freight payable under similar contracts entered into during a period of 180 (one hundred and eighty) days preceding the date of that contract, and where information relating to such contracts is not available, then 90% (ninety percent) of the amount computed under sub-clause (i) hereinabove.

Provided also that the cost of transportation due and payable by the Utility to the Supplier shall in no case exceed the actual cost incurred by the Supplier.

Explanation:

For the purposes of this Clause 12.3.2, Freight Index for shipping shall be computed by assigning a weigh age of [40% (forty per cent) and 60% (sixty per cent) respectively] or such relative weight age as the Parties may with mutual agreement determine form time to time, to the Baltic Dry Index and the Singapore 380 CST Bunker Fuel Price Index, or any substitute thereof as the Parties may mutually agree, and determining the arithmetic mean of such indices for a period of 3 (three) calendar months preceding the month in which Fuel is loaded on a ship, and in the case of transportation by rail, the freight charges shall always be deemed to be equal to 110% (one hundred and ten per cent) of the freight payable to the Indian Railways.]

[Option g: Gas imported from international market

12.3.1 The Supplier represents and warrants that it shall import Fuel under its own arrangements. The Parties agree that the cost of Fuel payable by the Utility to the Supplier under the provisions of Clause 12.2 shall be linked to the price thereof, Free on Board (FOB), as specified in US cents, based on the monthly average of price indices namely: (a) Henry Hub (USA), (b) NBP (UK), and (c) JCC (Japan)[17], or any substitute thereof, which the parties may mutually agree upon (the "**Fuel Price Index**"). The cost of Fuel specified in Clause 12.2 shall be deemed to be based on the average Fuel Price Index of the month preceding the Bid Date and in the event of any revision in the average Fuel Price Index during any subsequent month, the cost of Fuel specified in Clause 12.2 shall be revised in the same proportion that the average Fuel Price Index of the month preceding the Bid Date bears to the revised average Fuel Price Index for any subsequent month, and such revision shall take effect for and in respect of the electricity supplied on and after the 21st (twenty first) day of the month following the subsequent month referred to hereinabove. The Parties further agree that the cost of Fuel shall be converted from US cents to Indian rupees at the commencement of every month and the exchange rate used for this purpose shall

[17] The Utility may specify the index/indices prior to bidding.

be the mean of the buying and selling rate at the beginning of such month, as notified by the State Bank of India or any substitute thereof.

12.3.2 The cost of transportation of imported Fuel would include the cost of shipping and domestic transportation by pipeline. The cost of shipping of imported Fuel, shall be the lower of, (a) the indicative cost of shipping as specified in the Bid, in US cents, and (b) [20% (twenty percent)] of the price of Fuel, as specified in the Bid in US cents and the freight charges so determined as on the Bid Date shall be revised from time to time to reflect the variation occurring in the Freight Index:

Provided that the Supplier shall normally undertake shipment of Fuel, comprising no less than 90% (ninety per cent) of its annual import, under long term contracts which have duration of one year or more, and the cost of transportation hereunder shall be computed and paid at the rate specified in such contracts.

Provided further that the freight charges payable under such long term contracts shall not exceed the lower of, (i) the freight charge determined as on the Bid Date and adjusted to reflect the variation in Freight Index from time to time, and (ii) the average freight payable under similar contracts entered into during a period of 180 (one hundred and eighty) days preceding the date of that contract, and where information relating to such contracts is not available, then 90% (ninety per cent) of the amount computed under sub-clause (i) hereinabove.

Provided also that the cost of shipping due and payable by the Utility to the Supplier shall in no case exceed the actual cost incurred by the Supplier.

Explanation:

For the purposes of this Clause 12.3.2, Freight Index for shipping shall be computed by assigning a weightage of [40% (forty percent) and 60% (sixty per cent) respectively] or such relative weightage as the Parties may with mutual agreement determine from time to time, to the Baltic Dry Index and the Singapore 380 CST Bunker Fuel Price Index, or any substitute thereof as the Parties may mutually agree, and determining the arithmetic mean of such indices for a period of 3 (three) calendar months preceding the month in which Fuel is loaded on a ship.

12.3.3 The Supplier represents and warrants that it shall transport Fuel from the port of import situate at ……, or any substitute thereof. The Parties agree that the cost of domestic transportation to the paid by the Utility to the Supplier under the provisions of Clause 12.2 shall be linked to the charges notified by the Petroleum and Natural Gas Regulatory Board and in the event of any revision in the notified charges after the Bid Date, the cost of domestic transportation specified in Clause 12.2 shall be revised in the same proportion that the notified charges, as on the Bid Date, bears to be revised charges, as and when notified, and such revision in cost of transportation shall take effect for and in respect of the electricity supplied from the 1st (first) day of the month following the date of revision in notified charges. For the avoidance of doubt, the Parties agree that the provisions of this Clause 12.3.2 shall apply even if the Fuel is transported by rail and road, instead of pipelines, and the cost of transportation hereunder shall always be computed as

if the fuel was transported by pipelines. The Parties further agree that in the event Fuel is transported from a shorter distance compared to the location specified hereinabove, the cost of transportation will be reduced in proportion to the reduction in charges on account thereof. The parties further agree that the cost of transportation due and payable by the Utility to the Supplier shall in no case exceed the actual cost incurred by the Supplier.]

[Option h: Coal from Captive Mines abroad

12.3.1 The Supplier represents and warrants that it shall procure Fuel from Captive Mines situate outside India. The Parties agree that the cost of Fuel payable by the Utility to the Supplier under the provisions of Clause 12.2 shall be linked to the price thereof, Free on Board (FOB), as specified in US cents, which shall be increased every year at a compounded annual rate of 2% (two per cent), commencing from the Accounting Year following the Base Year. The parties further agree that the cost of Fuel shall be converted from US cents to Indian rupees at the commencement of every month and the exchange rate used for this purpose shall be the mean of the buying and selling rate at the beginning of such month, as notified by the State Bank of India or any substitute thereof. The parties also agree that the supplier of Fuel shall be deemed to be a Contractor for the purposes of Article 17, and any change in law or taxes occurring in the jurisdiction where the Captive Mines are situate shall be deemed to be a Change in Law affecting the Supplier and its Associate, if any, under the provisions of Article 21.

12.3.2 The total cost of transportation of imported Fuel, shall be the lower of, (a) the indicative cost of transportation as specified in the Bid, in US cents, and (b) 20% (twenty percent)] of the price of Fuel, as specified in the Bid in US cents, to which 110% (one hundred and ten percent) of the freight payable to the Indian Railways shall be added for inland transportation., if any, and the total freight charges so determined as on the Bid Date shall be revised from time to time to reflect the variation occurring in the Freight Index:

Provided that the Supplier shall normally undertake shipment of Fuel, comprising no less than 90% (ninety per cent) of its annual import, under long term contracts which have duration of one year or more, and the cost of transportation hereunder shall be computed and paid at the rate specified in such contracts.

Provided further that the freight charges payable under such long term contracts shall not exceed the lower of, (i) the freight charge determined as on the Bid Date and adjusted to reflect the variation in Freight Index from time to time, and (ii) the average freight payable under similar contracts entered into during a period of 180 (on hundred and eighty) days preceding the date of that contract, and where information relating to such contracts is not available, then 90% (ninety per cent) of the amount computed under sub-clause (i) hereinabove.

Provided also that the cost of transportation due and payable by the Utility to the Supplier shall in no case exceed the actual cost incurred by the Supplier.

Explanation:

For the purposes of this Clause 12.3.2, Freight Index for shipping shall be computed by assigning a weightage of [40% (forty per cent) and 60% (sixty per cent) respectively] or such relative weightage as the Parties may with mutual agreement determine from time to time, to the Baltic Dry Index and the Singapore 380 CST Bunker Fuel Price Index, or any substitute thereof as the Parties may mutually agree, and determining the arithmetic mean of such indices for a period of 3 [three] calendar months preceding the month in which Fuel is loaded on a ship and in the case of transportation by rail, the freight charges shall always be deemed to be equal to 110% (one hundred and ten per cent) of the freight payable to the Indian Railways.]

[Option i: Fuel imported under fixed-price gas contract

12.3.1 The Supplier represents and warrants that it shall procure Fuel under a fixed-price contract for supply of gas from outside India. The Parties agree that the cost of Fuel payable by the Utility to the Supplier under the provisions of Clause 12.2 shall be linked to the price thereof, Free on Board (FOB), as specified in US cents. The Parties further agree that the cost of Fuel shall be converted from US cents to Indian rupees at the commencement of every month and the exchange rate used for this purpose shall be the mean of the buying and selling rate at the beginning of such month, as notified by the State Bank of India or any substitute thereof.

12.3.2 The total cost of transportation of imported Fuel would include the cost of shipping and domestic transportation by pipeline. The cost of shipping of imported Fuel, shall be the lower of, (a) the indicative cost of transportation as specified in the Bid, in US cents, and (b) [20% (twenty percent)] of the price of Fuel, as specified in the Bid in US cents and the freight charges so determined as on the Bid Date shall be revised from time to time to reflect the variation occurring in the Freight Index:

Provided that the Supplier shall normally undertake shipment of Fuel, comprising no less that 90% (ninety per cent) of its annual import, under long term contracts which have duration of one year or more, and the cost of transportation hereunder shall be computed and paid at the rate specified in such contracts.

Provided further that the freight charges payable under such long term contracts shall not exceed the lower of, (i) the freight charge determined as on the Bid Date and adjusted to reflect the variation in Freight Index from time to time, and (ii) the average freight payable under similar contracts entered into during a period of 180 (one hundred and eighty) days preceding the date of that contract, and where information relating to such contracts is not available, then 90% (ninety per cent) of the amount computed under sub-clause (i) hereinabove.

Provided also that the cost of transportation due and payable by the Utility to the Supplier shall in no case exceed the actual cost incurred by the Supplier.

Explanation:

For the purposes of this Clause 12.3.2, Freight Index for shipping shall be computed by assigning a weightage of [40% (forty per cent) and 60% (sixty per

cent) respectively] or such relative weightage as the Parties may with mutual agreement determine from time to time, to the Baltic Dry Index and the Singapore 380 CST Bunker Fuel Price Index, or any substitute thereof as the Parties may mutually agree, and determining the arithmetic mean of such indices for a period of 3 (three) calendar months preceding the month in which Fuel is loaded on a ship.

12.3.3 The Supplier represents and warrants that it shall transport Fuel by pipeline from the port of import situate at……, or any substitute thereof. The Parties agree that the cost of domestic transportation to be paid by the Utility to the Supplier under the provisions of Clause 12.2 shall be linked to the charges notified by the Petroleum and Natural Gas Regulatory Board, and in the event of any revision in the notified charges after the Bid Date, the cost of domestic transportation specified in Clause 12.2 shall be revised in the same proportion that the notified charges, as on the Bid Date, bears to the revised charges, as and when notified, and such revision in cost of transportation shall take effect for and in respect of the electricity supplied from the 1st (first) day of the month following the date of revision in notified charges. For the avoidance of doubt, the Parties agree that the provisions of this Clause 12.3.2 shall apply even if the Fuel is transported by rail or road, instead of pipelines, and the cost of transportation hereunder shall always be computed as if the Fuel was transported by pipelines. The parties further agree that in the event Fuel is transported from a shorter distance compared to the location specified hereinabove, the cost of transportation will be reduced in proportion to the reduction in charges on account thereof. The Parties further agree that the cost of transportation due and payable by the Utility to the Supplier shall in no case exceed the actual cost incurred by the Supplier.]

[*Option j: Lumpsum Tariff*[18]

12.3.1 The Supplier represents and warrants that it shall supply electricity to the Utility at the Delivery Point for a lumpsum Tariff that shall comprise: (a) a Base Variable Charge referred to in Clause 12.2, which shall include the entire generating cost of electricity, the transmission charges thereof and the transmission losses, and (b) a Base Fixed Charge which shall be equal to the Base Variable Charge excluding the transmission charges and transmission losses specified in Clause 12.2. For the avoidance of doubt, the Parties agree that the Base Fixed Charge and the Base Variable Charge shall be revised in accordance with the provisions of Clauses 11.3 and 12.3.2 respectively.

12.3.2 The Parties agree that the generating cost component of Base Variable Charge specified in Clause 12.2 shall be increased for every Accounting Year following the Base Year so as to reflect 50% (fifty per cent) of the variation in WPI occurring between January 31 immediately preceding the Base Year and January 31 immediately preceding the Accounting Year for which such revision is undertaken. For the avoidance of doubt and by way of illustration, if (a) the Base Variable Charge specified hereinabove is assumed as 80 paise (eighty paise) and (b) WPI between the two aforesaid dates, the latter being 1 (one) year after the

[18] May be used for procurement any sources of energy including renewable source of energy where deemed feasible. Bidders whose source of Fuel is from Coal Mine/Blocks allocated through auction by Governmental Instrumentality as per provisions of Applicable Laws shall not be eligible to Bid under this sub-clause (X) (Lumpsum Tariff).

first such date, increases by 5% (five per cent), the Variable Charge in the Accounting Year following the first Accounting Year shall be 82 paise (eighty two paise).]

12.4 Shortage of Fuel

In the event the Supplier anticipates a shortfall in the production of electricity for supply to the Utility from Contracted Capacity on account of a shortfall in Fuel for reasons beyond the control of the Supplier, the Supplier shall, as soon as practicable but in any event no later than 7 (seven) days from the date when it anticipated the shortage of Fuel, notify the Utility of the nature, extent and period of shortage of Fuel and the reasons thereof. For the avoidance of doubt, the Parties expressly agree that no Tariff shall be payable to the Supplier for any shortfall in Availability occurring on account of shortage of Fuel, save and except as provided in Clause 11.4.5.[19]

12.5 Restrictions on use of Concessional Fuel

[The Supplier acknowledges that it is not entitled to use Concessional Fuel except for production of electricity and supply thereof under and in accordance with a long-term power purchase agreement with a Utility in accordance with the provisions of the Act and, therefore, agrees and undertakes not to use any Concessional Fuel for production and supply of electricity in pursuance of this Agreement. *if Supplier is NOT a Trading Licensee, or* The Supplier undertakes that the Developer shall not use Concessional Fuel for production and supply of electricity in pursuance of this Agreement *if supplier is a Trading Licensee*] The Supplier further acknowledges and agrees that in the event of any breach of the provisions of this Clause 12.5, the Utility shall be entitled to deduct, withhold and appropriate 60% (sixty per cent) of the Tariff as Damages for and in respect of the electricity produced and supplied by use of Concessional Fuel, without prejudice to the rights of the Utility to appropriate the Performance Security and terminate this Agreement as if a Supplier Default has occurred.

[Provided, however, that in case gas in supplied by ONGC/GAIL on concessional terms, the Utility and the Supplier may, with prior approval of the Government, use such gas for production of electricity and supply thereof under this Agreement.]

[12.6 Take or Pay supply of Fuel

The Parties expressly acknowledge and agree that the [Supplier *if supplier is NOT a Trading Licensee, or* Developer *if Supplier is a Trading Licensee*] shall produce electricity for supply thereof under this Agreement by utilising gas procured under a fixed supply contract which shall require the Supplier to pay for supply of gas even if it is not utilised, and in the event such electricity is not Dispatched by the Utility or sold to a Buyer in accordance with the provisions of this Agreement, the Utility shall pay to the Supplier the cost incurred by it for the gas that has remained unutilised.]

[19] The word "Fuel" may be substituted by "Water" in case electricity is to be supplied from hydroelectric Power station. Similar corrections may be made in the relevant clauses.

ARTICLE 13

PAYMENT SECURITY

13.1 Default Escrow Account

13.1.1 The Utility and the Supplier shall, prior to the Appointed Date, execute a default escrow agreement with the Utility's bank substantially in the form specified in Schedule-C (the "**Default Escrow Agreement**") for the establishment and operation of the default escrow account (the "**Default Escrow Account**"**)** in favour of the Supplier. The Parties agree and acknowledge that the Default Escrow Account shall be established and maintained at a bank where at least 30% (thirty per cent) of the Utility's total monthly Revenues are normally deposited (the "**Default Escrow Bank**"). The Utility expressly agrees and undertakes that throughout the term of the Contract Period, no less than 30% (thirty per cent) of its total Revenues shall continue to be deposited at that bank or any substitute thereof that the Parties may by mutual agreement determine and Revenues equivalent to 30% (thirty per cent) of the annual Capacity Charge (the "**Maximum Monthly Payment**") shall be routed every month through the Default Escrow Account in accordance with the provisions of this Clause 13.1 and the Default Escrow Agreement.

13.1.2 The Utility and the Supplier shall, prior to the Appointed Date, execute a deed of hypothecation substantially in the form specified at of Schedule-D (the "**Deed of Hypothecation**"), whereby the Utility shall hypothecate to the Supplier an amount equal to Maximum Monthly Payment, to be deposited every month in the Default Escrow Account for discharging the liabilities arising out of and in relation to the Secured Obligations.

13.1.3 The Parties acknowledge and agree that during the period commencing from the 25th (twenty fifth) day of every month and until discharge of any Monthly Invoice due and payable on or prior to that day, an amount equal to 20% (twenty per cent) of the annual Capacity Charge (the "**Minimum Monthly Payment**") shall be withheld in the Default Escrow Account for payment to the Supplier against such Monthly Invoice and the balance remaining shall be available to the Utility for withdrawal or transfer in accordance with the provisions of the Default Escrow Agreement.

13.1.4 The Utility shall procure that the Supplier has the first priority charge on the Revenues deposited into the Default Escrow Account, in accordance with the terms of the Default Escrow Agreement and the Deed of Hypothecation, but not exceeding the Maximum Monthly Payment for and in respect of any month.

13.2 Letter of Credit

13.2.1 The Utility shall, no later than 30 (thirty) days prior to the likely date of the Appointed Date, provide to the Supplier, an unconditional, revolving and irrevocable letter of credit for an amount equivalent to the Minimum Monthly Payment (the "**Letter of Credit**"), which may be drawn upon by the Supplier for recovery of payment due against the Monthly Invoice in accordance with the provisions of this Agreement. The Letter of Credit shall be substantially in the form specified in Schedule-E and shall come into effect on the Appointed Date,

and shall be modified once every year to reflect the revision in Minimum Monthly Payment in accordance with the provisions of this Agreement.

13.2.2 The Letter of Credit shall be procured by the Utility from a bank where at least 30% (thirty per cent) of the Utility's total monthly Revenues are normally deposited, and which shall have been appointed as the Default Escrow Bank. All costs and expenses relating to opening and maintenance of the Letter of Credit shall be borne by the Utility.

13.2.3 In the event of Utility's failure to pay the Monthly Invoice before the 27th (twenty seventh) day of the month in which the relevant Payment Due Date occurs, the Supplier may, in its discretion, invoke the Letter of Credit for recovery of the amount due, whereupon the Default Escrow Bank shall, without any reference to the Utility, pay the amount due upon the Supplier presenting the following documents, namely:

(a) a copy of the Monthly Invoice which has remained unpaid; and

(b) a certificate from the Supplier to the effect that the Monthly Invoice is in accordance with this Agreement and that the amount due and payable has remained unpaid.

13.2.4 In the event that the amount covered by the Letter of Credit is at any time less than the Minimum Monthly Payment or is insufficient for recovery of payment due against the Monthly Invoice, the Utility shall, within a period of 7 (seven) days from the date on which such shortfall occurred, cause the Letter of Credit to be replenished and reinstated to the extent specified in Clause 13.2.1. For the avoidance of doubt, the Parties agree that the Letter of Credit shall not be revised solely on account of revision in Minimum Monthly Payment, except to give effect to such revision once every year.

13.2.5 The Parties may, by mutual agreement, substitute the Letter of Credit by an unconditional and irrevocable bank guarantee or any equivalent instrument as may be mutually agreed upon.

13.3 Recovery from sale of Contracted Capacity

13.3.1 In the event the Supplier is unable to recover its Tariff through the Default Escrow Account and the Letter of Credit, as the case may be, and if the Tariff or part thereof remains unpaid for a period of 1 (one) month from the Payment Due Date, then notwithstanding anything to the contrary contained in this Agreement, the Supplier shall have the right to sell the whole or part of the Contracted Capacity to any Buyer for recovery of its dues from the Utility. For the avoidance of doubt, the Parties expressly agree that the Supplier shall be entitled to appropriate the revenues from sale hereunder for recovering the Tariff due and payable to it for sale of such Contracted Capacity to the Utility and the surplus remaining, if any, shall be appropriated for recovery of its dues from the Utility.

13.3.2 The sale of Contracted Capacity pursuant to Clause 13.3.1 shall not extinguish any liability of the Utility or any claim that the Supplier may have against the Utility, save and except to the extent of amounts recovered under the provisions of Clause 13.3.1.

13.3.3 Supply of electricity to the Utility in accordance with the provisions of this Agreement shall be restored no later than 7 (seven) days from the day on which the Utility pays, or is deemed to have paid, the arrears due to the Supplier in accordance with the provisions of this Agreement, restores the Default Escrow Account and renews the Letter of Credit.

13.4 Payment security for Termination

The Parties agree and acknowledge that upon Termination and on failure of the Utility to make the Termination Payment within 30 (thirty) days of demand by the Supplier, Revenues equal to the Maximum Monthly Payment, deposited into the Default Escrow Account in accordance with the provisions of this Agreement and the Default Escrow Agreement, shall be appropriated every month and paid to the Supplier until discharge of the Termination Payment and any interest thereon. For the avoidance of doubt, the Utility expressly agrees and undertakes that 30% (thirty per cent) of its total monthly Revenues shall continue to be deposited into its account with the Default Escrow Bank until its liability for an in respect of the Termination Payment is fully discharged.

ARTICLE 14

DESPATCH OF CONTRACTED CAPACITY

14.1 Despatch of Contracted Capacity

14.1.1 The Utility shall, in accordance with Applicable Laws, issue instructions to the Supplier for production of electricity and despatch thereof to the Grid during such period and in such volume as it may specify in its instructions (the "**Despatch**"). Provided that the Utility shall not Despatch in excess of the Contracted Capacity, unless mutually agreed between the Parties. For the avoidance of doubt, the Parties agree that the Utility may, in its discretion, direct the Supplier to Despatch on its behalf, all or part of the Contracted Capacity, in favour of the third parties designated by it from time to time on the express understanding that the payment therefor shall be made by the Utility to the Supplier as if the electricity has been Despatched in favour of the Utility.

14.1.2 Pursuant to the provisions of Clause 14.1.1, the [Supplier shall if the Supplier is NOT a Trading Licensee, or Supplier shall cause the Developer to] plan the production and Despatch of electricity and convey its availability for scheduling thereof by the SLDC or RLDC, as the case may be, and shall supply electricity in accordance with the provisions of the Grid Code and the Act.

14.1.3 In the event the Supplier schedules any electricity, produced from Contracted Capacity, for sale to Buyers in breach of this Agreement, the Supplier shall pay Damages equal to the higher of: (a) twice the Fixed Charge; and (b) the entire sale revenue accrued from Buyers. For the avoidance of doubt, no Fixed Charge or any amount in lieu thereof shall be due or payable to the Supplier for and in respect of any electricity sold hereunder.

14.2 Settlement of UI charges

14.2.1 All payments due to or from the Supplier on account of any unscheduled interchange in terms of the UI Regulations (the "**Unscheduled Interchange**" or "**UI**") shall be solely to the account of and borne by the Supplier, save and except as provided in Clause 14.2.2 and 14.2.3.

14.2.2 Subject to the provisions of the Applicable Laws, the Utility shall have the first right to despatch, in the form of UI, any surplus electricity generated from the contracted Capacity, and 90% (ninety per cent) of the revenues accruing from such UI charges, after deducting an amount equal to the Tariff payable for such electricity, shall be paid by the Supplier to the credit of the Utility and the balance remaining may be appropriated by the Supplier.

14.2.3 Subject to the provisions of Clause 14.2.2, the Supplier may, in addition to the scheduling under Clause 14.1, supply electricity produced from the unutilised Contracted Capacity, and in such an event the Fixed Charge due and payable by the Utility to the Supplier for and in respect of the Contracted Capacity utilised hereunder shall be deemed to be waived and shall not be payable by the Utility.

Provided, that the Parties may with mutual agreement reduce the Fixed Charge to be waived hereunder to such extent as they may determine.

14.3 Overriding powers of the Utility

14.3.1 Upon occurrence of a Supplier's Default, the Utility may, in its discretion, direct the Supplier to stop any or all its sale of electricity to Buyers from and in respect of Contracted Capacity, and to sell all such electricity to the Utility in accordance with the provisions of this Agreement. Upon receipt of any directions hereunder from the Utility, the Supplier shall comply forthwith and issue despatch and scheduling instruction to the RLDC and SLDC in conformity with the directions of the Utility.

14.3.2 In the event the Supplier does not comply with the directions of the Utility issued in pursuance of Clause 14.3.1, the Utility may issue directions to the RLDC and SLDC to undertake despatch and scheduling in accordance with such instructions as the Utility may issue hereunder from time to time.

14.3.3 The Supplier shall, prior to the Appointed Date, furnish a certified true copy of this Agreement to the RLDC and SLDC and obtain a receipt thereof. By furnishing a copy of this Agreement to the RLDC and SLDC, the Supplier shall be deemed to have agreed and undertaken to abide by the provisions of this Clause 14.3 and to have given irrevocable instructions to the RLDC and SLDC to carry out all the directions given by the Utility hereunder. For the avoidance of doubt, the Parties expressly agree that the provisions of this Clause 14.3 shall remain in force and effect until the Termination Payment, if any, has been made by the Supplier to the Utility.

14.3.4 The exercise of any overriding powers by the Utility under this Clause 14.3 shall not in any manner affect or diminish the liability and obligation of the Utility to make payments to the Supplier for the electricity supplied or the Availability of Contracted Capacity and the Utility shall, for this purpose, ensure and procure compliance of the provisions of Article 13. Notwithstanding anything to the contrary contained in this Clause 14.3, the Utility shall not be entitled to issue any directions hereunder nor shall the RLDC and SLDC comply with such directions to the extent and for the period during which Utility is in material breach of the provisions of Article 13 or of its payment obligations to the Supplier under this Agreement, and in such an event the provisions of Clause 13.3 shall apply.

14.4 Ramp up of Despatch

In the event the Utility Despatches less than 2% (two per cent) of Contracted Capacity at any time and requires ramping up of generation thereafter, it shall allow a period of 4 (four)[20]hours to the Supplier for reaching Availability equal to the Contracted Capacity. For the avoidance of doubt, the Parties agree that in the event the Supplier fails to reach such Availability within [4 (four)] hours, the shortfall thereof shall be deemed to be Mis-declaration under the provisions of

[20] May be substituted by 20 minutes for a gas-based station and 5 minutes for a hydro-electric station.

Clause 11.5.5. The Parties further agree that the liability of the Utility hereunder shall at all times be reckoned with reference to the Contracted Capacity.

ARTICLE 15

INSURANCE

15.1 Insurance during Contract Period

The [Supplier in case Supplier is NOT a Trading Licensee or Supplier shall ensure that Developer shall effect and maintain at its own cost, such insurances for such maximum sums as may be necessary or prudent in accordance with Good Industry Practice. The Supplier shall also effect and maintain such insurances as may be necessary for mitigating the risks that may devolve on the Utility as a consequence of any act or omission of the Supplier [and/or the Developer if Supplier is a Trading Licensee] during the Contract Period.

15.2 Insurance Cover

Without prejudice to the provisions contained in Clause 15.1, the Supplier shall, during the Operations Period, procure and maintain [and cause the Developer to procure and maintain, as the case may be, if Supplier is a Trading Licensee] Insurance Cover including but not limited to the following:

(a) Loss, damage or destruction of the Project Assets at replacement value;

(b) comprehensive third party liability insurance including injury to or death of personnel of the Utility or others caused by the Project;

(c) the Supplier's general liability arising out of the Procurement Contract;

(d) liability to third parties for goods or property damage;

(e) workmen's compensation insurance; and

(f) any other insurance that may be necessary to protect the Supplier and its employees, including all Force Majeure Events that are insurable at commercially reasonable premiums and not otherwise covered in items (a) to (e) above.

15.3 Evidence of Insurance Cover

All insurances obtained by the Supplier [and by the Developer if Supplier is a Trading Licensee] in accordance with this Article 15 shall be maintained with insurers on terms consistent with Good Industry Practice. Within 15 (fifteen) days of obtaining any insurance cover, the Supplier shall furnish to the Utility, notarised true copies of the certificate(s) of insurance, copies of insurance policies and premia payment receipts in respect of such insurance, and no such insurance shall be cancelled, modified, or allowed to expire or lapse until the expiration of at least 45 (forty five) days after notice of such proposed cancellation, modification or non-renewal has been delivered by the Supplier to the Utility .

15.4 Remedy for failure to insure

If the Supplier [and/or the Developer if Supplier is a Trading Licensee] shall fail to effect and keep in force all insurances for which it is responsible pursuant hereto, the Utility shall have the option to either keep in force any such insurances, and pay such premia and recover the costs thereof from the Supplier, or in the event of computation of a Termination Payment, treat an amount equal to the Insurance Cover as deemed to have been received by the Supplier [and/or the Developer if Supplier is a Trading Licensee].

15.5 Waiver of subrogation

All insurance policies in respect of the insurance obtained by the Supplier [and/or by the Developer if Supplier is a Trading Licensee] pursuant to this Article 15 shall include a waiver of any and all rights of subrogation or recovery of the insurers thereunder against, *inter alia*, the Utility, and its assigns, successors, undertakings and their subsidiaries, affiliates, employees, insurers and underwriters, and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy or in any way connected with any loss, liability or obligation covered by such policies of insurance.

15.6 Supplier's waiver

The Supplier hereby further releases, assigns and waives any and all rights of subrogation or recovery against, *inter alia*, the Utility and its assigns, undertakings and their subsidiaries, affiliates, employees, successors, insurers and underwriters, which the Supplier may otherwise have or acquire in or from or in any way connected with any loss, liability or obligation covered by policies of insurance maintained or required to be maintained by the Supplier pursuant to this Agreement (other than third party liability insurance policies) or because of deductible clauses in or inadequacy of limits of any such policies of insurance.

15.7 Application of insurance proceeds

The proceeds from all insurance claims, except life and injury, shall be paid to the Supplier [and/or Developer in case Supplier is a Trading Licensee] and it shall, notwithstanding anything to the contrary contained in Clause 19.3, apply such proceeds for any necessary repair, reconstruction, reinstatement, replacement, improvement or development of the Power Station.

ARTICLE 16

ACCOUNTS AND AUDIT

16.1 Audited accounts

16.1.1 The Supplier shall maintain books of accounts recording all its receipts (including Tariff, revenues from sale of power to the Utility, other Distribution Licensees and Buyers, and all incomes derived/collected by it from or on account of the Power Station and/or sale of electricity from the Power Station), income, expenditure, payments, assets and liabilities, in accordance with this Agreement, Good Industry Practice, Applicable Laws and Applicable Permits. The Supplier shall provide 2 (two) copies of its Balance Sheet, Cash Flow Statement and Profit and Loss Account, along with a report thereon by its Statutory Auditors, within 90 (ninety) days of the close of the Accounting Year to which they pertain and such audited accounts, save and except where expressly provided to the contrary, shall form the basis of payments by either Party under this Agreement. The Utility shall have the right to inspect the records of the Supplier during office hours and require copies of relevant extracts of books of accounts, duly certified by the Statutory Auditors, to be provided to the Utility for verification of basis of payments, and in the event of any discrepancy or error being found, the same shall be rectified and such rectified account shall form the basis of payments by either Party under this Agreement.

16.1.2 The Supplier shall, within 30 (thirty) days of the close of each quarter of an Accounting Year, furnish to the Utility its unaudited financial results in respect of the preceding quarter, in the manner and form prescribed by the Securities and Exchange Board of India for publication of quarterly results by the companies listed on a stock exchange.

16.1.3 On or before the thirty-first day of May each Year, the Supplier shall provide to the Utility, for the preceding Accounting Year, a statement duly audited by its Statutory Auditors giving summarised information on (a) receipts on account of Tariff, (b) revenues from sale of electricity to other Distribution Licensees and Buyers, and (c) such other information as the Utility may reasonably require.

16.2 Appointment of auditors

16.2.1 The Supplier shall appoint, and have during the subsistence of this Agreement as its Statutory Auditors, a firm chosen by it and acceptable to the Utility. All fees and expenses of the Statutory Auditors shall be borne by the Supplier.

16.2.2 The Supplier may terminate the appointment of its Statutory Auditors after a notice of 45 (forty five) days to the Utility, subject to the replacement Statutory Auditors being appointed in the manner specified in Clause 16.2.1.

16.2.3 Notwithstanding anything to the contrary contained in this Agreement, the Utility shall have the right, but not the obligation, to appoint at its cost from time to time and at anytime, another firm (the "**Additional Auditors**") of Chartered Accountants to audit and verify all those matters, expenses, costs, realisations and

things which the Statutory Auditors are required to do, undertake or certify pursuant to this Agreement.

16.3 Certification of claims by Statutory Auditors

Any claim or document provided by the Supplier to the Utility in connection with or relating to receipts, income, payments, costs, expenses, accounts or audit, and any matter incidental thereto shall be valid and effective only if certified by its Statutory Auditors. For the avoidance of doubt, such certification shall not be required for exchange of information in the normal course of business.

16.4 Set-off

In the event any amount is due and payable by the Utility to the Supplier, it may set-off any sums payable to it by the Supplier and pay the balance remaining. Any exercise by the Utility of its rights under this Clause 16.4 shall be without prejudice to any other rights or remedies available to it under this Agreement or otherwise.

16.5 Dispute resolution

In the event of there being any difference between the findings of the Additional Auditors and the certification provided by the Statutory Auditors, such Auditors shall meet to resolve the differences and if they are unable to resolve the same, such Dispute shall be resolved by the Utility by recourse to the Dispute Resolution Procedure.

Part V

Force Majeure and Termination

ARTICLE 17

FORCE MAJEURE

17.1 Force Majeure

As used in this Agreement, the expression "**Force Majeure**" or "**Force Majeure Event**" shall, mean occurrence in India of any or all of Non-Political Event, Indirect Political Event and Political Event, as defined in Clauses 17.2, 17.3 and 17.4 respectively, if it affects the performance by the Utility(s) or the [Supplier *if Supplier is NOT a Trading Licensee, or* and/or the Developer *if Supplier is a Trading Licensee*] claiming the benefit of Force Majeure (the "**Affected Party**") of its obligations under this Agreement and which act or event (a) is beyond the reasonable control of the Affected Party, and (b) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice, and (c) has Material Adverse Effect on the Affected Party.

17.2 Non-Political Event

A Non-Political Event shall mean one or more of the following acts or events:

(a) act of God, epidemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionising radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Station Premises);

(b) strikes or boycotts (other than those involving the Supplier, [Developer, *if Supplier is a Trading Licensee*] Contractors or their respective employees/representatives, or attributable to any act or omission of any of them) interrupting supplies and services to the Power Station for a continuous period of 24 (twenty four) hours and an aggregate period exceeding 7 (seven) days in an Accounting Year, and not being an Indirect Political Event set forth in Clause 17.3;

(c) any failure or delay of a Contractor but only to the extent caused by another Non-Political Event and which does not result in any offsetting compensation being payable to the [Supplier *if Supplier is NOT a Trading Licensee, or* Supplier and/or Developer *if Supplier is a Trading Licensee*] by or on behalf of such Contractor;

(d) any delay or failure of an overseas contractor to deliver equipment in India [or to supply Fuel from an overseas Captive Mine], if such delay or failure is caused outside India by any event specified in Sub-clause (a) above and which does not result in any offsetting compensation being payable to the [Supplier *if Supplier is NOT a Trading Licensee, or* Developer *if Supplier is a Trading Licensee*] by such contractor;

(e) any judgement or order of any court of competent jurisdiction or statutory authority made against the [Supplier *if Supplier is NOT a Trading*

Licensee, or Supplier and/or Developer *if Supplier is a Trading Licensee*] in any proceedings for reasons other than (i) failure of the [Supplier *if Supplier is NOT a Trading Licensee, or* Supplier and/or Developer *if Supplier is a Trading Licensee*] to comply with any Applicable Law or Applicable Permit, or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or (iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by the Utility;

(f) the discovery of geological conditions, toxic contamination or archaeological remains on the Station Premises that could not reasonably have been expected to be discovered through an inspection of the Station Premises; or

(g) any event or circumstances of a nature analogous to any of the foregoing.

17.3 Indirect Political Event

An Indirect Political Event shall mean one or more of the following acts or events:

(a) an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;

(b) any political or economic upheaval, disturbance, movement, struggle or similar occurrence which could not have been anticipated or foreseen by a prudent person and which causes the construction or operation of the Project to be financially unviable or otherwise not feasible;

(c) industry-wide or State-wide strikes or industrial action for a continuous period of 24 (twenty four) hours and exceeding an aggregate period of 7 (seven) days in an Accounting Year;

(d) any civil commotion, boycott or political agitation which prevents generation or transmission of electricity by the Supplier for an aggregate period exceeding 7 (seven) days in an Accounting Year;

(e) any failure or delay of a Contractor to the extent caused by any Indirect Political Event and which does not result in any offsetting compensation being payable to the [Supplier *if Supplier is NOT a Trading Licensee, or* Supplier and/or Developer *if Supplier is a Trading Licensee*] by or on behalf of such Contractor;

(f) any Indirect Political Event that causes a Non-Political Event; or

(g) any event or circumstances of a nature analogous to any of the foregoing.

17.4 Political Event

A Political Event shall mean one or more of the following acts or events by or on account of any Government Instrumentality:

(a) Change in Law, only if consequences thereof cannot be dealt with under and in accordance with the provisions of Article 21 and its effect, in financial terms, exceeds the sum specified in Clause 21.1;

(b) compulsory acquisition in national interest or expropriation of any Project Assets or rights of the Supplier, [Developer *if Supplier is a Trading Licensee*] or of the Contractors;

(c) unlawful or unauthorised or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, licence, permit, authorisation, no objection certificate, consent, approval or exemption required by the Supplier, [Developer *if Supplier is a Trading Licensee*] or any of the Contractors to perform their respective obligations under this Agreement and the Project Agreements; provided that such delay, modification, denial, refusal or revocation did not result from the Supplier's, [Developer's *if Supplier is a Trading Licensee*] or any Contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, licence, authorisation, no objection certificate, exemption, consent, approval or permit;

(d) any failure or delay of a Contractor but only to the extent caused by another Political Event and which does not result in any offsetting compensation being payable to the [Supplier *if Supplier is NOT a Trading Licensee, or* Supplier and/or Developer *if Supplier is a Trading Licensee*] by or on behalf of such Contractor; or

(e) any event or circumstance of a nature analogous to any of the foregoing.

17.5 Duty to report Force Majeure Event

17.5.1 Upon occurrence of a Force Majeure Event, the Affected Party shall by notice report such occurrence to the other Party forthwith. Any notice pursuant hereto shall include full particulars of:

(a) the nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Article 17 with evidence in support thereof;

(b) the estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Agreement;

(c) the measures which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Event; and

(d) any other information relevant to the Affected Party's claim.

17.5.2 The Affected Party shall not be entitled to any relief for or in respect of a Force Majeure Event unless it shall have notified the other Party of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event no later than 7 (seven) days after the Affected Party knew, or ought reasonably to have known, of its occurrence, and shall have given particulars of the probable material

effect that the Force Majeure Event is likely to have on the performance of its obligations under this Agreement.

17.5.3 For so long as the Affected Party continues to claim to be materially affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) reports containing information as required by Clause 17.5.1, and such other information as the other Party may reasonably request the Affected Party to provide.

17.6 Effect of Force Majeure Event on the Procurement Contract

17.6.1 Upon the occurrence of any Force Majeure Event prior to the Appointed Date, the period set forth in Clause 4.1 for fulfilment of Conditions Precedent shall be extended by a period equal in length to the duration of the Force Majeure Event.

17.6.2 If any force Majeure Event occurs at any time after the Appointed Date, whereupon the Supplier is unable to transmit electricity to the Grid despite making best efforts or it is directed by the Utility, RLDC or SLDC or any Government Instrumentality to suspend generation or transmission during the subsistence of such Force Majeure Event, the Contract Period shall be extended by a period equal in length to the period during which the Supplier was prevented from generating or transmitting electricity on account thereof; provided that in the event of reduction in generation on account of partial inability or suspension, as the case may be, which cause the Availability on any day is to decline below 80% (eighty per cent) of the Normative Availability, the Utility shall extend the Contract Period in proportion to the loss of Availability due to Force Majeure. For the avoidance of doubt, loss of 25% (twenty five per cent) of Availability for 4 (four) days shall entitle the Supplier to extension of 1 (one) day in the Contract Period.

17.7 Allocation of costs arising out of Force Majeure

17.7.1 Upon occurrence of a Force Majeure Event after the Appointed Date, the costs incurred and attributable to such event and directly relating to the Contracted Capacity of the Power Station (the "**Force Majeure Costs**") shall be allocated and paid as follows:

(a) upon occurrence of a Non-Political Event and Indirect Political Event, the Parties shall bear their respective Force Majeure Costs and neither Party shall be required to pay to the other Party any costs thereof; and

(b) upon occurrence of a Political Event, all Force Majeure Costs attributable to such Political Event shall be reimbursed by the Utility to the Supplier.

For the avoidance of doubt, Force Majeure Costs may include interest payments on debt, O&M Expenses and all other costs directly attributable to the Force Majeure Event, but shall not include loss of Tariff, revenues from sale of electricity to other Distribution Licensees and Buyers, or debt repayment obligations.

17.7.2 Notwithstanding anything contained in this Clause 17.7, if during the occurrence of a Force Majeure Event, the Contracted Capacity or part thereof is deemed Available in accordance with the provisions of Clause 5.1.4, the Utility shall not be liable to make any payments towards Force Majeure Costs in respect thereof to the Supplier under this Clause 17.7.

17.7.3 Save and except as expressly provided in this Article 17, neither Party shall be liable to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant hereto.

17.8 Termination Notice for Force Majeure Event

If a Force Majeure Event subsists for a period of 180 (one hundred and eighty) days or more within a continuous period of 365 (three hundred and sixty five) days, either Party may in its discretion terminate this Agreement by issuing a Termination Notice to the other Party without being liable in any manner whatsoever, save as provided in this Article 17, and upon issue of such Termination Notice, this Agreement shall, notwithstanding anything to the contrary contained herein, stand terminated forthwith; provided that before issuing such Termination Notice, the Party intending to issue the Termination Notice shall inform the other Party of such intention and grant 15 (fifteen) days time to make a representation, and may after the expiry of such 15 (fifteen) days period, whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice.

17.9 Excuse from performance of obligations

If the Affected Party is rendered wholly or partially unable to perform its obligations under this Agreement because of a Force Majeure Event, it shall be excused from performance of such of its obligations to the extent it is unable to perform on account of such Force Majeure Event; provided that:

(a) the suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event;

(b) the Affected Party shall make all reasonable efforts to mitigate or limit damage to the other Party arising out of or as a result of the existence or occurrence of such Force Majeure Event and to cure the same with due diligence; and

(c) 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 resume performance of its obligations hereunder.

17.10 Relief for Unforeseen Events

17.10.1 Upon occurrence of an unforeseen event, situation or similar circumstances not contemplated or referred to in this Agreement, and which could not have been foreseen by a prudent and diligent person (the "**Unforeseen Event**"), any Party may by notice inform the other Party of the occurrence of such Unforeseen Event

with the particulars thereof and its effects on the costs, expense and revenues of the Power Station. Within 15 (fifteen) days of such notice, the Parties shall meet and make efforts in good faith to determine if such Unforeseen Event has occurred, and upon reaching agreement on accordance thereof deal with it in accordance with the provisions of this Clause 17.10.

17.10.2 Upon determination of the occurrence of an Unforeseen Event, the Parties shall make a reference to a conciliation tribunal which shall comprise one member each to be nominated by both Parties from among persons who have been Judges of a High Court and the conciliators so nominated shall choose a chairperson who has been a Judge of the Supreme Court or Chief Justice of a High Court.

17.10.3 The conciliation tribunal referred to in Clause 17.10.2 shall conduct its proceedings in accordance with the provisions of Article 23 as if it is an arbitration proceeding under that Article, save and except as provided in this Clause 17.10.

17.10.4 The conciliation tribunal referred to in this Clause 17.10 shall conduct preliminary proceedings to satisfy itself that -

(a) an Unforeseen Event has occurred;

(b) the effects of such Unforeseen Event cannot be mitigated without a remedy or relief which is not contemplated in the Agreement; and

(c) the Unforeseen Event or its effects have not been caused by any Party by any act or omission or its part,

and if the conciliation tribunal is satisfied that each of the conditions specified hereinabove is fulfilled, it shall issue an order to this effect and conduct further proceedings under this Clause 17.10.

17.10.5 Upon completion of the conciliation proceedings referred to in this Clause 17.10, the conciliation tribunal may by a reasoned order make recommendations which shall be:

(a) based on a fair and transparent justification;

(b) no greater in scope than is necessary for mitigating the effects of the Unforeseen Event;

(c) of no greater duration than is necessary for mitigating the effects of the Unforeseen Event; and

(d) quantified and restricted in terms of relief or remedy.

17.10.6 Within 15 (fifteen) days of receiving the order referred to in Clause 17.10.5, the Parties shall meet and make efforts in good faith to accept, in whole or in part, the relief or remedy recommended by the conciliation tribunal for mitigating the effects of the Unforeseen Event and to procure implementation of the Project in accordance with the provisions of this Agreement. In pursuance hereof, the Parties may, enter into a Memorandum of Understanding (the "**MoU**") setting

forth the agreement reached hereunder, and the terms of such MoU shall have force and effect as if they form part of the Agreement.

ARTICLE 18

COMPENSATION FOR BREACH OF AGREEMENT

18.1 Compensation for default by the Supplier

In the event of the Supplier being in material breach or default of this Agreement, it shall, upon receipt of the demand supported by necessary particulars thereof, pay to the Utility by way of compensation, all direct costs suffered or incurred by the Utility as a consequence of such material breach or default; provided that no compensation shall be payable under this Clause 18.1 for any material breach or default in respect of which Damages are expressly specified and payable under this Agreement. For the avoidance of doubt, the Parties agree that the compensation payable under this Article 18 shall be in addition to, and not in substitution for, or derogation of, Termination Payment, if any. The Parties further agree that the non-defaulting Party shall make all reasonable efforts to mitigate or limit the costs and damage arising as a result of breach of Agreement by the other Party or for any consequential losses incurred by the Utility.

18.2 Compensation for default by the Utility

In the event of the Utility being in material breach or default of this Agreement at any time after the Appointed Date, it shall, upon receipt of the demand supported by necessary particulars thereof, pay to the Supplier by way of compensation, all direct costs suffered or incurred by the Supplier as a consequence of such material breach or default; provided that no such compensation shall be payable for any material breach or default in respect of which Damages have been expressly specified in this Agreement. For the avoidance of doubt, compensation payable may include interest payments on debt, O&M Expenses and all other costs directly attributable to such material breach or default but shall not include loss on account of Tariff, revenues from sale of electricity to other Distribution Licensees and Buyers, and other revenues, debt repayment obligations, or any consequential losses.

18.3 Extension of Contract Period

In the event that a material breach or default of this Agreement causes delay in achieving the Appointed Date or leads to reduction in Availability, as the case may be, the Utility shall, in addition to payment of compensation under Clause 18.2, extend the Contract Period, such extension being equal in duration to the period by which the Appointed Date was delayed or Availability was reduced on account thereof, as the case may be; and in the event of reduction in Availability below 80% (eighty per cent) of the Normative Availability, the Utility shall, in addition to payment of compensation hereunder, extend the Contract Period in proportion to the loss of Availability. For the avoidance of doubt, loss of 25% (twenty five per cent) of Availability for 4 (four) days shall entitle the Supplier to extension of 1 (one)day in the Contract Period.

ARTICLE 19

TERMINATION

19.1 Termination for Supplier Default

19.1.1 Subject to Applicable Laws and save as otherwise provided in this Agreement, in the event that any of the defaults specified below shall have occurred, and the Supplier fails to cure the default within the Cure Period set forth below, or where no Cure Period is specified, then within a Cure Period of 90 (ninety) days, the Supplier shall be deemed to be in default of this Agreement (the "**Supplier Default**"), unless the default has occurred as a result of any breach of this Agreement by the Utility or due to Force Majeure. The defaults referred to herein shall include the following:

(a) The Performance Security has been encashed and appropriated in accordance with Clause 9.2 and the Supplier fails to replenish or provide fresh Performance Security within a Cure Period of 15 (fifteen) days;

(b) subsequent to the replenishment or furnishing of fresh Performance Security in accordance with Clause 9.2, the Supplier fails to meet any Condition Precedent or cure the Supplier Default, as the case may be, for which whole or part of the Performance Security was appropriated, within a Cure Period of 120 (one hundred and twenty) days;

(c) the Supplier has failed to make any payment to the Utility within the period specified in this Agreement;

(d) a breach of the Fuel Supply Agreement or any other Project Agreements by the [Supplier *if Supplier is NOT a Trading Licensee, or* Developer *if Supplier is a Trading Licensee*] has caused a Material Adverse Effect;

(e) the [Supplier *if Supplier is NOT a Trading Licensee, or* Supplier or Developer *if Supplier is a Trading Licensee*] creates any Encumbrance in breach of this Agreement;

(f) the Supplier repudiates this Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by the Agreement and fails to pay Damages in accordance with the provisions of this Agreement;

(g) [insert this clause if Supplier is a Trading Licensee "the Power Purchase Agreement between the Supplier and the Developer stands expired, cancelled or terminated, for any reason whatsoever;"]

(h) the Supplier schedules electricity, produced from Contracted Capacity, for sale to Buyers in breach of this Agreement and fails to pay Damages in accordance with the provisions of Clause 14.1.3;

(i) a Change in Ownership has occurred in breach of the provisions of Clause 5.3;

(j) the [Supplier *if Supplier is NOT a Trading Licensee, or* Developer *if Supplier is a Trading Licensee*] fails to achieve a monthly Availability of 70% (seventy per cent) for a period of 4 (four) consecutive months or for a cumulative period of 4 (four) months within any continuous period of 12 (twelve) months, save and except to the extent of Non-Availability caused by (i) a Force Majeure Event, (ii) an act or omission of the Utility, not occurring due to any default of the [Supplier *if Supplier is NOT a Trading Licensee, or* Developer *if Supplier is a Trading Licensee*] or (iii) shortage of Fuel occurring for reasons not attributable to the [Supplier *if Supplier is NOT a Trading Licensee, or* Developer *if Supplier is a Trading Licensee*];

(k) uses Concessional Fuel for production and supply thereof to the Utility during any 3 (three) days in any month;

(l) there is a transfer, pursuant to law either of (i) the rights and/or obligations of the [Supplier *if Supplier is NOT a Trading Licensee, or* Developer *if Supplier is a Trading Licensee*] under any of the Project Agreements, or of (ii) all or part of the assets or undertaking of the [Supplier *if Supplier is NOT a Trading Licensee, or* Supplier and/or the Developer *if Supplier is a Trading Licensee*], and such transfer causes a Material Adverse Effect;

(m) an execution levied on any of the assets of the [Supplier *if Supplier is NOT a Trading Licensee, or* Supplier and/or the Developer *if Supplier is a Trading Licensee*]has caused a Material Adverse Effect;

(n) the [Supplier *if Supplier is NOT a Trading Licensee, or* Supplier and/or the Developer *if Supplier is a Trading Licensee*] is adjudged bankrupt or insolvent, or if a trustee or receiver is appointed for the [Supplier *if Supplier is NOT a Trading Licensee, or* Supplier and/or the Developer *if Supplier is a Trading Licensee*] or for the whole or material part of its assets that has a material bearing on the Project;

(o) the [Supplier *if Supplier is NOT a Trading Licensee, or* Supplier and/or the Developer *if Supplier is a Trading Licensee*] has been, or is in the process of being liquidated, dissolved, wound-up, amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of the Utility, a Material Adverse Effect;

(p) a resolution for winding up of the [Supplier *if Supplier is NOT a Trading Licensee, or* Supplier and/or the Developer *if Supplier is a Trading Licensee*] is passed;

(q) any petition for winding up of the [Supplier *if Supplier is NOT a Trading Licensee, or* Supplier and/or the Developer *if Supplier is a Trading Licensee*] is admitted by a court of competent jurisdiction and a provisional liquidator or receiver is appointed and such order has not been set aside within 90 (ninety) days of the date thereof or the [Supplier *if Supplier is NOT a Trading Licensee, or* Supplier and/or the Developer" *if Supplier is a Trading Licensee*] is ordered to be wound up by a court except for the purpose of amalgamation or reconstruction; provided that, as part of such amalgamation or reconstruction, the entire property, assets and undertaking

of the [Supplier" *if Supplier is NOT a Trading Licensee, or* Supplier and/or the Developer, as the case may be *if Supplier is a Trading Licensee*] are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the [Supplier *if Supplier is NOT a Trading Licensee, or* Supplier and/or the Developer, as the case may be *if Supplier is a Trading Licensee*] under this Agreement and the Project Agreements; and provided that:

(i) the amalgamated or reconstructed entity has the capability and operating experience necessary for the performance of its obligations under this Agreement and the Project Agreements;

(ii) the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and the Project Agreements and has a credit worthiness at least as good as that of the [Supplier *if Supplier is NOT a Trading Licensee, or* Supplier and/or the Developer, as the case may be *if Supplier is a Trading Licensee*] as at the Appointed Date;

(iii) each of the Project Agreements remains in full force and effect; and

(iv) such amalgamation or reconstruction is approved by the Commission.

(r) any representation or warranty of the Supplier herein contained which is, as of the date hereof, found to be materially false, incorrect or misleading or the Supplier is at any time hereafter found to be in breach thereof;

(s) the Supplier submits to the Utility any statement, notice or other document, in written or electronic form, which has a material effect on the Utility's rights, obligations or interests and which is false in material particulars;

(t) the Supplier has failed to fulfil any obligation, for which failure Termination has been specified in this Agreement;

(u) the Supplier issues a Termination Notice in violation of the provisions of this Agreement; or

(v) the Supplier commits a default in complying with any other provision of this Agreement if such default causes or may cause a Material Adverse Effect on the Utility.

19.1.2 Without prejudice to any other rights or remedies which the Utility may have under this Agreement, upon occurrence of a Supplier Default, the Utility shall be entitled to terminate this Agreement by issuing a Termination Notice to the Supplier; provided that before issuing the Termination Notice, the Utility shall by a notice inform the Supplier of its intention to issue such Termination Notice and grant 15 (fifteen) days to the Supplier to make a representation, and may after the

expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice.

19.2 Termination for Utility Default

19.2.1 In the event that any of the defaults specified below shall have occurred, and the Utility fails to cure such default within a Cure Period of 120 (one hundred and twenty) days or such longer period as has been expressly provided in this Agreement, the Utility shall be deemed to be in default of this Agreement (the "**Utility Default**") unless the default has occurred as a result of any breach of this Agreement by the Supplier or due to Force Majeure. The defaults referred to herein shall include the following:

(a) The Utility commits a material default in complying with any of the provisions of this Agreement and such default has a Material Adverse Effect on the Supplier;

(b) the Utility has failed to make any payment to the Supplier, and the Supplier is unable to recover any unpaid amounts through the Default Escrow Account and the Letter of Credit, within the period specified in this Agreement; or

(c) the Utility repudiates this Agreement or otherwise takes any action that amounts to or manifests an irrevocable intention not to be bound by this Agreement.

19.2.2 Without prejudice to any other right or remedy which the Supplier may have under this Agreement, upon occurrence of a Utility Default, the Supplier shall be entitled to terminate this Agreement by issuing a Termination Notice to the Utility; provided that before issuing the Termination Notice, the Supplier shall by a notice inform the Utility of its intention to issue the Termination Notice and grant 15 (fifteen) days to the Utility to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice.

19.3 Termination Payment

19.3.1 Upon Termination on account of a Supplier Default, the Supplier shall pay to the Utility, by way of Termination Payment, an amount equal to the Fixed Charge that would have been due and payable for Normative Availability for a period of [6 (six) months][21] as if the Contracted Capacity was Available for such [6 (six) months] from the date of Termination.

19.3.2 Upon Termination on account of a Utility Default, the Utility shall pay to the Supplier, by way of Termination Payment, an amount equal to the Fixed Charge that would have been due and payable for Normative Availability for a period of [3 (three) months][22] as if the Contracted Capacity was Available for such [3 (three) months] from the date of Termination.

[21] This period may equal to about 10% (ten per cent) of the Contract Period.
[22] This period may equal to about 5% (five per cent) of the Contract Period.

19.3.3 Termination Payment shall be due and payable within 15 (fifteen) days of a demand being made with the necessary particulars, and in the event of any delay, the defaulting Party shall pay interest at a rate equal to 3% (three per cent) above the Bank Rate on the amount of Termination Payment remaining unpaid; provided that such delay shall not exceed 90 (ninety) days. For the avoidance of doubt, it is expressly agreed that Termination Payment shall constitute full discharge by the Utility of its payment obligations in respect thereof hereunder.

19.3.4 The Supplier expressly agrees that Termination Payment under this Article 19 shall constitute a full and final settlement of all claims of the Supplier on account of Termination of this Agreement for any reason whatsoever and that the Supplier or any shareholder thereof shall not have any further right or claim under any law, treaty, convention, contract or otherwise.

19.4 Instructions to RLDC and SLDC

19.4.1 The Supplier shall, prior to the Appointed Date, furnish a certified true copy of this Agreement to the RLDC and SLDC and obtain a receipt thereof. By furnishing such copy hereunder, the Supplier shall be deemed to have given irrevocable instructions and authority to the RLDC and SLDC to follow the instructions of the Utility in accordance with the provisions of this Article 19. The Supplier agrees and undertakes that it shall not in any manner challenge or revoke the provisions of this Article 19 or in any manner prevent the Utility, RLDC or SLDC from giving effect thereto.

19.4.2 The Utility agrees and undertakes to exercise its rights hereunder only to the extent of the Contracted Capacity and the Supplier may supply electricity to Buyers in accordance with the provisions of this Agreement.

19.5 Survival of rights

Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 19.3.4, any Termination pursuant to the provisions of this Agreement shall be without prejudice to the accrued rights of either Party including its right to claim and recover money damages, insurance proceeds, security deposits, and other rights and remedies, which it may have in law or contract. All rights and obligations of either Party under this Agreement, including Termination Payments, shall survive the Termination to the extent such survival is necessary for giving effect to such rights and obligations.

Part VI

Other Provisions

ARTICLE 20

ASSIGNMENT AND CHARGES

20.1 Restrictions on assignment and charges

20.1.1 Subject to Clauses 20.2 and 20.3, this Agreement shall not be assigned by the Supplier to any person, save and except with the prior consent in writing of the Utility, which consent the Utility shall be entitled to decline without assigning any reason.

20.1.2 Subject to the provisions of Clause 20.2, the Supplier shall not create nor permit to subsist any Encumbrance, or otherwise transfer or dispose of all or any of its rights and benefits under this Agreement or any Project Agreement to which the Supplier is a party, except with prior consent in writing of the Utility, which consent the Utility shall be entitled to decline without assigning any reason.

20.2 Permitted assignment and charges

The restraints set forth in Clause 20.1 shall not apply to:

(a) liens arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the Power Station;

(b) mortgages/pledges/hypothecation of Project Assets and their related documents of title, arising or created in the ordinary course of business of the Power Station, and as security only for indebtedness to its Lenders and/or for working capital arrangements for the Power Station;

(c) assignment of rights, interest and obligations of the Supplier to or in favour of its as security for financing provided by them; and

(d) liens or encumbrances required by any Applicable Law.

20.3 Assignment by the Utility

Notwithstanding anything to the contrary contained in this Agreement, the Utility may, after giving 60 (sixty) days' notice to the Supplier, assign and/ or transfer any of its rights and benefits and/or obligations under this Agreement to an assignee who is, in the reasonable opinion of the Utility, capable of fulfilling all of the Utility's then outstanding obligations under this Agreement and has the financial standing necessary for this purpose.

20.4 Approvals for assignment

Any assignment under this Article 20 shall be subject to the approvals and consents required therefor under Applicable Laws, including approval of the Commission. Provided, however, that the grant of any consent or approval under Applicable Laws shall not oblige the Utility to grant its approval to such assignment, save and except as provided herein.

ARTICLE 21

CHANGE IN LAW

21.1 Increase in costs

If as a result of Change in Law, the Supplier suffers an increase in costs or reduction in net after-tax return or other financial burden, the aggregate financial effect of which exceeds the higher of Rs. 1 crore (Rupees one crore)[23] and 0.1% (zero point one per cent) of the Capacity Charge in any Accounting Year, the Supplier may so notify the Utility and propose amendments to this Agreement so as to place the Supplier in the same financial position as it would have enjoyed had there been no such Change in Law resulting in increased costs, reduction in return or other financial burden as aforesaid. Upon notice by the Supplier, the Parties shall meet, as soon as reasonably practicable but no later than 30 (thirty) days from the date of notice, and either agree on amendments to this Agreement or on any other mutually agreed arrangement:

Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the Supplier may by notice require the Utility to pay an amount that would place the Supplier in the same financial position that it would have enjoyed had there been no such Change in Law, and within 15 (fifteen) days of receipt of such notice, along with particulars thereof, the Utility shall pay the amount specified therein; provided that if the Utility shall dispute such claim of the Supplier, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Clause 21.1 shall be restricted to changes in law directly affecting the Supplier's costs of performing its obligations under this Agreement.

21.2 Reduction in costs

If as a result of Change in Law, the Supplier benefits from a reduction in costs or increase in net after-tax return or other financial gains the aggregate financial effect of which exceeds the higher of Rs. 1 crore (Rupees one crore) and 0.1% (zero point one per cent) of the Capacity Charge in any Accounting Year, the Utility may so notify the Supplier and propose amendments to this Agreement so as to place the Supplier in the same financial position as it would have enjoyed had there been no such Change in Law resulting in decreased costs, increase in return or other financial gains as aforesaid. Upon notice by the Utility, the Parties shall meet, as soon as reasonably practicable but no later than 30 (thirty) days from the date of notice, and either agree on such amendments to this Agreement or on any other mutually agreed arrangement:

Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the Utility may by notice require the Supplier to pay an amount that would place the Supplier in the same financial position that it would have enjoyed had there been no such Change in Law, and within 15 (fifteen) days of receipt of such notice, along with particulars thereof, the Supplier shall pay the amount specified

[23] This amount may, in the discretion of the Utility, be suitably increased, but in no case exceeding an amount of Rs 1 lakh for every MW of Contracted Capacity. A similar modification should also be made in Clause 21.2.

therein to the Utility; provided that if the Supplier shall dispute such claim of the Utility, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Clause 21.2 shall be restricted to changes in law directly affecting the Supplier's costs of performing its obligations under this Agreement.

21.3 Protection of NPV

Pursuant to the provisions of Clauses 21.1 and 21.2 and for the purposes of placing the Supplier in the same financial position as it would have enjoyed had there been no Change in Law affecting the costs, returns or other financial burden or gains, the Parties shall endeavour to establish a net present value (the "**NPV**") of the net cash flow and make necessary adjustments in costs, revenues, compensation or other relevant parameters, as the case may be, to procure that the NPV of the net cash flow is the same as it would have been if no Change in Law had occurred. For the avoidance of doubt, the Parties expressly agree that for determination of NPV, the discount rate to be used shall be equal to the weighted average rate of interest at which the Supplier has raised the Debt Due under its Financing Agreements.

21.4 Restriction on cash compensation

The Parties acknowledge and agree that the demand for cash compensation under this Article 21 shall be restricted to the effect of Change in Law during the respective Accounting Year and shall be made at any time after commencement of such year, but no later than one year from the close of such Accounting Year. Any demand for cash compensation payable for and in respect of any subsequent Accounting Year shall be made after the commencement of the Accounting Year to which the demand pertains, but no later than 2 (two) years from the close of such Accounting Year.

21.5 No claim in the event of recovery from Buyers

Notwithstanding anything to the contrary contained in this Agreement, the Utility shall not in any manner be liable to reimburse to the Supplier any sums on account of a Change in Law if the same are recoverable from the Buyers.

ARTICLE 22

LIABILITY AND INDEMNITY

22.1 General indemnity

35.1.1 The Supplier shall indemnify, defend, save and hold harmless the Utility and its officers, servants, agents, Government Instrumentalities and Utility owned and/or controlled entities/enterprises, (the "**Utility Indemnified Persons**") against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature, whether arising out of any breach by the Supplier of any of its obligations under this Agreement or any related agreement or on account of any defect or deficiency in the provision of services to the Utility or sale by the Supplier to any Buyer or from any negligence of the Supplier under contract or tort or on any other ground whatsoever, except to the extent that any such suits, proceedings, actions, demands and claims have arisen due to any negligent act or omission, or breach or default of this Agreement on the part of the Utility Indemnified Persons.

22.1.2 The Utility shall indemnify, defend, save and hold harmless the Supplier against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature arising out of breach by the Utility of any of its obligations under this Agreement or any related agreement, which materially and adversely affect the performance by the Supplier of its obligations under this Agreement, save and except that where any such claim, suit, proceeding, action, and/or demand has arisen due to a negligent act or omission, or breach of any of its obligations under any provision of this Agreement or any related agreement and/or breach of its statutory duty on the part of the Supplier, its subsidiaries, affiliates, contractors, servants or agents, the same shall be the liability of the Supplier.

22.2 Indemnity by the Supplier

22.2.1 Without limiting the generality of Clause 22.1, the Supplier shall fully indemnify, hold harmless and defend the Utility and the Utility Indemnified Persons from and against any and all loss and/or damages arising out of or with respect to:

(a) failure of the Supplier to comply with Applicable Laws and Applicable Permits;

(b) payment of taxes required to be made by the Supplier in respect of the income or other taxes of the Supplier's contractors, suppliers and representatives; or

(c) non-payment of amounts due as a result of materials or services furnished to the Supplier or any of its contractors which are payable by the Supplier or any of its contractors.

22.2.2 Without limiting the generality of the provisions of this Article 22, the Supplier shall fully indemnify, hold harmless and defend the Utility Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands,

liabilities and damages which the Utility Indemnified Persons may hereafter suffer, or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other intellectual property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the Supplier or by the Supplier's Contractors in performing the Supplier's obligations or in any way incorporated in or related to the Project. If in any such suit, action, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the Supplier shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the revocation or suspension of the injunction or restraint order. If, in any such suit, action, claim or proceedings, the Power Station, or any part thereof or comprised therein, is held to constitute an infringement and its use is permanently enjoined, the [Supplier shall *if Supplier is NOT a Trading Licensee, or* Supplier shall cause the Developer to" *if Supplier is a Trading Licensee*] promptly make every reasonable effort to secure for the Utility a licence, at no cost to the Utility, authorising continued use of the infringing work. If the [Supplier *if Supplier is NOT a Trading Licensee, or* Developer *if Supplier is a Trading Licensee*] is unable to secure such licence within a reasonable time, the [Supplier *if Supplier is NOT a Trading Licensee, or* Developer *if Supplier is a Trading Licensee*] shall, at its own expense, and without impairing the Specifications and Standards, either replace the affected work, or part, or process thereof with non-infringing work or part or process, or modify the same so that it becomes non-infringing.

22.3 Notice and contest of claims

In the event that either Party receives a claim or demand from a third party in respect of which it is entitled to the benefit of an indemnity under this Article 22 (the "**Indemnified Party**") it shall notify the other Party (the "**Indemnifying Party**") within 15 (fifteen) days of receipt of the claim or demand and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim or demand, it may conduct the proceedings in the name of the Indemnified Party, subject to the Indemnified Party being secured against any costs involved, to its reasonable satisfaction.

22.4 Defence of claims

22.4.1 The Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and reasonable costs and expenses thereof shall be indemnified by the Indemnifying Party. If the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party in respect of loss to the full extent provided by this Article 22, the Indemnifying Party shall be entitled, at its option, to assume and control the defence of such claim, action, suit or proceeding, liabilities, payments and obligations at its expense and through the counsel of its choice; provided it gives prompt notice of its intention to do so to the Indemnified Party and reimburses the Indemnified Party for the reasonable cost and expenses incurred by the Indemnified Party prior to the assumption by the Indemnifying

Party of such defence. The Indemnifying Party shall not be entitled to settle or compromise any claim, demand, action, suit or proceeding without the prior written consent of the Indemnified Party, unless the Indemnifying Party provides such security to the Indemnified Party as shall be reasonably required by the Indemnified Party to secure the loss to be indemnified hereunder to the extent so compromised or settled.

22.4.2 If the Indemnifying Party has exercised its rights under Clause 22.3, the Indemnified Party shall not be entitled to settle or compromise any claim, action, suit or proceeding without the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

22.4.3 If the Indemnifying Party exercises its rights under Clause 22.3, the Indemnified Party shall nevertheless have the right to employ its own counsel, and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party, when and as incurred, unless:

(a) the employment of counsel by such party has been authorised in writing by the Indemnifying Party;

(b) the Indemnified Party shall have reasonably concluded that there may be a conflict of interest between the Indemnifying Party and the Indemnified Party in the conduct of the defence of such action;

(c) the Indemnifying Party shall not, in fact, have employed independent counsel reasonably satisfactory to the Indemnified Party, to assume the defence of such action and shall have been so notified by the Indemnified Party; or

(d) the Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party either:

(i) that there may be specific defences available to it which are different from or additional to those available to the Indemnifying Party; or

(ii) that such claim, action, suit or proceeding involves or could have a material adverse effect upon it beyond the scope of this Agreement:

Provided that if Sub-clauses (b), (c) or (d) of this Clause 22.4.3 shall be applicable, the counsel for the Indemnified Party shall have the right to direct the defence of such claim, demand, action, suit or proceeding on behalf of the Indemnified Party, and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder.

22.5 No consequential claims

Notwithstanding anything to the contrary contained in this Article 22, the indemnities herein provided shall not include any claim or recovery in respect of any cost, expense, loss or damage of an indirect, incidental or consequential nature, including loss of profit, except as expressly provided in this Agreement.

ARTICLE 23

DISPUTE RESOLUTION

23.1 Dispute resolution

23.1.1 Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the "**Dispute**") shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 23.2.

23.1.2 The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.

23.2 Conciliation

In the event of any Dispute between the Parties, either Party may require such Dispute to be referred to the Managing Director of the Utility Chairman of the Board of Directors of the Supplier for amicable settlement, and upon such reference, the said persons shall meet no later than 7 (seven) days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 7 (seven) day period or the Dispute is not amicably settled within 15 (fifteen) days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within 30 (thirty) days of the notice in writing referred to in Clause 23.1.1 or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 23.3.

23.3 Arbitration

23.3.1 Any Dispute which is not resolved amicably by conciliation, as provided in Clause 23.2, and is not required under Applicable Laws to be adjudicated or referred to arbitration by the Commission, shall be finally decided by reference to arbitration by an arbitral tribunal constituted in accordance with Clause 23.3.2. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the "**Rules**"), or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996. The place of such arbitration shall be the capital of the State and the language of arbitration proceedings shall be English.

23.3.2 There shall be an arbitral tribunal comprising three arbitrators, of whom each Party shall select one, and the third arbitrator shall be appointed by the two arbitrators so selected, and in the event of disagreement between the two arbitrators, the appointment shall be made in accordance with the Rules.

23.3.3 The arbitral tribunal shall make a reasoned award (the "**Award**"). Any Award made in any arbitration held pursuant to this Article 23 shall be final and binding

on the Parties as from the date it is made, and the Supplier and the Utility agree and undertake to carry out such Award without delay.

23.3.4 The Supplier and the Utility agree that an Award may be enforced against the Supplier and/or the Utility, as the case may be, and their respective assets wherever situated.

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

23.4 Adjudication by the Commission

23.4.1 In the event a Dispute is required under Applicable Laws to be adjudicated upon by the Commission, such Dispute shall, instead of reference to arbitration under Clause 23.3, be submitted for adjudication by the Commission in accordance with Applicable Laws and all references to Dispute Resolution Procedure shall be construed accordingly. For the avoidance of doubt, the Parties hereto agree that the adjudication hereunder shall not be final and binding until an appeal, if any, against such adjudication has been decided by the appellate tribunal, or no such appeal has been preferred within the time specified in the Applicable Law.

23.4.2 Where any dispute is referred by the Commission to be settled through arbitration, the procedure specified in Clause 23.3 shall be followed to the extent applicable.

23.5 Adjudication by a tribunal

In the event of constitution of a statutory tribunal with powers to adjudicate upon disputes between the Supplier and the Utility, all Disputes arising after such constitution shall, instead of reference to arbitration or adjudication under Clauses 23.3 and 23.4 respectively, be adjudicated upon by such tribunal in accordance with Applicable Laws and all references to Dispute Resolution Procedure shall be construed accordingly.

ARTICLE 24

DISCLOSURE

24.1 Disclosure of Specified Documents

The Supplier shall make available for inspection by any person, copies of this Agreement (hereinafter collectively referred to as the "**Specified Documents**"), free of charge, during normal business hours on all working days at the Supplier's Registered Office and the Power Station and shall provide copies of the same to any person upon payment of copying charges on a 'no profit no loss' basis.

24.2 Disclosure of Documents relating to safety

The [Supplier shall *if Supplier is NOT a Trading Licensee, or* Supplier shall cause the Developer to *if Supplier is a Trading Licensee*] make available for inspection by any person copies of all Documents and data relating to safety of the Power Station, free of charge, during normal business hours on all working days, at the Supplier's Registered Office and the Power Station. The [Supplier shall *if Supplier is NOT a Trading Licensee, or* Supplier shall cause the Developer to *if Supplier is a Trading Licensee*] make copies of the same available to any person upon payment of copying charges on a 'no profit no loss' basis.

24.3 Withholding disclosure of Protected Documents

Notwithstanding the provisions of Clauses 24.1 and 34.2, but subject to Applicable Laws, the Utility shall be entitled to direct the Supplier, from time to time, to withhold the disclosure of Protected Documents (as defined herein below) to any person in pursuance of the aforesaid Clauses.

Explanation:

The expression Protected Documents shall mean such of the Specified Documents or documents referred to in Clauses 24.1 and 24.2, or portions thereof, the disclosure of which the Utility is entitled to withhold under the provisions of the Right to Information Act, 2005.

ARTICLE 25

MISCELLANEOUS

25.1 Governing law and jurisdiction

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and the courts in the State shall have exclusive jurisdiction over matters arising out of or relating to this Agreement.

25.2 Waiver of immunity

Each Party unconditionally and irrevocably:

(a) agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;

(b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Party with respect to its assets;

(c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and

(d) consents generally in respect of the enforcement of any judgement or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgement that may be made or given in connection therewith).

25.3 Interest

Unless otherwise specified, any interest payable under this Agreement shall accrue on a daily outstanding basis and shall be compounded on the basis o quarterly rests.

25.4 Delayed payments

The Parties hereto agree that payments due from one Party to the other Party under the provisions of this Agreement shall be made within the period set forth therein, and if no such period is specified, within 30 (thirty) days of receiving a demand along with the necessary particulars. Unless otherwise specified in this Agreement, in the event of delay beyond such period, the defaulting Party shall pay interest for the period of delay calculated at a rate equal to 5% (five per cent)

above the Bank Rate, and recovery thereof shall be without prejudice to the rights of the Parties under this Agreement including Termination thereof.

25.5 Waiver

38.5.1 Waiver, including partial or conditional waiver, by either Party of any default by the other Party in the observance and performance of any provision of or obligations under this Agreement:

(a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;

(b) shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and

(c) shall not affect the validity or enforceability of this Agreement in any manner.

25.5.2 Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation thereunder nor time or other indulgence granted by a Party to the other Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

25.6 Exclusion of implied warranties etc.

This Agreement expressly excludes any warranty, condition or other undertaking implied at law or by custom or otherwise arising out of any other agreement between the Parties or any representation by either Party not contained in a binding legal agreement executed by both Parties.

25.7 Survival

25.7.1 Termination shall:

(a) not relieve the Supplier or the Utility, as the case may be, of any obligations hereunder which expressly or by implication survive Termination hereof, including any rights and obligations under Article 22; and

(b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of, or caused by, acts or omissions of such Party prior to the effectiveness of such Termination or arising out of such Termination.

25.7.2 All obligations surviving Termination shall only survive for a period of 3 (three) years following the date of such Termination.

25.8 Entire Agreement

This Agreement and the Schedules together constitute a complete and exclusive statement of the terms of the agreement between the Parties on the subject hereof, and no amendment or modification hereto shall be valid and effective unless such modification or amendment is agreed to in writing by the Parties and duly executed by persons especially empowered in this behalf by the respective Parties. All prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement are abrogated and withdrawn. For the avoidance of doubt, the Parties hereto agree that any obligations of the Supplier arising from the Request for Qualification or Request for Proposals, as the case may be, shall be deemed to form part of this Agreement and treated as such.

25.9 Severability

If for any reason whatsoever, any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to the Dispute Resolution Procedure set forth under this Agreement or otherwise.

25.10 No partnership

This Agreement shall not be interpreted or construed to create an association, joint venture or partnership between the Parties, or to impose any partnership obligation or liability upon either Party, and neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

25.11 Third parties

This Agreement is intended solely for the benefit of the Parties, and their respective successors and permitted assigns, and nothing in this Agreement shall be construed to create any duty to, standard of care with reference to, or any liability to, any person not a Party to this Agreement.

25.12 Successors and assigns

This Agreement shall be binding upon, and inure to the benefit of the Parties and their respective successors and permitted assigns.

25.13 Notices

Any notice or other communication to be given by any Party to the other Party under or in connection with the matters contemplated by this Agreement shall be in writing and shall:

(a) in the case of the Supplier, be given by facsimile or e-mail and by letter delivered by hand to the address given and marked for attention of the person set out below or to such other person as the Supplier may from time to time designate by notice to the Utility; provided that notices or other communications to be given to an address outside the city specified in Sub-clause (b) below may, if they are subsequently confirmed by sending a copy thereof by registered acknowledgement due, or by courier, be sent by facsimile or e-mail to the number as the Supplier may from time to time designate by notice to the Utility.

{Attention:
Designation:
Address:
Fax No:
Email:}

(b) in the case of the Utility, be given by facsimile or e-mail and by letter delivered by hand at the address given and marked to the attention of the person set out below with a copy delivered to the Utility Representative or such other person as the Utility may from time to time designate by notice to the Supplier; provided that if the Supplier does not have an office in the same city as the Utility, it may send such notice by facsimile or e-mail and by registered acknowledgement due, or by courier.

{Name:
Designation:
Address:
Fax No:
Email:}; and

(c) any notice or communication by a Party to the other Party, given in accordance herewith, shall be deemed to have been delivered when in the normal course of post it ought to have been delivered and in all other cases, it shall be deemed to have been delivered on the actual date of delivery; provided that in the case of facsimile or e-mail, it shall be deemed to have been delivered on the working day following the date of its delivery.

25.14 Language

All notices required to be given by one Party to the other Party and all other communications, Documentation and proceedings which are in any way relevant to this Agreement shall be in writing and in English language.

25.15 Counterparts

This Agreement may be executed in two counterparts, each of which, when executed and delivered, shall constitute an original of this Agreement.

ARTICLE 26

DEFINITIONS

26.1 Definitions

In this Agreement, the following words and expressions shall, unless repugnant to the context or meaning thereof, have the meaning hereinafter respectively assigned to them:

"**Accounting Year**" means the financial year commencing from the first day of April of any calendar year and ending on the thirty-first day of March of the next calendar year;

"**Act**" means the Electricity Act, 2003;

"**Affected Party**" shall have the meaning as set forth in Clause 17.1;

"**Agreement**" or "**Agreement for Procurement of Power**" means this Agreement, its Recitals, the Schedules hereto and any amendments thereto made in accordance with the provisions contained in this Agreement;

"**Applicable Laws**" means all laws, brought into force and effect by GOI or the State Government including rules, regulations and notifications made thereunder, and judgements, decrees, injunctions, writs and orders of any court of record, applicable to this Agreement and the exercise, performance and discharge of the respective rights and obligations of the Parties hereunder, as may be in force and effect during the subsistence of this Agreement;

"**Applicable Permits**" means all clearances, licences, permits, authorisations, no objection certificates, consents, approvals and exemptions required to be obtained or maintained under Applicable Laws in connection with the construction, operation and maintenance of the Power Station during the subsistence of this Agreement;

"**Appointed Date**" means the date on which all the Conditions Precedent are achieved and every Condition Precedent is either satisfied or waived, as the case may be, in accordance with the provisions of this Agreement, and such date shall be the date of commencement of the Contract Period;

"**Associate**" or "**Affiliate**" means, in relation to either Party, a person who controls, is controlled by, or is under the common control with such Party (as used in this definition, the expression "control" means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person, whether by operation of law or by contract or otherwise);

"**Availability**" shall have the meaning as set forth in Clause 5.1.4 and the term "**Available**" shall be construed accordingly;

"**Bank Rate**" means the rate of interest specified by the Reserve Bank of India from time to time in pursuance of section 49 of the Reserve Bank of India Act, 1934 or any replacement of such Bank Rate for the time being in effect;

"**Base Fixed Charge**" shall have the meaning as set forth in Clause 11.2;

"**Base Year**" means the Accounting Year in which the Bid was received;

"**Bid**" means the documents in their entirety comprised in the bid submitted by the selected bidder in response to the Request for Proposals in accordance with the provisions thereof and "**Bids**" shall mean the bids submitted by any and all pre-qualified bidders;

"**Bid Date**" means the last date on which the Bid may have been submitted in accordance with the provisions of the Request for Proposals;

"**Bid Security**" means the security provided by the Supplier to the Utility along with the Bid in accordance with the Request for Proposals, and which is to remain in force until substituted by the Performance Security;

"**Buyer(s)**" shall mean the third parties buying electricity from the Power Station, in accordance with the provisions of this Agreement and Applicable Laws;

"**CIL**" means Coal India Limited or any subsidiary thereof, and shall include any substitute or successor thereof;

"**Capacity Certificate**" means the certificate issued by an experienced and qualified firm of technical consultants certifying the installed capacity, plant configuration, station Heat Rate and other principal parameters of the Power Station;

"**Capacity Charge**" shall have the meaning as set forth in Clause 11.4.2;

["**Captive Mine**" means a mine, acquired through any form of auction or bidding which specifically allows the owner or allotte, as the case may be, to use the coal for production of electricity and sale thereof to any purchaser; and includes a mine which is owned by a third party that has entered into a long-term agreement with the Supplier for dedicated supply of Fuel for use at the Power Station for a period not less than the Contract Period;]

"**Change in Law**" means the occurrence of any of the following after the Bid Date:

(a) the enactment of any new Indian law;

(b) the repeal, modification or re-enactment of any existing Indian law;

(c) the commencement of any Indian law which has not entered into effect until the Bid Date;

(d) a change in the interpretation or application of any Indian law by a judgement of a court of record which has become final, conclusive and binding, as compared to such interpretation or application by a court of record prior to the Bid Date; or

(e) any change in the rates of any of the Taxes that have a direct effect on the Project;

"**Change in Ownership**" means a transfer of the direct and/or indirect legal or beneficial ownership of any shares, or securities convertible into shares, that causes the aggregate holding of the promoters together with their Associates in the total Equity to decline, at

any time prior to the 1st (first) anniversary of the Appointed Date, below 51% (fifty one per cent) thereof, or such lower proportion as may be permitted by the Utility upon substitution of the promoters of the Supplier by an entity having sufficient financial and technical capacity to discharge the obligations of the Supplier under this Agreement;

"**Coal Mine/Block**s" shall mean Coal Mine/Blocks allocated through auction by Governmental Instrumentality as per provisions of Applicable Laws;

"**Commission**" means the Appropriate Electricity Regulatory Commission or any successor thereof duly constituted under the Act;

"**Concessional Fuel**" shall mean Fuel which is produced or procured by the Supplier through any form of concessional, preferential or captive allocation or sale of such Fuel or the source thereof by a Government Instrumentality or an entity owned or controlled by the Central Government or the State Government, as the case may be, but does not include Fuel, or the source thereof, which is procured through any form of bidding, auction or other means of procurement where the price of Fuel to be paid by the Supplier is determined by market forces;

"**Conditions Precedent**" shall have the meaning as set forth in Clause 4.1.1;

"**Contract Period**" means the period starting on and from the Appointed Date and ending on the earlier of the [5th (fifth)_] anniversary of the Appointed Date and the date of termination of the Agreement;

"**Contracted Capacity**" shall have the meaning as set forth in Clause 10.1;

"**Contractor**" means the person or persons, as the case may be, with whom the Supplier has entered into any of the Fuel Supply Agreement, the O&M Contract, or any other material agreement or contract for operation and maintenance of the Contracted Capacity or matters incidental thereto, but does not include a person who has entered into an agreement for providing financial assistance to the Supplier;

"**Cure Period**" means the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Party responsible for such breach or default and shall:

(a) commence from the date on which a notice is delivered by one Party to the other Party asking the latter to cure the breach or default specified in such notice; and

(b) not relieve any Party from liability to pay Damages or compensation under the provisions of this Agreement; and

provided that if the cure of any breach by the Supplier requires any reasonable action by the Supplier that must be approved by the Utility hereunder, the applicable Cure Period shall be extended by the period taken by the Utility or the to accord their approval;

"**Damages**" shall have the meaning as set forth in Sub-clause (y) of Clause 1.2.1;

"**Deed of Hypothecation**" shall have the meaning as set forth in Clause 13.1.2;

"**Default Escrow Account**" shall have the meaning as set forth in Clause 13.1.1;

"**Default Escrow Agreement**" shall have the meaning as set forth in Clause 13.1.1;

"**Default Escrow Bank**" shall have the meaning as set forth in Clause 13.1.1;

"**Delivery Point**" means any point in the intra-state Grid where the electricity supplied under this Agreement is received by the Utility;

"**Despatch**" shall have the meaning as set forth in Clause 14.1.1;

"**Developer**" shall mean the owner of the Power Station from which the Supplier shall supply the Power to the Utility(s);]

"**Dispute**" shall have the meaning as set forth in Clause 23.1.1;

"**Disputed Amounts**" shall have the meaning as set forth in Clause 11.9.3;

"**Dispute Resolution Procedure**" means the procedure for resolution of Disputes as set forth in Article 23;

"**Distribution Licensee**" means a person who has been granted a licence under section 14 of the Electricity Act, 2003 to distribute electricity as a distribution licensee;

"**Document**" or "**Documentation**" means documentation in printed or written form, or in tapes, discs, drawings, computer programmes, writings, reports, photographs, films, cassettes, or expressed in any other written, electronic, audio or visual form;

"**Equity**" means the sum expressed in Indian Rupees representing the paid up equity share capital of the Supplier for meeting the equity component of the Project Cost, and for the purposes of this Agreement shall include convertible instruments or other similar forms of capital, which shall compulsorily convert into equity share capital of the Supplier, and any interest-free funds advanced by any shareholder of the Supplier for meeting such equity component;

"**Fixed Charge**" shall have the meaning as set forth in Clause 11.1.2;

"**Force Majeure**" or "**Force Majeure Event**" shall have the meaning ascribed to it in Clause 17.1;

["**Fuel**" means the [coal/gas][24] which is fit for use in generation of electricity at the Power Station;]

"**Fuel Supply Agreement**" means the agreement entered into between the Supplier and a supplier of Fuel [and includes any arrangement for purchase of Fuel at spot prices];

"**GOI**" means the Government of India;

"**Good Industry Practice**" means the practices, methods, techniques, designs, standards, skills, diligence, efficiency, reliability and prudence which are generally and reasonably expected from a reasonably skilled and experienced operator engaged in the same type of undertaking as envisaged under this Agreement and which would be expected to result in

[24] The words "Fuel" and "coal/gas" may be substituted by "Water" in case electricity is procured from a hydro-electric Power Station.

the performance of its obligations by the Supplier in accordance with this Agreement, Applicable Laws and Applicable Permits in reliable, safe, economical and efficient manner, and includes prudent utility practices generally accepted by electricity generating stations for ensuring safe, economic and efficient construction, operation and maintenance of the Power Station and for providing safe, economic, reliable and efficient supply of electricity;

"**Government**" means the Government of India or the Government of the State, as the case may be;

"**Government Instrumentality**" means any department, division or sub-division of the Government of India or the State Government and includes any commission, board, authority, agency or municipal and other local authority or statutory body, including Panchayat, under the control of the Government of India or the State Government, as the case may be, and having jurisdiction over all or any part of the Power Station or the performance of all or any of the services or obligations of the Supplier under or pursuant to this Agreement;

"**Grid**" means the high voltage backbone system of inter-connected transmission lines and sub-stations;

"**Grid Code**" means the Indian Electricity Grid Code 2010 or any substitute thereof;

"**Incentive**" means a payment due to the Supplier, in accordance with the provisions of this Agreement, for any delivery, performance or outcome, as the case may be, which is better than the standards specified in respect thereof;

"**Indemnified Party**" means the Party entitled to the benefit of an indemnity pursuant to Article 22;

"**Indemnifying Party**" means the Party obligated to indemnify the other Party pursuant to Article 22;

"Indirect Political Event" shall have the meaning as set forth in Clause 17.3;

"**Insurance Cover**" means the aggregate of the maximum sums insured under the insurances taken out by the Supplier pursuant to Article 15, and includes all insurances required to be taken out by the Supplier under Clause 15.1 but not actually taken, and when used in the context of any act or event, it shall mean the aggregate of the maximum sums insured and payable or deemed to be insured and payable in relation to such act or event;

"**LOA**" or "**Letter of Award**" means the letter of award referred to in Recital (D);

"**Letter of Credit**" shall have the meaning as set forth in Clause 13.2.1;

"**Material Adverse Effect**" means a material adverse effect of any act or event on the ability of either Party to perform any of its obligations under and in accordance with the provisions of this Agreement and which act or event causes a material financial burden or loss to either Party;

"**Maximum Monthly Payment**" shall have the meaning as set forth in Clause 13.1.1;

"**Minimum Monthly Payment**" shall have the meaning as set forth in Clause 13.1.3;

"**Mis-declaration**" shall have the meaning as set forth in Clause 11.5.5;

"**Monthly Invoice**" shall have the meaning as set forth in Clause 11.9.1;

"**Non-Availability**" means any partial or total lack of Availability for any other reason; "**Non-Political Event**" shall have the meaning as set forth in Clause 17.2;

"**Normative Availability**" shall have the meaning as set forth in Clause 5.1.4;

"**Parties**" means the parties to this Agreement collectively and "**Party**" shall mean any of the parties to this Agreement individually;

"**Payment Due Date**" shall have the meaning as set forth in Clause 11.9.3;

["**Peak hours**" shall have the meaning as set forth in Clause 10.4;]

"**Performance Security**" shall have the meaning as set forth in Clause 9.1;

"**Point of Grid Connection**" means the point of interconnection at which the electricity generated by the Power Station is transferred to the Grid;

"**Political Event**" shall have the meaning as set forth in Clause 17.4;

[Insert this definition in case Supplier is a Trading Licensee:

"**Power Purchase Agreement**" shall mean the back to back arrangement for supply of power between the Supplier and the Developer from the Power Station;]

"**Power Station**" means the generating station as described in Recital A or a Unit thereof, and shall include the Dedicated Transmission System, Project Assets, Project Facilities;

"**Procurement Contract**" shall have the meaning as set forth in Clause 3.1.1;

"**Project**" means the construction, operation and maintenance of the Power Station in accordance with the provisions of this Agreement, and includes all works, services and equipment relating to or in respect of the Scope of the Agreement;

"Project Agreements" means this Agreement, Fuel Supply Agreement, O&M contract and any other material agreements or contracts that may be entered into by the Supplier with any person in connection with matters relating to, arising out of or incidental to the Project;

"**Project Assets**" means all physical and other assets relating to and forming part of the Project including:

(a) rights over the Station Premises in the form of licence or otherwise;

(b) tangible assets such as civil works and equipment including foundations, embankments, pavements, electrical systems, communication systems, relief centres, administrative offices and Sub-stations;

[(c) rights over Captive Mines;]

(d) all rights of the Supplier under the Project Agreements;

(e) financial assets, such as receivables, security deposits etc.;

(f) insurance proceeds; and

(g) Applicable Permits and authorisations relating to or in respect of the Power Station;

"**RLDC**" means the Regional load Despatch Centre as specified in the Act;

"**Re**.", "**Rs**." or "**Rupees**" or "**Indian Rupees**" means the lawful currency of the Republic of India;

"**Request for Proposals**" or "**RFP**" shall have the meaning as set forth in Recital (C);

"**Request for Qualification**" or "**RFQ**" shall have the meaning as set forth in Recital (B);

"**Revenues**" means all of the present and future funds, payment obligations, monies, claims, bills and any other property whatsoever which may from time to time be derived from or accrue to or be offered or due to the Utility in the form of cash receipts or receivables from any and all sources, save and except any capital receipts of the Utility for and in relation to any capital expenditure for creation of assets;

"**SLDC**" means the State Load Despatch Centre as specified in the Act;

"**Scope of the Agreement**" shall have the meaning as set forth in Clause 2.1;

"**Secured Obligations**" means:

(a) the amounts due to the Default Escrow Bank from the Utility in relation to the Letter of Credit;

(b) obligations of the Utility for payment of Tariff and Incentives under and in accordance with this Agreement; and

(c) obligation of the Utility to make Termination Payment under and in accordance with this Agreement upon termination thereof;

"**Specifications and Standards**" means the specifications and standards relating to the quality, quantity, capacity and other requirements for the Power Station, as set forth in the rules and regulations made under the Act;

"**State**" means the State or the Union Territory, as the case may be, in which the headquarters of the Utility is situate and "**State Government**" means the government of that State or Union Territory;

"**Station Premises**" shall mean and include the site, real estate, assets, equipments, facilities and amenities comprising the Power Station;

"**Statutory Auditors**" means a reputable firm of chartered accountants acting as the statutory auditors of the Supplier under the provisions of the Companies Act, 2013, including any re-enactment or amendment thereof, for the time being in force, and appointed in accordance with Clause 16.2.1;

"**Supplier**" shall have the meaning attributed thereto in the array of Parties as set forth in the Recitals;

"**Supplier Default**" shall have the meaning as set forth in Clause 19.1.1;

"**Tariff**" shall have the meaning as set forth in Clause 11.1.1;

"**Taxes**" means any Indian taxes including excise duties, customs duties, value added tax, sales tax, local taxes, cess and any impost or surcharge of like nature (whether Central, State or local) on the goods, materials, equipment and services incorporated in and forming part of the Power Station charged, levied or imposed by any Government Instrumentality, but excluding any interest, penalties and other sums in relation thereto imposed on any account whatsoever. For the avoidance of doubt, Taxes shall not include taxes on corporate income;

"**Termination**" means the expiry or termination of this Agreement and the Procurement Contract hereunder;

"**Termination Notice**" means the communication issued in accordance with this Agreement by one Party to the other Party terminating this Agreement;

"**Termination Payment**" means the amount payable by the defaulting Party to the other Party, under and in accordance with the provisions of this Agreement upon Termination;

[Insert this definition in case Supplier is a Trading Licensee:

"**Trading Licensee**" shall mean the Applicant/Bidder which is an Electricity Trader or a Distribution Licensee in terms of the Electricity Act, 2003 and submits its Application on the basis of an exclusive power purchase agreement executed with the entity with identified generation source from where the power is proposed to be supplied by the Applicant/Bidder.]

"**UI Regulations**" means the CERC Unscheduled Interchange Regulations 2009 or any substitute thereof;

"**Unit**" means a unit of the Power Station which is equipped with a turbine and associated facilities for generation of electricity independently of other units at the Power Station;

"**Utility**" shall have the meaning attributed thereto in the array of Parties as set forth in the Recitals;

"**Utility Default**" shall have the meaning as set forth in Clause 19.2.1;

"**Utility Representative**" means such person or persons as may be authorised in writing by the Utility to act on its behalf under this Agreement and shall include any person or persons having authority to exercise any rights or perform and fulfil any obligations of the Utility under this Agreement;

"Variable Charge" shall have the meaning as set forth in clause 12.1; and

"**WPI**" means the Wholesale Price Index for all commodities as published by the Ministry of Industry, GOI and shall include any index which substitutes the WPI, and any reference to WPI shall, unless the context otherwise requires, be construed as a reference to the WPI published for the period ending with the preceding month, save and except that for the purposes of annual revision of the Fixed Charge in accordance with the provisions of Clause 11.3, the revision due on April 1 of any year shall be computed with reference to WPI as on January 31 of that year.

IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DAY, MONTH AND YEAR FIRST ABOVE WRITTEN.

SIGNED, SEALED AND DELIVERED
For and on behalf of
THE UTILITY by:

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(e-mail address)

In the presence of:

1.

THE COMMON SEAL OF SUPPLIER has been affixed pursuant to the resolution passed by the Board of Directors of the Supplier at its meeting held on the .... day of 20....hereunto affixed in the presence of .... Director, who has signed these presents in token thereof and .... Company Secretary / Authorised Officer who has countersigned the same in token thereof[£]:

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(e-mail address)

2.

[£] To be affixed in accordance with the articles of association of the Supplier and the resolution passed by its Board of Directors.

Schedules

SCHEDULE – A
(See Clause 2.1)

SITE OF THE POWER STATION[25]

1 The Site

Site of the Power Station shall include the land, buildings, structures as briefly described in Annex-I of this Schedule A.

2 Power Station

The principal features of the Power Station are described in Annex-I of this Schedule-A.

[25] In case of a Trading Licensee being the Supplier, the details of the Power Station of the Developer need to be filled in this Schedule.

Annex – I[26]
(Schedule-A)

Description of Coal-based Power Station[$]

1 The site

The Site of the Power station shall include the land, building and structures as briefly described below:

{Provide a brief description here.}

2 Capacity of the Power Station

2.1 The Power Station shall have a generating capacity of not less than ..... MW.

2.2 The configuration of Units is given below:

(a) The number of Units is .....

(b) The nameplate capacity of each Unit is ..... MW.

3 Dedicated communication

The Power Station shall have a dedicated communication linkage with the Utility.

3 Specifications and Standards

The Power Station shall be constructed in conformity with the Specifications and Standards specified in Annex-I of Schedule-C.

4 Station Heat Rate

The Station Heat Rate of the Power station shall be no more than [2,350 (two thousand three hundred and fifty)][27] kCal per kWh at 100% (hundred per cent) maximum continuous rating (MCR) or such lower Station Heat Rate as may be specified in the Capacity Certificate.

5 Ramp Rates

All Units of the Power Station shall be capable of increasing or decreasing their output (generation level) by not less than 3% (three per cent) per minute. Such capability shall at all times be demonstrated during the Unit load of 50% (fifty per cent) or more.

[26] Three formats have been provided for this Annex-I. Depending on project-specific requirements, the appropriate format of Annex-I may be retained and the remaining two formats may be omitted. In case of non-conventional sources of energy, a suitable format may be evolved.

[$] Particulars in respect of the blanks in this Annex-I shall be provided by the selected bidder after issue of Letter of Award and the same shall be included in the Agreement to be executed between Parties.

[27] This figure may be substituted by 2,350 for all bids received on or before December 31, 2016 or where a Power Station shall have achieved COD prior to that date.

6 Each Unit of the Power Station shall have the capacity to ramp up from a cold start and reach full capacity within a period of 4 (four) hours from the time of each start.

7 Description of the Power Station

The Power Station shall conform with Applicable Laws and the regulations notified by the Central Electricity Authority and the Appropriate Commission.

The Power Station is briefly described below:

A. **Boiler**

(i)	Type	---
(ii)	Number of steam generators with auxiliaries	
(iii)	Steaming capacity (BMCR)	---T/hr
(iv)	Pressure at SH outlet	---kg/cm^2(abs)
(v)	Temperature at SH outlet	---^{o}C
(vi)	Temperature at RH outlet	---^{o}C

B. **Seam Turbine**

(i)	Type	
(ii)	Number	
(iii)	TMCR output	---MW
(iv)	VWO output	---MW
(v)	Turbine inlet pressure at TMCR	---kg/cm^2
(vi)	MS temperature at turbine inlet	---^{o}C
(vii)	RH temperature at turbine inlet	---^{o}C
(viii)	HP/LP by pass	---%
(ix)	Boiler feed pump	
	(a) TDBFP Capacity (m^3/hr)	---
	(b) MDBFP Capacity (m^3/hr)	---

C. **Condenser**

(i)	Type	
(ii)	Design cooling water temperature	---^{o}C
(iii)	Tube material	
(iv)	Type of cooling water	
(v)	Condensate polishing plant	---(Capacity)

D. **Generator**

(i)	Number	---
(ii)	Capacity	---MVA
(iii)	Power factor	---
(iv)	Cooling	

(a)	Rotor	---
(b)	Stator	---

Annex - I
(Schedule-A)

Description of Gas-based Power Station[$]

1 The site

The Site of the Power station shall include the land, building and structures as briefly described below:

{Provide a brief description here.}

2 Capacity of the Power Station

2.1 The Power Station shall have a generating capacity of not less than ..... MW.

2.2 The configuration of Units is given below:

(a) The number of Units is.....

(b) The nameplate capacity of each Unit is ..... MW.

3 Dedicated communication

The Power Station shall have a dedicated communication linkage with the Utility.

4 Station Heat Rate

The Station Heat Rate of the Power station shall be [2,000 (two thousand) Kcal per KWh] (NCV basis) or such lower figure as may be specified in the Capacity Certificate.

5 Ramp Rates

All Units of the Power Station shall be capable of increasing or decreasing their output (generation level) by not less than 5% (five per cent) per minute. Such capability shall at all times be demonstrated during the Unit load of 50% (fifty per cent) or more.

6 Each Unit of the Power Station shall have the capacity to ramp up from a cold start and reach full capacity within a period of [3 (three) hours].

7 Description of the Power Station

The Power Station shall conform with Applicable Laws and the regulations notified by the Central Electricity Authority and the Appropriate Commission.

Gas based thermal generating stations comprise of Gas turbine/IC Engine as prime mover with the Generator coupled to it. The engine shall be based on four stroke technology with spark ignition, for gas as the main fuel, or dual fuel ignition capabilities, for Liquid/Gas as main fuel or even both.

A. **Engine**

[$] Particulars in respect of the blanks in this Annex-I shall be provided by the selected bidder after issue of Letter of Award and the same shall be included in the Agreement to be executed between Parties.

Number of cylinders	
Cylinder bore	mm
Stroke	mm
Speed	Rpm
Mean Piston Speed	m/s
Mean effective Pressure	Bar
Compression ratio	
Number of inlet valves	
Number of outlet valves	
Direction of rotation faced towards Flywheel	
Noise level	---dB (A) ---m distance

B. **Generator**

Number of units	
Capacity	---MVA
Power Factor	---
Cooling	
(a) Rotor	
(b) Stator	---

C. **Exhaust gas boilers and STG for plant combined cycle operation***

One exhaust gas boiler shall be considered per Engine set.

Evaporator, economizer, super heater & steam drum sized for heat recovery corresponding to 100% load on Engine load.

Boiler

Type	---
Number of steam generators with auxiliaries	---
Steam capacity (BMCR)	---T/hr
Pressure at SH outlet	---kg/cm^2 (abs)
Temperature at SH outlet	---^{0}C
Temperature at RH outlet	---^{0}C

Steam Turbine

Type	
Number	
TMCR output	---MW
VWO output	---MW
Turbine inlet pressure at TMCR	---kg/cm^2
MS temperature at turbine inlet	---^{0}C
RH temperature at turbine inlet	---^{0}C
HP/LP by pump	%
Boiler feed pump	
(a) TDBFP Capacity (m^3/hr)	---
(b) MDBFP Capacity (m^3/hr)	---

*In case small stream generators, this may be omitted.

Annex - I
(Schedule-A)

Description of Hydro-based Power Station[$]

1 The site

The Site of the Hydro-electric Power station shall include the land, building and structures comprising a Dam/Barrage, HRT, Penstocks/Pressure Shaft, Power House (Underground/Surface/Semi surface) & TRT. The Power Station may be based on Storage/Run off River.

2 Capacity of the Hydro Power Station

2.1 The Hydro Power Station has a generating capacity of ..... MW.

2.2 The configuration of Units is given below:

(a) The number of Units is .....

(b) The nameplate capacity of each Unit is ..... MW.

3 Head

Maximum net head available for power generation is ....., which is the maximum gross head less all the losses in the water conductor system including penstock.

Minimum net head results from the difference in elevation between the minimum head water level (MDDL) and the maximum tailrace water level (TWL0, minus losses with all turbines operating at full gate opening.

4 Overloading Limits

All Units of Hydro Power Station shall be capable of increasing their output by 10% (ten per cent). The rate of increase or decrease in machine output shall be governed by change in speed/pressure rise in compliance other relevant IS.

5 Ramp Rates

Each Units of the Hydro Power Station shall have the capacity to ramp up from spinning at zero load to reach full capacity within 5 minutes.

6 Description of the Power Station

The Power Station shall conform with Applicable Laws and the regulations notified by the Central Electricity Authority and the Appropriate Commission.

The Power Station is briefly described below:

A. **Intake**

[$] Particulars in respect of the blanks in this Annex-I shall be provided by the selected bidder after issue of Letter of Award and the same shall be included in the Agreement to be executed between Parties.

(i) Number :

(ii) Invert Level:

(iii) Design Discharge:

(iv) Intake Gates (Size) :

B. **Head Race Tunnel**

(i) Number:

(ii) Size:

(iii) Shape:

(iv) Length:

(v) Design Discharge:

(vi) Velocity

C. **Surge Shaft**

(i) Number:

(ii) Type:

(vi) Size:

(vii) Height:

(viii) Max. Surge Level:

(ix) Min Surge Level:

D Penstock

(i) Number:

(ii) Daimeter:

(iii) Length:

(iv) Shape:

(v) Design Discharge:

E. Water Levels

(i) Full Reservoir Level:

(ii) Minimum Draw Down Level:

(iii) Minimum TWL:

(iv) Maximum TWL:

F. Power House

(i) Type:

(ii) Installed Capacity:

(iii) Number of Units:

(iv) Power House Cavern Size:

(v) Type of Turbine:

(vi) Type & Capacity of Generator:

(vii) Number & Rating of Transformer:

(viii) Overall efficiency:

G. Tail Race Tunnel

(i) Type:

(ii) Size:

(iii) Length:

(iv) Design Discharge:

SCHEDULE –B
(See Clause 9.1.1)

PERFORMANCE SECURITY

The.....,
Distribution Company
State of....

WHEREAS:

(A) .... (the "**Supplier**") and [the.... Distribution Company] represented by.... and having its principal offices at.... ("**Utility**") have entered into an Agreement for Procurement of Power dated ....(the "**Agreement**") whereby the Utility has agreed to the [Supplier *if supplier is NOT a Trading Licensee, or* Developer *if Supplier is a Trading Licensee*] undertaking the financing and operation of the Power Station with a generating capacity of .... MW in the State of ....on finance, own and operate (the "**FOO**") basis, subject to and in accordance with the provisions of the Agreement.

(B) The Agreement requires the Supplier to furnish a Performance Security to the Utility in a sum of [Rs..... cr. (Rupees.... crore)] (the "**Guarantee Amount**") as security for due and faithful performance of its obligations, under and in accordance with the Agreement (as defined in the Agreement).

(C) We,.... through our Branch at .....the "**Bank**") have agreed to furnish this Bank Guarantee by way of Performance Security.

NOW, THEREFORE, the Bank hereby, unconditionally and irrevocably, guarantees and affirms as follows:

1. The Bank hereby unconditionally and irrevocably guarantees and undertakes to pay to the Utility upon occurrence of any failure or default in due and faithful performance of all or any of the Supplier's obligations, under and in accordance with the provisions of the Agreement, on its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Supplier, such sum or sums upto an aggregate sum of the Guarantee Amount as the Utility shall claim, without the Utility being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.

2. A letter from the Utility, under the hand of an Officer not below the rank of a Superintending Engineer or equivalent, that the Supplier has committed default in the due and faithful performance of all or any of its obligations under and in accordance with the Agreement shall be conclusive, final and binding on the Bank. The Bank further agrees that the Utility shall be the sole judge as to whether the Supplier is in default in due and faithful performance of its obligations during the Contract Period under the Agreement and its decision that the Supplier is in default shall be final, and binding on the Bank, notwithstanding any differences between the Utility and the Supplier, or any dispute between them

pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Supplier for any reason whatsoever.

3. In order to give effect to this Guarantee, the Utility shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Supplier and/or the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.

4. It shall not be necessary, and the Bank hereby waives any necessity, for the Utility to proceed against the Supplier before presenting to the Bank its demand under this Guarantee.

5. The Utility shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Agreement or to extend the time or period for the compliance with, fulfilment and/or performance of all or any of the obligations of the Supplier contained in the Agreement or to postpone for any time, and from time to time, any of the rights and powers exercisable by the Utility against the Supplier, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement and/or the securities available to the Utility, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the Utility of the liberty with reference to the matters aforesaid or by reason of time being given to the Supplier or any other forbearance, indulgence, act or omission on the part of the Utility or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.

6. This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the Utility in respect of or relating to the Agreement or for the fulfilment, compliance and/or performance of all or any of the obligations of the Supplier under the Agreement.

7. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and this Guarantee will remain in force for the period specified in paragraph 8 below and unless a demand or claim in writing is made by the Utility on the Bank under this Guarantee, no later than 6 (six) months from the date of expiry of this Guarantee, all rights of the Utility under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.

8. The Performance Security shall cease to be in force and effect when the Supplier shall have provided another Performance Security in substitution of this Performance Security.

9. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the Utility in writing, and declares and warrants that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.

10. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred Branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the Utility that the envelope was so posted shall be conclusive.

11. This Guarantee shall come into force with immediate effect and shall remain in force and effect for a period of two years from the date hereof or until it is released earlier by the Utility pursuant to the provisions of the Agreement.

Signed and sealed this.... day of ....20.... at ....

SIGNED, SEALED AND DELIVERED
For and on behalf of
the BANK by:

(Signature)
(Name)
(Designation)
(Code Number)
(Address)

NOTES:

(i) The bank guarantee should contain the name, designation and code number of the officer(s) signing the guarantee.

(ii) The address, telephone number and other details of the Head Office of the Bank as well as of issuing Branch should be mentioned on the covering letter of issuing Branch.

SCHEDULE – C
(See Clause 13.1.1)

DEFAULT ESCROW AGREEMENT

THIS DEFAULT ESCROW AGREEMENT is entered into on this the.... day of ....20....

AMONGST

1. ....Limited, a company incorporated under the provisions of the Companies Act, 2013 and having its registered office at ....(hereinafter referred to as the "**Supplier**" which expression shall, unless repugnant to the context or meaning thereof, include its successors, substitutes and permitted assigns);

2. ....(name and particulars of the Default Escrow Bank), through its ....branch, and having its registered office at.... (hereinafter referred to as the "**Default Escrow Bank**" which expression shall, unless repugnant to the context or meaning thereof, include its successors, substitutes and permitted assigns); and

3. The.... Distribution Company represented by ....and having its principal offices at ....(hereinafter referred to as the "**Utility**" which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and permitted assigns).

WHEREAS:

(A) The Utility has entered into a agreement dated .... with the Supplier (the "Agreement for Procurement of **Power**") for supply of .... MW of electricity from the Power Station at.... in the State of...., and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.

(B) To secure the Utility's payment obligations to the Supplier under the Agreement for Procurement of Power, the Utility is required to establish a default escrow account on the terms and conditions stated therein (the "**Default Escrow Account**").

NOW, THEREFORE, in consideration of the foregoing and the respective covenants and agreements set forth in this Agreement, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, the following words and expressions shall, unless repugnant to the context or meaning thereof, have the meaning hereinafter respectively assigned to them:

"**Agreement**" means this Default Escrow Agreement and any amendment thereto made in accordance with the provisions contained herein;

"**Cure Period**" means the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Utility, and shall commence from the date on which a notice is delivered by the Supplier to the Utility asking the latter to cure the breach or default specified in such notice;

"**Default Escrow Account**" shall have the meaning set forth in Recital B of this Agreement;

"**Parties**" means the parties to this Agreement collectively and "**Party**" shall mean any of the Parties to this Agreement individually;

"Agreement for Procurement of Power" shall have the meaning set forth in Recital A of this Agreement;

"**Security**" shall have the meaning set forth in Clause 3.1;

"**Utility Account**" shall have the meaning set forth in Clause 2.4;

"**Utility Escrow Default**" shall have the meaning set forth in Clause 8.1;

"**Utility's Lenders**" means the banks and/or financial institutions, which have provided or propose to provide financial assistance and/or other facilities and guarantees to the Utility and who have, for the repayment and/or discharge of obligations of the Utility been provided security by way of a charge on the Revenues of the Utility, as specified in Annex-I hereto.

1.2 Interpretation

1.2.1 The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the Agreement for Procurement of Power shall, unless repugnant to the context, have the meaning ascribed thereto in the Agreement for Procurement of Power.

1.2.2 References to Clauses and Annexes are, unless stated otherwise, references to Clauses and Annexes of this Agreement.

1.2.3 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Agreement for Procurement of Power shall apply, *mutatis mutandis*, to this Agreement.

2 DEFAULT ESCROW ACCOUNT

2.1 Default Escrow Bank to act as trustee

2.1.1 The Utility hereby appoints the Default Escrow Bank to act as trustee for the Supplier and the Utility in connection herewith and authorises the Default Escrow Bank to exercise such rights, powers, authorities and discretion as are specifically delegated to the Default Escrow Bank by the terms hereof together with all such rights, powers, authorities and discretion as are reasonably incidental hereto, and the Default Escrow Bank accepts such appointment pursuant to the terms hereof.

2.1.2 The Utility hereby declares that all rights, title and interest in and to the Default Escrow Account shall be vested in the Default Escrow Bank and held in trust for the Supplier and the Utility, and applied in accordance with the terms of this Agreement. No person other than the Supplier and the Utility shall have any rights hereunder as third party beneficiaries under this Agreement.

2.2 Acceptance of Default Escrow Bank

The Default Escrow Bank hereby agrees to act as such and to accept the Revenues of the Utility pursuant to the provisions of this Agreement and the Agreement for Procurement of Power. The Default Escrow Bank shall hold and safeguard the Default Escrow Account during the term of this Agreement and shall treat the amount in the Default Escrow Account as monies deposited by the Utility with the Default Escrow Bank. In performing its functions and duties under this Agreement, the Default Escrow Bank shall act in trust for the benefit of, and as agent for, the Supplier and the Utility, or their nominees, successors or permitted assigns, in accordance with the provisions of this Agreement.

2.3 Establishment of Accounts

2.3.1 Within 30 (thirty) days from the date of this Agreement, and in any case prior to the Appointed Date, the Utility shall open and establish the Default Escrow Account with the ……. (name of Branch) Branch of the Default Escrow Bank, and such account shall be maintained at all times until the termination of this Agreement under Clause 9 hereof. The Default Escrow Account shall be denominated in Rupees.

2.3.2 The Default Escrow Bank shall maintain the Default Escrow Account in accordance with the terms of this Agreement and its usual practices and applicable regulations, and pay the maximum rate of interest payable to similar customers on the balance in the said account from time to time.

2.3.3 The Default Escrow Bank and the Utility shall, in accordance with Good Industry Practice, agree on the detailed mandates, terms and conditions, and operating procedures for the Default Escrow Account, but in the event of any conflict or inconsistency between this Agreement and such mandates, terms and conditions, or procedures, this Agreement shall prevail.

2.4 Utility Account

The Default Escrow Bank and the Utility acknowledge that at least 30% (thirty per cent) of the Utility's total monthly Revenues are being deposited in the Utility's existing account at the Default Escrow Bank (the "**Utility Account**"), and the Utility undertakes to maintain the Utility Account and continue to deposit therein at least 30% (thirty per cent) of its total monthly Revenue, till the termination of this Agreement under Clause 9 hereof.

2.5 Default Escrow Bank's fee

The Default Escrow Bank shall be entitled to receive its fee and expenses in an amount, and at such times, as may be agreed between the Default Escrow Bank

and the Utility. For the avoidance of doubt, the Default Escrow Bank shall be entitled to deduct such fee and expenses from the monies deposited in the Default Escrow Account.

2.6 Rights of the Parties

Save and except as otherwise provided in the Agreement for Procurement of Power, the rights of the Supplier and the Utility in the monies held in the Default Escrow Account are set forth in their entirety in this Agreement and they shall have no other rights against or to the monies in the Default Escrow Account.

3 OBLIGATIONS OF THE DEFAULT ESCROW BANK

3.1 Creation of Security Interest

The Utility expressly agrees that it shall, prior to the Appointed Date, execute the Deed of Hypothecation and create a first priority charge/ security interest in favour of the Supplier on the Revenues deposited into the Default Escrow Account pursuant to this Agreement, but not exceeding the Maximum Monthly Payment for and in respect of each and every month until termination of this Agreement (the "**Security**").

3.2 Transfer to Default Escrow Account

The Default Escrow Bank shall procure and ensure transfer of Revenues deposited into the Utility Account from the Utility Account to the Default Escrow Account to the extent of and in the manner specified in this Agreement.

3.3 Statement of accounts

The Default Escrow Bank shall provide to the Utility and the Supplier, no later than the 15 (fifteen) days from the end of each month, a statement of accounts detailing all deposits and withdrawals into and from the Default Escrow Bank during the previous month. During any period, following the delivery of a notice of the occurrence of a Utility Escrow Default and until delivery of notice that the Utility Escrow Default is no longer continuing, the Default Escrow Bank shall provide statement of accounts to the Utility and the Supplier on a daily basis.

3.4 Protection of Supplier's interest

The Default Escrow Bank shall, at all times, act and discharge its functions and obligations under this Agreement in accordance with the principle of protecting and enforcing the rights and interest of the Supplier hereunder and the Security afforded to it herein for the full and timely performance by the Utility of the Secured Obligations in the manner contemplated under this Agreement and the Agreement for Procurement of Power.

3.5 Monies to be held in trust

Monies received by the Default Escrow Bank under this Agreement shall, until used or applied in accordance with this Agreement, be held by the Default Escrow

Bank in trust for the purposes for which they were received, and shall be segregated from other funds and property of the Default Escrow Bank.

3.6 Communications and notices

In discharge of its duties and obligations hereunder, the Default Escrow Bank:

(a) may, in the absence of bad faith or gross negligence on its part, rely as to any matters of fact which might reasonably be expected to be within the knowledge of the Utility upon a certificate signed by or on behalf of the Utility;

(b) may, in the absence of bad faith or gross negligence on its part, rely upon the authenticity of any communication or document believed by it to be authentic;

(c) shall within 5 (five) business days after receipt, deliver a copy to the Supplier of any notice or document received by it from the Utility in connection herewith; and

(d) shall within 5 (five) business days after receipt, deliver a copy to the Utility of any notice or document received by it from the Supplier in connection herewith.

3.7 No set off

The Default Escrow Bank agrees not to claim or exercise any right of set off, banker's lien or other right or remedy with respect to amounts standing to the credit of the Default Escrow Account. For the avoidance of doubt, it is hereby acknowledged and agreed by the Default Escrow Bank that the monies held by the Default Escrow Bank in the Default Escrow Account shall not be considered as part of the assets of the Default Escrow Bank, shall in the case of bankruptcy or liquidation of the Default Escrow Bank, be wholly excluded from the assets of the Default Escrow Bank in such bankruptcy or liquidation.

3.8 Regulatory approvals

The Default Escrow Bank shall use its best efforts to procure, and thereafter maintain and comply with, all regulatory approvals required for it to establish and operate the Default Escrow Account. The Default Escrow Bank represents and warrants that it is not aware of any reason why such regulatory approvals will not ordinarily be granted to the Default Escrow Bank.

4 OBLIGATIONS OF THE UTILITY

4.1 General

4.1.1 The Utility covenants with the Supplier and the Default Escrow Bank that it will discharge the Secured Obligations in accordance with the provisions of the Agreement for Procurement of Power and this Agreement.

4.1.2 The Utility hereby agrees and undertakes that until the termination of this Agreement, no less than 30% (thirty per cent) of its total monthly Revenue shall continue to be deposited into the Utility Account at the Default Escrow Bank and the Revenues therein shall be routed through the Default Escrow Account in accordance with the terms hereof.

4.1.3 The Utility agrees and undertakes that it shall not take any actions inconsistent with the instructions given under this Agreement or interfere in any manner with the transfer of funds into the Default Escrow Account in accordance with the terms of this Agreement, or deliver or cause to be delivered to the Default Escrow Bank any amendment, modification or supplement to such instructions or any additional or new instructions regarding routing, deposit or withdrawal of funds by the Default Escrow Bank without the express written approval of the Supplier, which amendment, modification or supplement thereto or any such additional or new instructions shall be effective only if consented to by a duly authorised representative of the Supplier.

4.2 Creation of Charge

4.2.1 The Utility hereby agrees and undertakes that it shall create, under and pursuant to the Deed of Hypothecation, a first charge in favour of the Supplier over the Revenues routed through the Default Escrow Account in pursuance of this Agreement, which charge shall remain in force and effect until payment and discharge of the Secured Obligations. The Utility further acknowledges and agrees that commencing from the date of execution of the Deed of Hypothecation and until payment and discharge of the Secured Obligations, the Utility's Lenders or any other entity shall not have any charge over any part of the Security, and that such charge, if created in future, in favour of Utility's Lenders or any other entity would be secondary and subordinate to the first charge created in favour of the Supplier pursuant to the Deed of Hypothecation. The Utility expressly agrees that it shall procure and ensure that the rights of the Supplier hereunder are not prejudiced in any manner whatsoever.

4.2.2 The Utility agrees and undertakes to provide such other documents, certificates and agreements as the Supplier or the Default Escrow Bank may reasonably request in respect of creating a first charge in favour of the Supplier in accordance with Clause 4.2.1.

4.2.3 The Utility may, subject to the provisions of this Agreement and the Deed of Hypothecation, create any other security interest subordinate and secondary to (i) the first charge created in favour of the Supplier over the Revenues routed through the Default Escrow Account or (ii) any part thereof, in favour of any person other than the Supplier for any reason whatsoever.

4.3 Changes in revenue collection

No change shall be made or permitted by the Utility in its business operations or revenue collection policies which would result in the reduction or diversion of Revenues from the Utility Account such that its level falls below 30% (thirty per cent) of the total monthly Revenues of the Utility from any and all sources.

5. OPERATION & MANAGEMENT OF DEFAULT ESCROW ACCOUNT

5.1 General

5.1.1 All amounts deposited in the Utility Account shall be applied by the Default Escrow Bank in accordance with this Clause 5. The parties expressly agree that all amounts routed through the Default Escrow Account pursuant to this Agreement shall constitute a part of the Security and shall not constitute payment of the Secured Obligations until applied to the payment thereof as hereinafter provided.

5.1.2 In the event of any dispute arising out of this Agreement, the Parties shall have recourse to the dispute resolution mechanism specified in Clause 12:

Provided that pending the full and final resolution of such dispute, the Default Escrow Bank shall retain the disputed amounts in the Default Escrow Account and shall not allow transfer or withdrawal of funds from the Default Escrow Account to the extent of the amount under dispute. Upon full and final settlement of the dispute, either the Utility or the Supplier may bring the decision of the Arbitrator, Commission or court, as the case may be, to the notice of the Default Escrow Bank who shall be bound by such decision and shall carry out such actions as are specified in the decision.

5.2 Deposits by the Utility

The Utility and the Default Escrow Bank agree and undertake that during the period commencing from the 10th (tenth) day and ending on the 30th (thirtieth) day of every month, the Default Escrow Bank shall deposit into the Default Escrow Account by daily transfers from the Utility Account, without any further authorisation or instructions from the Utility, funds aggregating an amount equal to the Maximum Monthly Payment, and shall continue to make such deposits every month until all Secured Obligations, including the obligations arising out of Termination Payment, are fully discharged.

5.3 Irrevocable instructions

The Utility irrevocably directs the Default Escrow Bank, and the Default Escrow Bank agrees to transfer from the Utility Account to the Default Escrow Account on a monthly basis, an amount equal to the Maximum Monthly Payment, and further route and transfer such amounts in the manner and to the extent specified in this Agreement.

5.4 Withdrawals during Operation Period

The Default Escrow Bank shall, during the Contract Period, procure and ensure that on or before the 25th (twenty fifth) day of every month, an amount equal to the Minimum Monthly Payment is retained in the Default Escrow Account for payment in respect of the Monthly Invoice for the preceding month, and the balance remaining may be withdrawn or transferred in accordance with the instructions of the Utility.

5.5 Drawal against Letter of Credit

5.5.1 If for any reason whatsoever, any amount due and payable in respect of the Monthly Invoice for and in respect of the preceding month is not paid in accordance with the provisions of the Agreement for Procurement of Power, the Supplier may, at any time after the 27th (twenty seventh) day of the month in which the Payment Due Date shall have occurred, draw on the Letter of Credit, to recover such amount.

5.5.2 Notwithstanding anything to the contrary contained in this Agreement, in the event that the amount covered by the Letter of Credit is at any time less than the Minimum Monthly Payment or is insufficient for recovery of payment due against the Monthly Invoice, and there is a failure of the Utility to replenish such shortfall and reinstate the Letter of Credit within a period of 7 (seven) days, the Default Escrow Bank shall transfer or withhold funds from the Default Escrow Account for the purpose of reinstating the Letter of Credit and shall continue such transfer or withholding of funds until the Letter of Credit has been fully replenished and reinstated for an amount equal to the Minimum Monthly Payment.

5.6 Withdrawals upon Termination

5.6.1 Upon Termination of the Agreement For Procurement of Power, if the Utility fails to make the Termination Payment due and payable to the Supplier within a period of 30 (thirty) days from the date of demand by the Supplier under and in accordance with the provisions of the Agreement for Procurement of Power, the Supplier may by notice, convey the necessary particulars and instruct the Default Escrow Bank to make the Termination Payment in accordance with this Clause 5.6.

5.6.2 Notwithstanding anything to the contrary in this Agreement, upon receipt of a notice from the Supplier under and in accordance with the provisions of Clause 5.6.1, all amounts standing to the credit of the Default Escrow Account and deposited therein from time to time shall, subject to a monthly limit of the Maximum Monthly Payment, be appropriated and transferred to the Escrow Account during each and every month until the Termination Payment and interest thereon are fully paid and discharged in accordance with the provisions of the Agreement for Procurement of Power .

5.6.3 The Utility expressly acknowledges and agrees that upon Termination of the Agreement for Procurement of Power, it shall continue to deposit Revenues equal to 30% (thirty per cent) of its total monthly Revenues into the Utility Account in accordance with Clauses 2.4 and 4.1.2, and such Revenues shall, subject to the provisions of Clause 5.6.2, be routed and deposited into the Default Escrow Account by the Default Escrow Bank till the Termination Payment and any interest thereon, have been paid in full. For the avoidance of doubt, the Utility agrees that it shall not take any actions inconsistent with the instructions given hereunder by the Supplier or interfere in any way with the transfer of funds into the Default Escrow Account or with the further transfer of funds to the Escrow Account in accordance with the provisions of this Clause 5.6.

6 REPRESENTATIONS AND WARRANTIES

6.1 Representations and Warranties of the Utility

The Utility hereby represents and warrants to the Supplier and the Default Escrow Bank as of the date of this Agreement and at all times that:

(a) the Utility is a duly constituted entity and is validly existing under the laws of India and has all requisite legal power and authority to execute this Agreement and to carry out the terms, conditions and provisions contained in this Agreement;

(b) this Agreement constitutes valid legal and binding obligations of the Utility, enforceable in accordance with the terms of this Agreement;

(c) to the best of the knowledge of the Utility, there is no pending or threatened action, suit or proceeding before any court, tribunal or judicial or quasi judicial body or Government that could reasonably be expected to materially and adversely affect the financial condition or operations of the Utility or the ability of the Utility to perform its obligations under this Agreement or which purports to affect the legality, validity or enforceability of this Agreement;

(d) the execution, delivery and performance of this Agreement by the Utility have been duly authorized by all requisite actions and will not constitute a violation of:

(i) any statute, judgment, order, decree or regulation of any court, Government Instrumentality or arbitral tribunal applicable or relating to the Utility, its assets or its business; or

(ii) the Utility's constitution or other documents or any indenture, contract or agreement to which it is Party or by which it or its property may be bound;

(e) no hypothecation, lien, charge, security interest or other encumbrance shall exist over or shall be created over the Revenues of the Utility, routed through the Default Escrow Account pursuant to this Agreement, on and after the date of execution of the Deed of Hypothecation;

(f) on and after the date of execution of the Deed of Hypothecation, the Utility Lenders do not and shall not have any first ranking security charge, security interest or other encumbrance over the Revenues of the Utility routed through the Default Escrow Account, except a second/and subordinate charge which may be created in their favour in accordance with Clauses 4.2.1 and 4.2.3;

(g) the schedules, annexes and other attachments attached hereto do not and will not contain any material misstatement of fact which is untrue or omit to state any fact, the omission of which makes or will make any of the

statements therein, in the light of the circumstances under which they were or will be made, misleading in any respect;

(h) all filings and other actions necessary to create, perfect and protect a first priority security interest and charge with respect to the Security have been duly made or taken or shall be duly made as soon as possible and as of the said date, all such filings and actions shall be in full force and effect;

(i) the particulars relating to the Utility's Lenders, as specified in Annex-I of this Agreement, shall be complete and accurate in all material respects and all such accounts are held and made in good faith; and

(j) at least 30% (thirty per cent) of the Utility's total monthly Revenues are deposited in the Utility Account every month and shall continue to be deposited in the Utility Account till the termination of this Agreement in accordance with the terms herein.

6.2 Representations and Warranties of the Default Escrow Bank

The Default Escrow Bank shall represent and warrant to the Utility and the Supplier as of the date of this Agreement and at all times that:

(a) the Default Escrow Bank is a duly constituted scheduled commercial bank having its head office at …… and its branch among others, at …… and validly existing under the laws of India and has all requisite legal power and authority to enter into this Agreement and to perform its duties and obligations hereunder;

(b) this Agreement constitutes the valid legal and binding obligations of the Default Escrow Bank enforceable in accordance with the terms of this Agreement;

(c) there are no actions, suits or proceedings pending or threatened, against or affecting the Default Escrow Bank before any court or administrative body or arbitral tribunal that could reasonably be expected to affect adversely and materially the ability of the Default Escrow Bank to perform its duties and obligations under this Agreement;

(d) the execution delivery and performance of this Agreement has been duly authorised by all requisite action, and will not constitute a violation of:

(i) any statute, judgment, order, decree or regulation of any court, Government Instrumentality or arbitral tribunal applicable or relating to the Default Escrow Bank, its assets or its business; or

(ii) the Default Escrow Bank's constitution or other documents or any indenture, contract or agreement to which it is a party or by which it or its property may be bound; and

(e) the Default Escrow Bank is not aware of any other charge or security interest or encumbrance granted over the Revenues of the Utility routed through the Default Escrow Account in favour of any other person other than the Supplier, save and except those created in favour of the Utility's Lenders as specified in Annex-I hereto.

6.3 Representations and Warranties of the Supplier

The Supplier hereby represents and warrants to the Default Escrow Bank and the Utility that:

(a) it has been duly constituted under the Companies Act, 1956 as amended and is validly existing under the laws of India and has all requisite legal power and authority to enter into this Agreement and to perform its duties and obligations hereunder;

(b) this Agreement constitutes the valid, legal and binding obligations of the Supplier enforceable in accordance with the terms of this Agreement;

(c) the execution, delivery and performance of this Agreement by the Supplier has been duly authorized by all requisite action, and will not constitute a violation of:

(i) any statute, judgment, order, decree or regulation of any court, Government Instrumentality or arbitration tribunal applicable or relating to the Supplier, its assets or its business; or

(ii) the Supplier's constitution or other documents or any indenture, contract or agreement to which it is Party or by which it is Party or by which it or its property may be bound; and

(d) there are no actions, suits or proceedings pending or threatened, against or affecting the Supplier before any court or administrative body or arbitral tribunal that could reasonably be expected to affect adversely and materially the ability of the Supplier to perform its duties and obligations under this Agreement.

7. UTILITY'S COVENANTS

7.1 The Utility covenants that:

(a) It shall create and maintain valid, perfected and enforceable first priority and ranking security interest and charge over all of the Security pursuant to the Deed of Hypothecation;

(b) it shall procure all amendments, approvals, consents or waivers as may be required from the Utility's Lenders and any other financing parties from whom such amendments, approvals, consents or waivers are required, for the creation, maintenance and enforcement of the security interest contemplated hereby or by the Deed of Hypothecation;

(c) it shall not, on and after the date of the signing of the Deed of Hypothecation, grant or create a first priority security interest, hypothecation, charge, lien, security interest or other encumbrance over the Revenues of the Utility routed through the Default Escrow Account pursuant to this Agreement, throughout the term of this Agreement other than the Security created under the Deed of Hypothecation , in favour of the Supplier, save and except in compliance with the provisions of this Agreement or the Deed of Hypothecation;

(d) it shall obtain in a timely manner and maintain in full force and effect (or where appropriate, renew) all authorisations that are necessary and that are required to be in the name of the Utility, in connection with:

(i) the execution, delivery, performance and observance by the Utility of this Agreement;

(ii) the validity, binding effect and enforceability of this Agreement; and the Deed of Hypothecation; and

(iii) the creation and perfection of the charge over the Revenues routed through the Default Escrow Account pursuant to this Agreement;

(e) it shall effect all registrations, recordings, filings and notarisations, which are or may become necessary to enable the performance by the Utility of its obligations under this Agreement and the Deed of Hypothecation;

(f) it shall execute such further documents, instruments and register or record the same and take any other action necessary to give effect to this Agreement and the Deed of Hypothecation; and

(g) it shall inform the Supplier of any receipt of notice, claim or legal proceedings instituted against it which might affect the payment obligations as set out in the Agreement.

8 UTILITY ESCROW DEFAULT

8.1 Utility Escrow Default

Following events shall constitute an event of default by the Utility (a "**Utility Escrow Default**") unless such event of default has occurred as a result of Force Majeure or any act or omission of the Supplier:

(a) the Utility commits breach of this Agreement by failing to deposit its Revenues equal to 30% (thirty per cent) of its total monthly Revenues in any month into the Utility Account as provided herein and fails to cure such breach by depositing the same into the Utility Account within a period of 5 (five) business days thereof;

(b) the Utility does not deposit or cause to be deposited an amount equal to the Maximum Monthly Payment into the Default Escrow Account as

provided herein and fails to cure such breach by depositing the same into the Default Escrow Account within a period of 5 (five) business days thereof.

(c) the Utility causes the Default Escrow Bank to withdraw or transfer funds in breach of the terms of this Agreement and fails to cure such breach by depositing the relevant funds into the Default Escrow Account within a Cure Period of 5 (five) business days;

(d) the Utility commits or causes any other breach of the provisions of this Agreement and fails to cure the same within a Cure Period of 5 (five) business days;

(e) the Utility fails to pay the amounts due under any Monthly Invoice either through the Default Escrow Account or the Letter of Credit;

(f) any representation or warranty made by the Utility in this Agreement shall be or shall have been incorrect in any material respect;

(g) the amount covered by the Letter of Credit is at any time less than the Minimum Monthly Payment or is insufficient for recovery of payment due against the Monthly Invoice, and there is failure on the part of the Utility to replenish such shortfall and reinstate the Letter of Credit within a period of 7 (seven) days;

(h) the Supplier is unable to draw on the Letter of Credit pursuant to the failure of the Utility to establish the Letter of Credit in accordance with the Agreement for Procurement of Power; and

(i) the Utility commits or causes any breach of the provisions of the Deed of Hypothecation and fails to cure the same within a Cure Period of 5 (five) business days.

9 TERMINATION OF DEFAULT ESCROW AGREEMENT

9.1 Duration of the Default Escrow Agreement

This Agreement shall remain in full force and effect so long as any sum remains outstanding from the Utility in respect of the Secured Obligations, unless terminated earlier by consent of all the Parties or otherwise in accordance with the provisions of this Agreement.

9.2 Termination of the Agreement

The Utility may, by no less than 60 (sixty) days prior notice to the Default Escrow Bank and the Supplier, terminate this Agreement and appoint a successor Default Escrow Bank, provided that the successor Default Escrow Bank is acceptable to the Supplier. The termination of this Agreement shall take effect only upon coming into force of a Default Escrow Agreement with the successor Default Escrow Bank and the completion of the procedure set forth in Clause 9.4 to the satisfaction of the Supplier.

9.3 Resignation by the Default Escrow Bank

The Default Escrow Bank may, after giving at least 180 (one hundred eighty) days notice in writing to the Utility and the Supplier resign from acting as Default Escrow Bank for the purposes of this Agreement. In the event of such notice of resignation, the Utility and the Supplier shall forthwith appoint a successor bank as Default Escrow Bank and shall, no later than 60 (sixty) days prior to the effectiveness of such resignation, execute and cause such successor bank to execute a Default Escrow Agreement with the Utility and the Supplier. Provided that if a successor bank acceptable to the Supplier is found within a shorter period, the Supplier and Utility may waive the notice period of 180 (one hundred eighty) days. For the avoidance of doubt, the resignation of the Default Escrow Bank hereunder shall be effective only upon coming into force of a Default Escrow Agreement with the successor Default Escrow Bank and the completion of the procedure set forth in Clause 9.4 to the satisfaction of the Supplier.

9.4 Procedure for substitution

In the event that a successor Default Escrow Bank is appointed under the provisions of Clause 9.2 or 9.3, as the case may be, the Default Escrow Bank shall:

(i) cease therewith accepting any payments or deposits into the Default Escrow Account;

(ii) transfer all amounts standing to the credit for the Default Escrow Account to the Default Escrow Account opened with the successor Default Escrow Bank to the satisfaction of the Supplier;

(iii) when all such amounts have been transferred, close the Default Escrow Account; and

(iv) within 30 (thirty) days of such closing, provide to the Utility and the Supplier a written report which shall fully reconcile all deposits to, and withdrawals from the Default Escrow Account.

9.5 Default Escrow Bank to continue

Notwithstanding the termination of the Default Escrow Agreement or the resignation of the Default Escrow Bank, as the case may be, the Default Escrow Agreement shall remain in force and the Default Escrow Bank shall continue to discharge its obligations thereunder until a successor Default Escrow Bank has been appointed and its Default Escrow Agreement has become effective upon completion of the procedure set forth in Clause 9.4 to the satisfaction of the Supplier.

9.6 Closure of Default Escrow Account

The Default Escrow Bank shall, at the request of the Utility and the Supplier, made on or after the payment by the Utility of all the Secured Obligations, and

upon confirmation of receipt of such payments, close the Default Escrow Account and any sub-accounts thereunder and pay any amount standing to the credit thereof to the Utility. Upon closure of the Default Escrow Account hereunder, the Default Escrow Agreement shall be deemed to be terminated.

10 SUPPLEMENTARY DEFAULT ESCROW AGREEMENT

10.1 Supplementary default escrow agreement

The Utility shall be entitled to enter into a supplementary default escrow agreement with the Default Escrow Bank providing, *inter alia*, for detailed procedures and documentation in relation to the Default Escrow Account; provided that such supplementary default escrow agreement shall not contain any provision which is inconsistent with this Agreement and in the event of any conflict or inconsistency between provisions of this Agreement and such supplementary agreement, the provisions of this Agreement shall prevail.

11 INDEMNITY

11.1 General indemnity

11.1.1 The Utility will indemnify, defend and hold the Supplier and the Default Escrow Bank harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of any breach by the Utility of any of its obligations under this Agreement or on account of failure of the Utility to comply with Applicable Laws and Applicable Permits.

11.1.2 The Supplier will indemnify, defend and hold the Utility harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Supplier to fulfil any of its obligations under this Agreement, which materially and adversely affects the performance of the Utility's obligations under this Agreement, other than any loss, damage, cost and expense arising out of acts done in discharge of their lawful functions by the Supplier, its officers, servants and agents.

11.1.3 The Default Escrow Bank will indemnify, defend and hold the Utility and the Supplier harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Default Escrow Bank to fulfil its obligations under this Agreement, which materially and adversely affects the performance of the Utility or Supplier's obligations under this Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Default Escrow Bank, its officers, servants and agents.

11.2 Notice and contest of claims

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 11.1 or in respect of which it is entitled to reimbursement (the "**Indemnified Party**"), it shall notify the other Party responsible for indemnifying such claim hereunder (the "**Indemnifying Party**") within 15 (fifteen) days of receipt of the claim and shall

not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

12 DISPUTE RESOLUTION

12.1 Dispute resolution

12.1.1 Any dispute, difference or claim arising out of or in connection with this Agreement, which is not resolved amicably, shall be decided finally by reference to arbitration to a Board of Arbitrators comprising one nominee of each Party to the dispute, and where the number of such nominees is an even number, the nominees shall elect another person to such Board. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternate Dispute Resolution, New Delhi (the "**Rules**") or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996.

12.1.2 The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The place of arbitration shall be the capital of the State and the language of arbitration shall be English.

13. MISCELLANEOUS PROVISIONS

13.1 Governing law and jurisdiction

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and the courts in the State where the headquarter of the Utility is situated shall have jurisdiction over all matters arising out of or relating to this Agreement.

13.2 Waiver of sovereign immunity

The Utility unconditionally and irrevocably:

(a) agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;

(b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Government or the Utility with respect to its assets;

(c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and

(d) consents generally in respect of the enforcement of any judgement or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgement that may be made or given in connection therewith).

13.3 Priority of agreements

In the event of any conflict between the Agreement for Procurement of Power and this Agreement, the provisions contained in the Agreement for Procurement of shall prevail over this Agreement.

13.4 Alteration of terms

All additions, amendments, modifications and variations to this Agreement shall be effectual and binding only if in writing and signed by the duly authorised representatives of the Parties.

13.5 Waiver

13.5.1 Waiver by any Party of a default by another Party in the observance and performance of any provision of or obligations under this Agreement:

(a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;

(b) shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and

(c) shall not affect the validity or enforceability of this Agreement in any manner.

13.5.2 Neither the failure by any Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation thereunder nor time or other indulgence granted by any Party to another Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

13.6 No third party beneficiaries

This Agreement is solely for the benefit of the Parties and no other person or entity shall have any rights hereunder.

13.7 Survival

13.7.1 Termination of this Agreement:

(a) shall not relieve the Parties of any obligations hereunder which expressly or by implication survive termination hereof; and

(b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, shall not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of, or caused by, acts or omissions of such Party prior to the effectiveness of such termination or arising out of such termination.

13.7.2 All obligations surviving the cancellation, expiration or termination of this Agreement shall only survive for a period of 3 (three) years following the date of such termination or expiry of this Agreement.

13.8 Severability

If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared as such by any court or tribunal of competent jurisdiction or any other instrumentality, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Clause 12.1 of this Agreement or otherwise.

13.9 Successors and assigns

This Agreement shall be binding on and shall inure to the benefit of the Parties and their respective successors and permitted assigns.

13.10 Continuation of Agreement

Any corporation or association into which the Default Escrow Bank may be converted or merged, or with which it may be consolidated or to which it may sell or transfer its business and assets as a whole or substantially as a whole or any corporation or association resulting from any such conversion, sale, merger, consolidation or transfer to which it is a party, shall be and become the successor Default Escrow Bank hereunder without the execution or filing of any agreement, document or instrument of any further act, deed or conveyance on the part of the Parties, anything herein to the contrary notwithstanding.

13.11 Notices

All notices or other communications to be given or made under this Agreement shall be in writing and shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or e-mail. The address for service of each Party, its facsimile number and e-mail address are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on a business day, or on a day that is not a business day, the notice shall be deemed

to be received on the first business day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile or e-mail shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be sent. Such change shall be effective when all the Parties have notice of it.

13.12 Specimen signatures

As soon as practicable but in no event later than 15 (fifteen) days from the date of this Agreement, the Utility and the Supplier shall deliver to each other and to the Default Escrow Bank, specimen signatures of their respective authorised officers duly attested by their respective banks for the purposes of this Agreement. The Utility and the Supplier shall have the right to change their respective authorised officers by delivering specimen signatures of their new authorised officers.

13.13 Language

All notices, certificates, correspondence and proceedings under or in connection with this Agreement shall be in English.

13.14 Authorised representatives

Each of the Parties shall, by notice in writing, designate their respective authorised representatives through whom only all communications shall be made. A Party hereto shall be entitled to remove and/or substitute or make fresh appointment of such authorised representative by similar notice.

13.15 Original Document

This Agreement may be executed in 4 (four) counterparts, each of which when executed and delivered shall constitute an original of this Agreement.

IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN.

THE COMMON SEAL OF SUPPLIER has been affixed pursuant to the resolution passed by the Board of Directors of the Supplier at its meeting held on the.... day of 20.... hereunto affixed in the presence of...., Director, [who has signed these presents in token thereof and...., Company Secretary / Authorised Officer who has countersigned the same in token thereof][£]:

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(e-mail address)

SIGNED, SEALED
AND
DELIVERED
For and on behalf of
THE DEFAULT
ESCROW BANK by:

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(e-mail address)

SIGNED, SEALED
AND
DELIVERED
For and on behalf of

THE UTILITY by:

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(e-mail address)

In the presence of:

1.

2.

[£] To be affixed in accordance with the articles of association of the Supplier and the resolution passed by its Board of Directors

Annex- I
(Schedule-C)

Utility's Lenders

Serial. No.	Particulars of Lenders	Amount for which charge created	Brief description of assets financed against first charge

SCHEDULE – D
(See Clause 13.1.2)

DEED OF HYPOTHECATION

THIS DEED OF HYPOTHECATION is entered into on this the ....day of ....20….

BETWEEN

1. .... Limited, a company incorporated under the provisions of the Companies Act, 2013 and having its registered office at ....(hereinafter referred to as the "**Supplier**" which expression shall, unless repugnant to the context or meaning thereof, include its successors, permitted assigns and substitutes);

2. The .... Distribution Company represented by .... and having its principal offices at.... (hereinafter referred to as the "**Utility**" which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and permitted assigns).

WHEREAS:

(A) The Utility has entered into a agreement dated.... with the Supplier (the "**Agreement for Procurement of Power"**) for supply of .... MW of electricity from the Power Station at .... in the State of .... and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.

(B) To secure the Utility's payment obligations to the Supplier under and in accordance with the Agreement for Procurement of Power, the Utility is required to establish a default escrow mechanism, *inter alia*, on the terms and conditions stated therein and in the Default Escrow Agreement dated .... entered into between the Parties and the Default Escrow Bank, a copy of which is annexed hereto and marked as Annex-B to form part of this Agreement.

(C) To further secure the Secured Obligations, the Utility has agreed to grant a charge and security interest in favour of the Supplier on the Utility's right, title and interest on and in the Default Escrow Account and all funds, amounts, deposits and monies deposited therein, in accordance with the terms hereof.

NOW, THEREFORE, in consideration of the foregoing and the respective covenants and agreements set forth in this Agreement, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, the following words and expressions shall, unless repugnant to the context or meaning thereof, have the meaning hereinafter respectively assigned to them:

"**Deed**" means this Deed of Hypothecation and any amendment thereto made in accordance with the provisions contained herein;

"**Default Escrow Agreement**" shall have the meaning set forth in Recital B of this Deed;

"**Hypothecated Interest**" shall have the meaning ascribed thereto in Clause 2.2.1 of this Deed;

"Agreement for Procurement of Power" shall have the meaning set forth in Recital A of this Deed;

1.2 Interpretation

1.2.1 The words and expressions beginning with capital letters and defined in this Deed shall have the meaning ascribed thereto herein, and the words and expressions used in this Deed and not defined herein but defined in the Agreement for Procurement of Power or the Default Escrow Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Agreement for Procurement of Power or the Default Escrow Agreement, as the case may be.

1.2.2 References to Clauses are, unless stated otherwise, references to Clauses of this Deed.

1.2.3 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Agreement for Procurement of Power shall apply, *mutatis mutandis*, to this Deed.

2 SECURITY INTEREST

2.1 Covenant to pay

In consideration of the Supplier having entered into the Agreement for Procurement of Power and agreeing to make available to the Utility the Contracted Capacity, subject to the terms and conditions set out in the Agreement for Procurement of Power, the Utility hereby covenants with the Supplier that it shall pay to the Supplier all the Secured Obligations in the manner set out in the Agreement for Procurement of Power.

2.2 Creation of Charge

2.2.1 As security for the payment of the Secured Obligations when due in accordance with the Agreement for Procurement of Power, the Utility, as the legal and/or beneficial owner of the Hypothecated Interest hereby hypothecates by way of first priority charge in favour of the Supplier, all right, title, interest, benefit, claims and demands whatsoever of the Utility in respect of the Revenues deposited into the Default Escrow Account, but not exceeding the Maximum Monthly Payment for and in respect of any month (collectively, the "**Hypothecated Interest**").

2.2.2 The charge created pursuant to this Clause 2.2 by the Utility over the Hypothecated Interest in favour of the Supplier is a floating charge and it shall not hinder the Utility from selling, leasing or otherwise disposing of or dealing with the Hypothecated Interest or any part thereof, save and except as provided in Clause 3.1.

Provided that the floating charge created pursuant to this Clause 2.2 shall forthwith and automatically be converted into a fixed charge upon the occurrence of any Utility Escrow Default.

2.2.3 At any time after a Utility Escrow Default occurs and is continuing, the Supplier shall have the authority to act upon and enforce the provisions of this Deed in accordance with the provisions hereof and the Agreement for Procurement of Power.

2.2.4 Following the occurrence of a Utility Escrow Default, the Supplier shall not, save and except as may be required under the Agreement for Procurement of Power, be obliged before taking steps to enforce the Security constituted by or pursuant to this Deed to:

(a) take action or obtain judgement or any arbitration award against the Utility in any court or before any arbitrator;

(b) make or file any claim or proof in a winding up or dissolution of the Utility; and

(c) exercise any legal remedies, which may be available to it under or in respect of the Agreement for Procurement of Power.

2.3 Release of Charge

2.3.1 Upon termination of the Agreement for Procurement of Power in terms thereof, the first priority charge created under Clause 2.2 shall be released and vacated on the date when all the Secured Obligations have been paid in full.

2.3.2 In case of the occurrence of the events described in Clause 2.3.1, the Supplier shall, at its own costs and expense, forthwith:

(a) cede the benefit of the first priority charge on and security interest in the Hypothecated Interest;

(b) re-assign, retransfer or re-convey to the Utility, or as it may direct, the Hypothecated Interest; and

(c) execute all such documents and do all such other acts as may be required by the Utility in connection with the release of the benefit of the charge on and security interest in the Hypothecated Interest.

3 FURTHER ENCUMBRANCES

3.1 Except for the charge created under this Deed and permitted under Clause 2.2, the Utility shall not, without the prior written consent of the Supplier, which may be granted or rejected in its sole and absolute discretion within thirty (30) days of receipt of a request in this regard from the Utility, create or suffer any mortgage, charge, lien or encumbrance in or to the Hypothecated Interest or any part thereof or do or allow anything that may prejudice this charge on the Hypothecated Interest.

3.2 The Utility shall be entitled to create a subordinate/second charge in favour of the Utility's Lenders or any other entity over the Hypothecated Interest, provided, however, that the Utility shall procure and ensure that the rights of the Supplier under this Deed are not prejudiced in any manner.

4 REPRESENTATIONS AND WARRANTIES

4.1 Representations and Warranties of the Utility

The Utility hereby represents and warrants to the Supplier as of the date of this Deed and at all times that:

(a) the Utility is a duly constituted entity and is validly existing under the laws of India and has all requisite legal power and authority to execute this Deed and to carry out the terms, conditions and provisions contained in this Agreement;

(b) this Deed constitutes valid legal and binding obligations of the Deed, enforceable in accordance with the terms of this Deed;

(c) the charge and security interest created hereunder constitute a first priority security interest in favour of the Supplier;

(d) based on available records, the Revenues are believed by the Utility to be true and bonafide and fully collectible Revenues generated in the ordinary course of business of the Utility and the Utility has full right and interest in the Revenues;

(e) to the best of its knowledge, there is no pending or threatened action, suit or proceeding before any court, tribunal or judicial or quasi judicial body or Government that could reasonably be expected to materially and adversely affect the financial condition or operations of the Utility or the ability of the Utility to perform its obligations under this Deed or which purports to affect the legality, validity or enforceability of this Deed;

(f) the execution, delivery and performance of this Deed by the Utility have been duly authorised by all requisite actions and will not constitute a violation of:

(i) any statute, judgment, order, decree or regulation of any court, Government Instrumentality or arbitral tribunal applicable or relating to the Utility, its assets or its business; or

(ii) the Utility's constitution or other documents or any indenture, contract or agreement to which it is Party or by which it or its property may be bound;

(g) no hypothecation, lien, charge, security interest or any other encumbrance shall exist over or shall be created over the Revenues of the Utility routed

through the Default Escrow Account after the date hereof, except as permitted under this Deed;

(h) as of the date hereof and until the expiry of this Deed, the Utility Lenders or any other entity do not and shall not have any first ranking charge, security interest or other encumbrance over the Revenues of the Utility routed through the Default Escrow Account, except a second/and subordinate charge which may be created in their favour in accordance with the provisions of Clauses 3.1 and 3.2; and

(i) the schedules, annexes and other attachments attached hereto do not and will not contain any material misstatement of fact which is untrue or omit to state any fact, the omission of which makes or will make any of the statements therein, in the light of the circumstances under which they were or will be made, misleading in any respect.

4.2 Representations and Warranties of the Supplier

The Supplier hereby represents and warrants to the Utility that:

(a) it has been duly constituted under the Companies Act, 1956 as amended and is validly existing under the laws of India and has all requisite legal power and authority to enter into this Deed and to perform its duties and obligations hereunder;

(b) this Deed constitutes the valid, legal and binding obligations of the Supplier enforceable in accordance with the terms of this Deed; and

(c) the execution, delivery and performance of this Deed by the Supplier has been duly authorised by all requisite action, and will not constitute a violation of:

(i) any statute, judgment, order, decree or regulation of any court, Government Instrumentality or arbitration tribunal applicable or relating to the Supplier, its assets or its business; or

(ii) the Supplier's constitution or other documents or any indenture, contract or agreement to which it is Party or by which it is Party or by which it or its property may be bound.

5. UTILITY'S COVENANTS

5.1 The Utility covenants that during the term of this Deed:

(a) it shall do all acts and things as may be reasonably required or appropriate to give effect to the charge/security interest created in favour of the Supplier on and in the Hypothecated Interest and take all steps to maintain such charge and security interest in full force and effect on and in the Hypothecated Interest;

(b) it shall obtain and maintain at its own expense any license, permission, consent or authorisation and pay any taxes or duties, including without limitation, stamp duties, which may be required in order to create, maintain and preserve the charge/security interest granted under this Deed and to enable the Supplier to have the full benefit of this Deed;

(c) it shall procure all amendments, approvals, consents or waivers as may be required from the Utility's Lenders and any other financing parties from whom such amendments, approvals, consents or waivers are required, for the creation, maintenance and enforcement of the charge/security interest contemplated hereby;

(d) it shall not grant or create a first priority security interest, hypothecation, charge, lien, security interest or any other encumbrance over the Revenues of the Utility routed through the Default Escrow Account pursuant to the Default Escrow Agreement, throughout the term of this Deed other than the Security created hereunder in favour of the Supplier, save and except in compliance with the provisions of this Deed;

(e) it shall obtain in a timely manner and maintain in full force and effect (or where appropriate, renew) all authorisations that are necessary and that are required to be in the name of the Utility, in connection with:

(i) the execution, delivery, performance and observance by the Utility of this Deed;

(ii) the validity, binding effect and enforceability of this Deed; and

(iii) the creation and perfection of the charge, over the Revenues routed through the Default Escrow Account, pursuant to this Deed;

(f) it shall effect all registrations, recordings, filings and notarisations, which are or may become necessary to enable the performance by the Utility of its obligations under this Deed;

(g) it shall execute such further documents, instruments and register or record the same and take any other action necessary to give effect to this Deed ;

(h) it shall inform the Supplier of any receipt of notice, claim or legal proceedings instituted against it which might affect the payment obligations as set out in this Deed;

(i) deposit or cause to be deposited in the Utility Account the Revenues immediately upon the receipt thereof; and

(j) after the occurrence and during the continuance of a Utility Escrow Default, deliver to the Supplier (not later than the second business day of each month) copies of summary statements of the Revenues received during the immediately preceding month.

6. FURTHER ACTIONS

The Utility shall, from time to time, upon the request of the Supplier, promptly and duly execute or procure the execution of all such further documents and conduct such filings and registration, and take any other action (at the sole expense of the Supplier) as the Supplier may reasonably require in order that the Supplier may obtain the full benefit of the charge created by this Deed and of the rights and powers hereby granted.

7 INDEMNITY

7.1 General indemnity

7.1.1 The Utility will indemnify, defend and hold the Supplier harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of any breach by the Utility of any of its obligations under this Deed or on account of failure of the Utility to comply with Applicable Laws and Applicable Permits.

7.1.2 The Supplier will indemnify, defend and hold the Utility harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Supplier to fulfil any of its obligations under this Deed, which materially and adversely affects the performance of the Utility's obligations under this Deed, other than any loss, damage, cost and expense arising out of acts done in discharge of their lawful functions by the Supplier, its officers, servants and agents.

7.2 Notice and contest of claims

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 7.1 or in respect of which it is entitled to reimbursement (the "**Indemnified Party**"), it shall notify the other Party responsible for indemnifying such claim hereunder (the "**Indemnifying Party**") within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

8. CONTINUING SECURITY

8.1 The Security created by this Deed shall be a continuing security for the performance and discharge of the Secured Obligations and the security so created shall:

(a) not be set aside by any intermediate payment or satisfaction of any part of the amount hereby secured; and

(b) be in addition to and shall not in any way be prejudiced or affected by any collateral or other security now or hereafter held by the Supplier for all or any part of the Secured Obligations.

8.2 The charge granted hereby and the rights, powers and remedies conferred on the Supplier by this Deed or by Applicable Laws shall not be discharged, impaired or otherwise affected by:

(a) any time or other indulgence given or agreed to be given by the Supplier to the Utility or to any other party providing Security for the Secured Obligations;

(b) any amendment to the Agreement for Procurement of Power or the Default Escrow Agreement not agreed to by the Supplier;

(c) any release or exchange of Security or obligations granted or undertaken pursuant to the Agreement for Procurement of Power or the Default Escrow Agreement or any documents connected therewith;

(d) any other act, event or omission which but for this provision would impair or discharge the Utility's liability hereunder; and

(e) any change in the structure or organisation of the Utility as a result of a Change in Law, insolvency of the Utility or otherwise.

9 DISPUTE RESOLUTION

9.1 Dispute resolution

9.1.1 Any dispute, difference or claim arising out of or in connection with this Deed, which is not resolved amicably, shall be decided finally by reference to arbitration to a Board of Arbitrators comprising one nominee of each Party to the dispute, and where the number of such nominees is an even number, the nominees shall elect another person to such Board. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternate Dispute Resolution, New Delhi (the "**Rules**") or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996.

9.1.2 The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The place of arbitration shall be the capital of the State and the language of arbitration shall be English.

10. MISCELLANEOUS PROVISIONS

10.1 Governing law and jurisdiction

This Deed shall be construed and interpreted in accordance with and governed by the laws of India, and the courts in the State where headquarter of the Utility is situated shall have jurisdiction over all matters arising out of or relating to this Deed.

10.2 Waiver of sovereign immunity

The Utility unconditionally and irrevocably:

(a) agrees that the execution, delivery and performance by it of this Deed constitute commercial acts done and performed for commercial purpose;

(b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Deed or any transaction contemplated by this Deed, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Government or the Utility with respect to its assets;

(c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and

(d) consents generally in respect of the enforcement of any judgement or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgement that may be made or given in connection therewith).

10.3 Priority of agreements

In the event of any conflict between the Agreement for Procurement of Power and this Agreement, the provisions contained in this Deed shall prevail over the Agreement for Procurement of Power.

10.4 Alteration of terms

All additions, amendments, modifications and variations to this Deed shall be effectual and binding only if in writing and signed by the duly authorised representatives of the Parties.

10.5 Waiver

10.5.1 Waiver by any Party of a default by another Party in the observance and performance of any provision of or obligations under this Deed:

(a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Deed;

(b) shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and

(c) shall not affect the validity or enforceability of this Deed in any manner.

10.5.2 Neither the failure by any Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Deed or any obligation thereunder nor

time or other indulgence granted by any Party to another Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

10.6 No third party beneficiaries

This Deed is solely for the benefit of the Parties and no other person or entity shall have any rights hereunder.

10.7 Survival

10.7.1 Termination of this Deed:

(a) shall not relieve the Parties of any obligations hereunder which expressly or by implication survive termination hereof; and

(b) except as otherwise provided in any provision of this Deed expressly limiting the liability of either Party, shall not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of, or caused by, acts or omissions of such Party prior to the effectiveness of such termination or arising out of such termination.

10.7.2 All obligations surviving the cancellation, expiration or termination of this Deed shall only survive for a period of 3 (three) years following the date of such termination or expiry of this Deed.

10.8 Severability

If for any reason whatever any provision of this Deed is or becomes invalid, illegal or unenforceable or is declared as such by any court or tribunal of competent jurisdiction or any other instrumentality, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Clause 9.1 of this Deed or otherwise.

10.9 Successors and assigns

This Deed shall be binding on and shall inure to the benefit of the Parties and their respective successors and permitted assigns.

10.10 Continuation of Deed

Any corporation or association into which the Utility may be converted or merged, or with which it may be consolidated or to which it may sell or transfer its business and assets as a whole or substantially as a whole or any corporation or association resulting from any such conversion, sale, merger, consolidation or transfer to which it is a party, shall be and become the successor Utility hereunder without the execution or filing of any agreement, document or instrument of any

further act, deed or conveyance on the part of the Parties, anything herein to the contrary notwithstanding.

10.11 Notices

All notices or other communications to be given or made under this Deed shall be in writing and shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or e-mail. The address for service of each Party, its facsimile number and e-mail address are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on a business day, or on a day that is not a business day, the notice shall be deemed to be received on the first business day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile or e-mail shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be sent. Such change shall be effective when all the Parties have notice of it.

10.12 Specimen signatures

As soon as practicable but in no event later than 15 (fifteen) days from the date of this Deed, the Utility and the Supplier shall deliver to each other and to the Default Escrow Bank, specimen signatures of their respective authorised officers duly attested by their respective banks for the purposes of this Agreement. The Utility and the Supplier shall have the right to change their respective authorised officers by delivering specimen signatures of their new authorised officers.

10.13 Language

All notices, certificates, correspondence and proceedings under or in connection with this Deed shall be in English.

10.14 Authorised representatives

Each of the Parties shall, by notice in writing, designate their respective authorised representatives through whom only all communications shall be made. A Party hereto shall be entitled to remove and/or substitute or make fresh appointment of such authorised representative by similar notice.

10.15 Original Document

This Deed may be executed in 4 (four) counterparts, each of which when executed and delivered shall constitute an original of this Deed.

10.16 Effectiveness

This Deed shall become effective on and from the date hereof.

IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN.

THE COMMON SEAL OF SUPPLIER has been affixed pursuant to the resolution passed by the Board of Directors of the Supplier at its meeting held on the.... day of 20.... hereunto affixed in the presence of...., Director, [who has signed these presents in token thereof and...., company Secretary / Authorised Officer who has countersigned the same in token thereof][£]:

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(e-mail address)

SIGNED, SEALED AND DELIVERED
For and on behalf of
THE UTILITY by:

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(e-mail address)

[£] To be affixed in accordance with the articles of association of the Supplier and the resolution passed by its Board of Directors.

SCHEDULE –E
(See Clause 13.2.1)

LETTER OF CREDIT

DATE: ....

TO: .... Limited (the "**Supplier**")

FROM: (Specify the name and address of the bank issuing the Letter of Credit)[$] **(**the "**Bank**"**)**

The Bank hereby issues this unconditional, irrevocable and revolving monthly letter of credit (the "**Letter of Credit**") No.... in favour of the Supplier named above, subject to the following terms and conditions:

1. On the instructions of the Utility, we hereby establish this Letter of Credit in favour of the Supplier in the maximum aggregate amount of Rs. ....Rupees....)[$$] (the "**Monthly Payment**"), payable not more than once in a month upon notice received from the Supplier to this effect.

2. The Letter of Credit shall come into force with effect from...., 20.... and shall be valid and effective upto the 31st (thirty first) day of March, 20.... (indicate the year) falling after the year in which the Letter of Credit is issued (the "**Expiry Date**"), and shall be automatically and compulsorily renewed every year by the Bank, 2 (two) months prior to the date of expiry, for the period of the financial year that commences immediately after the Expiry Date, and shall continue to be so renewed until the end of the Contract Period. The date of expiry for the renewed period hereunder shall be deemed to be the Expiry Date for the purposes hereof.

3. This Letter of Credit provides security to the Supplier for the payment obligations of the Utility under an Agreement for Procurement of Power dated ....entered into between the Utility and the Supplier (the "**Agreement for Procurement of Power**") for supply of ..... MW of electricity from the Power Station owned and operated by the Supplier in the State of ....

4. Any reference to the Agreement for Procurement of Power or other agreement is for information only and does not in any way incorporate the terms and conditions of such Agreement for Procurement of Power or agreement into the terms and conditions of this Letter of Credit.

[$] As provided in Article 13 of the Agreement for Procurement of Power, the bank issuing the Letter of Credit should be the bank which has been appointed as the Default Escrow Bank under the Default Escrow Agreement

[$$] As provided in the Agreement for Procurement of Power, this amount shall be equal to 20% of the annual Capacity Charge payable by the Utility to the Supplier for Normative Availability of the power station during a period of one month. The Letter of Credit shall be modified and renewed once every year to reflect the revision in Minimum Monthly Payment in accordance with the provisions of the Agreement

5. The Supplier may draw upon this Letter of Credit by presenting a written demand for payment (by way of mail, courier or by hand) to the Bank along with the following documents:

   (i) a copy of the Monthly Invoice (as defined in the Agreement for Procurement of Power) issued by the Supplier to the Utility, any amounts whereof have remained unpaid; and

   (ii) a certificate from the Supplier, under the hand of an Officer not below the rank of a Director of the Supplier, to the effect that the Monthly Invoice (as defined in the Agreement for Procurement of Power) is in accordance with the Agreement for Procurement of Power and that the amount due has remained unpaid and has not been disputed by the Utility.

6. The Bank shall honour such demand for payment, subject to it being compliant with the terms hereof, without inquiring whether the Supplier has a right as between itself and the Utility to make such demand. Payment hereunder shall be made within 2 (two) business days after receipt of the demand for payment.

7. If a demand for payment or the aforesaid accompanying documents do not conform to the provisions of this Letter of Credit, we shall give immediate notice to the Supplier that the demand for payment or the aforesaid documents, as the case may be, were not effected in accordance with the Letter of Credit, stating the reasons thereof and also specifying what the Supplier is required to do for making effective its demand for payment in accordance with the Letter of Credit.

8. The Expiry Date of this Letter of Credit shall be deemed to be automatically extended, 2 (two) months prior to its Expiry Date, without any act or deed, for an additional period of 1 (one) financial year from the respective Expiry Date, unless at least 180 (one hundred and eighty) days prior to any Expiry Date, the Bank gives notice in writing to the Supplier and the Utility that the Bank elects not to renew this Letter of Credit for any such additional period, in which case immediately after the Expiry Date of this Letter of Credit, the Bank shall cease to be the Default Escrow Bank under and in accordance with the provisions of the Default Escrow Agreement dated ...., entered into between the Bank, the Utility and the Supplier.

9. Partial drawal shall be permitted hereunder, provided that the maximum drawdown in any month shall not exceed the Monthly Payment.

10. The Utility shall cause the Letter of Credit to be replenished to the equivalent of Monthly Payment within 7 (seven) days of a drawdown.

11. All payments made under this Letter of Credit will be free and clear of, and without deduction for, any present or future fees, taxes, restrictions or conditions of any nature, and without setoff or counterclaim for any reason, except as required by law.

12. All costs and expenses in connection with this Letter of Credit are to be on account of the Utility.

13. Save and except as otherwise expressly stated, this Letter of Credit is subject to the International Standby Practice, ISP 98, International Chamber of Commerce Publication No. 590.

14. This Letter of Credit is governed by the Laws of India.

15. All notices, demand for payments and communications in regard to this Letter of Credit are to be given in writing at the addresses below:

To: ….. (Name of Utility representative)
….. (Designation)
….. (Address, telephone and fax numbers)

To: ….. (Name of the Bank representative)
….. (Designation)
….. (Address, telephone and fax numbers)

To: ….. (Name of the Supplier representative)
….. (Designation)
….. (Address, telephone and fax numbers)

Signed and sealed this.... day of ....20…. at ....

SIGNED, SEALED AND DELIVERED
For and on behalf of
the BANK by:

(Signature)
(Name)
(Designation)
(Code Number)
(Address)

NOTES:

(i) The Letter of Credit should contain the name, designation and code number of the officer(s) signing the Letter of Credit.
(ii) The address, telephone number and other details of the Head Office of the Bank as well as of issuing Branch should be mentioned on the covering letter of issuing Branch.

Appendices

APPENDIX-I

LIST OF BID-SPECIFIC CLAUSES[£]

A. Provisions with currency-based footnotes

Footnotes with "£" sign

1. Agreement for Procurement of Power: Signature Page
2. Schedule-C: Default Escrow Agreement: Signature page..
3. Schedule-D: Deed of Hypothecation: signature Page.
4. Appendix-I: List of Bid-dpecific Clauses.

Note: The above footnotes marked "£" shall be removed prior to execution of the Agreement for Procurement of Power.

Footnotes with "$" or "$$"signs

1. Clause 5.5: Obligation relating to Transmission .
2. Clause 11.2: Base Fixed Charge
3. Clause 12.2: Base Variable Charge.
4. Schedule-A (Annex-I): Site of the Power Station.
5. Schedule –E: Letter of Credit: Form; and Paragraph 1.

Note: Non-numerical footnotes marked "$" or "$$" shall not be deleted. They shall remain in the Agreement for Procurement of Power to be executed between the Parties.

B. Provisions where curly brackets are used

1. Clause 7.1 (m): Representations and warranties of the Supplier
2. Clause 25.13 (a) and (b): Notices
3. Schedule-A (Annex-I): Site of the Power Station: Paragraph 1.

C. Provisions with blank spaces

1. Recitals: First line, Recitals 2 and D.
2. Clause 5.5: Obligations relating to transmission charges.
3. Clause 11.2: Base Fixed Charge.
4. Clause 12.3: Base Variable Charge.
5. Clause 12.3: Variable Charge.
6. Agreement for Procurement of Power: Signature page.

D. Schedules with blank spaces

All blank spaces in Schedules shall be retained in the Agreement for Procurement of Power to be executed between the Parties. These shall be filled up as and when the format of the respective Schedule is used.

[£] This Appendix-I contains a list of provisions that would need to be suitably modified for reflecting bid-specific provisions after the Supplier has been selected. This Appendix-I may be included in the draft Agreement for Procurement of Power forming part of the bid documents. It may however, be deleted when the Agreement for Procurement of Power is to be executed.

Note: The Table of Contents may also be suitably modified to reflect omission(s) and/or re-numbering of Bid-specific provisions.

APPENDIX-II

LIST OF PROJECT-SPECIFIC CLAUSES[28]

A. Clauses with serially numbered Footnotes (Fn)

1. Heading of the Agreement for Procurement of Power (Fn. 1).
2. Clause 3.1.1: The Procurement Contract (Fn. 2): Also address definition of Contract Period and other timelines.
3. Clause 5.1.4: Obligation of the Supplier (Fn. 3)*.
4. Clause 9.1.1: Performance Security (Fn. 4)*.
5. Clause 10.1: Contracted Capacity (Fn. 5)*: Also address Clause 10.4 and the definition of Peak Hours.
6. Clause 10.4: Supply during Peak Hours (Fn. 6)*.
7. Clause 10.5: Supply during Off-Peak Hours (Fn. 7)*
8. Clause 11.2: Based Fixed Charge (Fn. 8)*
9. Clause 11.4.2: Computation of Fixed Charge (Fn. 9)*. Also address clause 11.4.3.
10. Clause 12.2: Base Variable charge (Fn. 10 & 11)*.
11. Clause 12.3: Computation of Variable Charge (Fn. 12, 13, 14 and 15)*.
12. Clause 12.4: Shortage of Fuel (Fn. 16).
13. Clause 14.4: Ramp Up of dispatch (Fn. 17)
14. Clause 19.3: Termination Payment (Fn. 18 and 19)*
15. Clause 21.1: Increase in Cost (Fn. 20): Also address Clauses 21.2.
16. Clause 26.1: Definition of Fuel (Fn. 21)*.
17. Appendix-II: List of Project-Specific Clauses (Fn. 23).

***Note**: The Clauses to which these Footnotes relate also include square parenthesis or asterisks, which may be addressed simultaneously. Such square parenthesis or asterisks have not been listed in (B) or (C) below.

B. Clauses with square parenthesis

1. Clause 12.5: Restriction on use of Concessional Fuel.
2. Clause 12.6: Take or Pay supply of Fuel.
3. Clause 17.2 (d): Non-Political Event.
4. Clause 26.1: Definitions of Captive Mine, Fuel Supply Agreement and Project Assets.

C. Clauses with asterisks

1. Recitals; Recitals 1, A, B and C.

D. Schedules with Footnotes and square parenthesis

1. Schedules A relate to the physical and technical aspects of the Project and contain several Notes, Footnotes and square parenthesis. These Schedules require a comprehensive and integrated scrutiny for Project-specific customisation.

[28] This Appendix-II contains a list of provisions that would need to be suitably modified prior to issue of bid ddocuments for reflecting project-specific provisions. This Appendix-II should be omitted before issuing the draft MAPP, forming part of the Bid ddocuments

2. Schedule-B: Performance Security: Recitals A and B.
3. Schedule-C: Default Escrow Agreement: Signature page.
4. Schedule-D: Deed of Hypothecation: Signature page.

Note: The Table of Contents may also be suitably modified to reflect omission(s) and/or re-numbering of Project-specific Clauses.