

POWER PURCHASE AGREEMENT

FOR

PROCUREMENT OF RTC Firm POWER

FOR MEDIUM TERM

**For the period from 1st August 2013 to 30th June 2015
Under Case – 1 Bidding Procedure**

THROUGH

TARIFF BASED COMPETITIVE BIDDING PROCESS

**(As per Guidelines issued by the Government of India for Determination of Tariff
by Bidding Process for Procurement of Power by Distribution Licensees)**

FOR MEETING THE BASE LOAD

Between

**BANGALORE ELECTRICITY SUPPLY COMPANY LIMITED
("Procurer 1")
and**

**MANGALORE ELECTRICITY SUPPLY COMPANY LIMITED
("Procurer 2")**

**GULBARGA ELECTRICITY SUPPLY COMPANY LIMITED
("Procurer 3")
and**

**HUBLI ELECTRICITY SUPPLY COMPANY LIMITED
("Procurer 4")
and**

**CHAMUNDESHWARI ELECTRICITY SUPPLY CORPORATION LIMITED
("Procurer 5")**

And

**[Insert Name of the Seller]
("Seller")**

04.12.2012

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THIS AGREEMENT IS MADE ON THE [] DAY OF [] 2013

Between

(1) [BANGALORE ELECTRICITY SUPPLY COMPANY LIMITED],
(the “Procurer 1”)

(2) [MANGALORE ELECTRICITY SUPPLY COMPANY LIMITED],
(the “Procurer 2”)

(3) [GULBARGA ELECTRICITY SUPPLY COMPANY LIMITED],
(the “Procurer 3”)

(4) [HUBLI ELECTRICITY SUPPLY COMPANY LIMITED],
(the “Procurer 4”)

(5) CHAMUNDESHWARI ELECTRICITY SUPPLY CORPORATION LIMITED
(the “Procurer 5”)

and

[Insert Name of the Seller],
(the “Seller”)

[The “Procurer 1”, “Procurer 2”, “Procurer 3”, “Procurer 4” and “Procurer 5” are (hereinafter collectively referred to as the “Procurers” and individually as a “Procurer”), and each of the “Procurer” and “the “Seller” are individually referred as “Party” and collectively to as the “Parties”]

Whereas:

- A. In accordance with the Competitive Bidding Guidelines (as defined hereunder), the Procurer /Authorized Representative, had initiated a competitive bidding process through issue of RFP for procurement of power for medium term under Case-1 bidding procedure for meeting the Procurer(s)'s base load power requirements.
- B. Pursuant to the said bidding process, [Insert name of Successful Bidder] has been selected by the Procurer/ Authorized Representative, as the Seller for sale and supply of electricity in bulk to the Procurer(s), for the Aggregate Contracted Capacity (as defined

hereunder) of [To be filled in based on Selected Bid] MW, in accordance with the terms of this Agreement.

- C. The [Insert as applicable “Successful Bidder on behalf of the Seller” or “Seller”] has provided to the Procurer(s), Contract Performance Guarantee(s) as per format specified in Schedule 9 of this Agreement.
- D. [Insert if applicable] The Successful Bidder has to execute this Agreement and shall be construed as Seller for the purposes of this Agreement and to undertake all the responsibilities and obligations of the Seller.
- E. The Parties hereby agree to execute this Power Purchase Agreement setting out the terms and conditions for the sale of power up to the Aggregate Contracted Capacity by the Seller to the Procurer(s).
- F. The Procurer(s) agree, on the terms and subject to the conditions of this Agreement, to procure power up to the Aggregate Contracted Capacity and pay the Seller the Tariff as determined in accordance with the terms of this Agreement.
- G. The Procurer(s) have further agreed to make an application to the Appropriate Commission for the adoption of the Tariff under Section 63 of the Electricity Act, 2003.
- H. RFP Documents have been executed by the Procurer(s) and the Seller simultaneously with the signing of this Agreement.
- I. [Insert in case of generation source of the Successful Bidder being in the same state of the Procurer(s) or the Successful Bidder intends to connect the generation source to the STU Interface through a dedicated transmission line] The Procurer(s) and the Successful Bidder/Project Company have mutually agreed on the Delivery Point(s) for supplying power to the Procurer(s) and have incorporated the same in Schedule 1 of this Agreement.

Now therefore, in consideration of the premises and mutual agreements, covenants and conditions set forth herein, it is hereby agreed by and between the Parties as follows:

1. ARTICLE 1: DEFINITIONS AND INTERPRETATION

1.1 Definitions

The terms used in this Agreement, unless as defined below or repugnant to the context, shall have the same meaning as assigned to them by the Electricity Act, 2003 and the rules or regulations framed there under, including those issued/ framed by Appropriate Commission (as defined hereunder), as amended or re-enacted from time to time.

"Act" or "Electricity Act, 2003"	shall mean the Electricity Act, 2003 and any rules, amendments, regulation, notifications, guidelines or policies issued there under from time to time;
"Affiliate"	shall mean a company that either directly or indirectly <ol style="list-style-type: none">controls oris controlled by oris under common control with a Bidding Company (in the case of a single company) or a Member (in the case of a Consortium) and "control" means ownership by one company of at least twenty six percent (26%) of the voting rights of the other company;
"Aggregate Contracted Capacity"	with respect to the Seller, shall mean the aggregate capacity in <i>[Insert capacity]</i> MW contracted with the Procurer(s) for supply at the Interconnection Point from the Power Station's Net Capacity;
"Agreement" or "Power Purchase Agreement" or "PPA"	shall mean this Power Purchase Agreement including its recitals and Schedules, amended or modified from time to time in accordance with the terms hereof;
"Appropriate Commission"	shall mean the CERC, or the SERC or the Joint Commission referred to in Section 83 of the Electricity Act 2003, as the case may be;
"Authorized Representative" <i>[Insert this definition if applicable]</i>	shall mean Power Company of Karnataka Limited , the body corporate authorized by the Procurer(s) to carry out the bidding process for the selection of the Successful Bidder on their behalf;
"Availability Based Tariff" or "ABT"	shall mean all the regulations contained in the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2004, as amended or revised from

	time to time, to the extent applied as per the terms of this Agreement;
"Availability Factor" or "Availability"	shall have the meaning ascribed thereto in ABT (provided that in place of Installed capacity and Normative auxiliary consumption it shall be Aggregate Contracted Capacity);
"Available Capacity"	shall have the meaning ascribed thereto in ABT;
"Bid"	shall mean Non-Financial Bid and Financial Bid submitted by the Successful Bidder, in response to the RFP, in accordance with the terms and conditions of the RFP;
"Bid Deadline"	shall mean the last date and time for submission of the Bid in response to the RFP;
"Bidding Company"	shall refer to such single company that has submitted the Bid in accordance with the provisions of the RFP;
"Bidding Consortium" or "Consortium"	shall mean a group of companies that has collectively submitted the Bid;
"Bidding Guidelines" or "Competitive Bidding Guidelines"	shall mean the "Guidelines for Determination of Tariff by Bidding Process for Procurement of Power by Distribution Licensees", issued by Ministry of Power, Government of India, under Section 63 of the Electricity Act, 2003 on January 19, 2005 and as amended from time to time till the Bid Deadline;
"Bill Dispute Notice"	shall mean the notice issued by a Party raising a Dispute regarding a Monthly Bill or a Supplementary Bill issued by the other Party;
"Business Day"	shall mean with respect to Seller and Procurer(s), a day other than Sunday or a statutory holiday, on which the banks remain open for business in the State(s) of Karnataka in which the concerned Procurer's registered office is located;
"Central Transmission Utility" or "CTU"	shall mean the utility notified by the Central Government under Section-38 of the Electricity Act 2003;
"CERC"	shall mean the Central Electricity Regulatory Commission of India, constituted under sub – section (1) of Section 76 of the Electricity Act, 2003, or its successors;
"Change in Law"	shall have the meaning ascribed thereto in Article 10.1.1 of this Agreement;
"Competent Court"	shall mean any court or tribunal or any similar judicial or

of Law"	quasi-judicial body in India that has jurisdiction to adjudicate upon issues relating to this Agreement;
"Consents, Clearances and Permits"	shall mean all authorizations, licenses, approvals, registrations, permits, waivers, privileges, acknowledgements, agreements, or concessions required to be obtained from or provided by any concerned authority for the purpose of setting up of the generation facilities and/ or supply of power;
"Consultation Period"	shall mean the period of ninety (90) days or such other longer period as the Parties may agree, commencing from the date of issuance of a Seller Preliminary Default Notice or a Procurer Preliminary Default Notice as provided in Article 11 of this Agreement, for consultation between the Parties to mitigate the consequence of the relevant event having regard to all the circumstances;
"Contract Performance Guarantee"	shall mean the irrevocable unconditional bank guarantee, submitted or to be submitted by the Seller or the Successful Bidder on behalf of the Seller to the Procurer(s) from a Nationalized bank in the form attached hereto as Schedule 9, in accordance with the terms of this Agreement and RFP;
"Contract Year"	shall mean the period commencing on the Effective Date (as defined hereunder) and ending on the immediately succeeding March 31 and thereafter each period of twelve (12) months commencing on April 1 and ending on March 31; Provided that: (i) in the financial year in which the Scheduled Delivery Date would occur, the Contract Year shall end on the date immediately before the Scheduled Delivery Date and a new Contract Year shall commence once again from the Scheduled Delivery Date and end on the immediately succeeding March 31, and thereafter each period of twelve (12) months commencing on April 1 and ending on March 31, and (ii) provided further that the last Contract Year of this Agreement shall end on the last day of the Term of this Agreement; And further provided that for the purpose of payment, the Tariff shall be the Quoted Tariff for the entire Term of the PPA for respective Generation Source as per Schedule 8 of this Agreement;
"Contracted	with respect to each Procurer, shall mean the allocation

Capacity"	<p><i>of the Aggregate Contracted Capacity to each of the Procurers as provided in Schedule 1 hereof, subject to adjustment as per terms of this Agreement; [In case of multiple Procurers] subject to following:</i></p> <p><i>The implemented schedule of the concerned RLDC/SLDC, shall be treated as power delivered to Discoms (Procurer(s) subject to following:</i></p> <ul style="list-style-type: none">➤ <i>In case of Transmission System Constraint/Corridor Congestion, the Implemented Schedule shall be deemed as the Contracted capacity for such duration.</i>➤ <i>In case of Generator outages, power shall be arranged from alternate source at the same rate as indicated in the Lol. If implemented schedule except due to transmission system constraint/corridor congestion is less than the contracted capacity, the Bidder shall pay compensation as per Schedule 4 of PPA.</i>
"Control Centre"	<p>shall mean the RLDC and/or SLDC or such other load control centre designated by the Procurer(s) from time to time through which the Procurer(s) shall issue Dispatch Instructions to the Seller for supply of power;</p>
"Declared Capacity"	<p>shall mean the Power Station's Net Capacity at the relevant time at the Interconnection Point (expressed in MW) as declared by the Seller in accordance with the Grid Code and dispatching procedures as per the Availability Based Tariff;</p>
"Delivery Date"	<p>shall mean the date on which the Seller commences supply of the Aggregate Contracted Capacity to the Procurer(s);</p>
"Delivery Point"	<p>shall mean the STU Interface(s) as specified in Schedule 1 of this Agreement;</p>
"Developer" <i>[Insert this definition in case the Seller is a Trading Licensee]</i>	<p>shall mean the owner of the Power Station from which the Seller shall supply the Aggregate Contracted Capacity to the Procurer(s);</p>
"Dispatch"	<p>shall mean any instruction issued by the Procurer(s)</p>

Instruction"	through the concerned SLDC / RLDC to the Seller, in accordance with applicable Grid Code and this Agreement;
"Dispute"	shall mean any dispute or difference of any kind between a Procurer and the Seller or between the Procurers (jointly) and the Seller, in connection with or arising out of this Agreement including but not limited to any issue on the interpretation and scope of the terms of this Agreement as provided in Article 14 of this Agreement;
"Due Date"	shall mean the thirtieth (30th) day after a Monthly Bill or a Supplementary Bill is received and duly acknowledged by the Procurer(s) or, if such day is not a Business Day, the immediately succeeding Business Day, by which date such Monthly Bill or a Supplementary Bill is payable by such Procurer(s);
"Effective Date"	shall have the meaning ascribed thereto in Article 2.1 of this Agreement;
"Electricity Laws"	shall mean the Electricity Act, 2003 and the rules and regulations made thereunder from time to time along with amendments thereto and replacements thereof and any other Law pertaining to electricity including regulations framed by the Appropriate Commission;
"Event of Default"	shall mean the events as defined in Article 11 of this Agreement;
"Expiry Date"	shall mean the date ie., 30th June 2015 or such extended period as mutually agreed upon by both Parties;
"Force Majeure" or "Force Majeure Event"	shall have the meaning ascribed thereto in Article 9.3 of this Agreement;
"Fuel"	shall mean the primary fuel used to generate electricity namely [<i>Insert name of the fuel as applicable, namely domestic coal, imported coal, domestic (pipeline) gas, or imported gas (RLNG)</i>];
"Grid Code" / "IEGC" or "State Grid Code"	shall mean the Grid Code specified by the Central Commission under Clause (h) of Sub-section (1) of Section 79 of the Electricity Act and/or the State Grid Code as specified by the concerned State Commission, referred under Clause (h) of Sub-section (1) of Section 86 of the Electricity Act 2003, as applicable;
"Indian Governmental	shall mean the Government of India, Governments of state(s) of [<i>Insert the name(s) of the state(s) in</i>

Instrumentality"	India, where the Procurer(s), the Seller and the Power Station are located] and any ministry, department, board, authority, agency, corporation, commission under the direct or indirect control of Government of India or any of the above state Government(s) or both, any political sub-division of any of them including any court or Appropriate Commission(s) or tribunal or judicial or quasi-judicial body in India but excluding the Seller and the Procurer(s);
"Injection Point"	shall mean the [Insert Injection Point] as specified by the Successful Bidder in Format 4.10 of the Selected Bid (Schedule 10 of this Agreement);
"Installed Capacity"	shall mean the sum of nameplate capacities of the units of the Power Station, confirmed by the respective performance tests;
"Insurances"	shall mean the insurance cover to be obtained and maintained by the [<i>Insert "Seller" if Seller is NOT a Trading Licensee, or "Developer" if Seller is a Trading Licensee</i>] in accordance with Article 7 of this Agreement;
"Interconnection Facilities"	shall mean the facilities on the Procurers' side of the Delivery Point for receiving and metering the electrical output in accordance with this Agreement and which shall include, without limitation, all other transmission lines and associated equipments, transformers, relay and switching equipment and protective devices, safety equipment and, subject to Article 6, the Metering System required for supply of power as per the terms of this Agreement;
"Interconnection Point"	shall mean the point where the power from the Power Station switchyard bus of the Seller is injected into the interstate/intrastate transmission system (including the dedicated transmission line connecting the Power Station with the interstate/intrastate transmission system);
"Invoice" or "Bill"	shall mean either a Monthly Invoice, or a Supplementary Invoice by any of the Parties;
"Late Payment Surcharge"	shall have the meaning ascribed thereto in Article 8.3.5 of this Agreement;
"Law"	shall mean in relation to this Agreement, all laws including Electricity Laws in force in India and any statute, ordinance, regulation, notification or code, rule, or any interpretation of any of them by an Indian Governmental Instrumentality and having force of law and shall further include without limitation all applicable rules, regulations,

	orders, notifications by an Indian Governmental Instrumentality pursuant to or under any of them and shall include without limitation all rules, regulations, decisions and orders of the Appropriate Commission;
"Letter of Credit" or "L/C"	shall have the meaning ascribed thereto in Article 8.4.1 of this Agreement;
"Letter of Intent" or "LOI"	shall mean the letter issued by the Procurer / Authorized Representative to the Successful Bidder for supply of power pursuant to the RFP;
"Meters" or "Metering System"	shall mean meters used for accounting and billing of electricity in accordance with Central Electricity Authority (Installation and Operations of Meters) Regulations, 2006, Grid Code and ABT, as amended from time to time;
"Minimum Offtake Guarantee"	shall mean guaranteed offtake of Eighty Five percent (85%) <i>[Insert percent of offtake]</i> of the Aggregate Contracted Capacity for the Procurer or all Procurers taken together, as the case may be, during a Contract Year
"Month"	shall mean a period of thirty (30) days from (and excluding) the date of the event, where applicable, else a calendar month;
"Monthly Bill" or "Monthly Invoice"	shall mean a monthly invoice comprising of Tariff and penalty, as per Schedule 4 hereof;
"Normative Availability"	shall mean Eighty Five. percent (85%) Availability of the Aggregate Contracted Capacity at the Interconnection Point on Contract Year basis.
"Operating Period";	shall mean the period commencing from the Delivery Date, until the Expiry Date or date of earlier termination of this Agreement in accordance with Article 2 of this Agreement;
"Party" and "Parties"	shall have the meaning ascribed thereto in the recital to this Agreement;
"Payment Mechanism"	shall have the meaning ascribed thereto in Article 8.4 of this Agreement;
"Power Station"	shall mean the <i>[Insert name of generation source specified by the Successful Bidder in its Bid]</i> power generation facility of installed capacity of <i>[Insert capacity]</i> MW, located at <i>[Insert name of the place]</i> in <i>[Insert name of the District and State]</i> ; This includes all units and auxiliaries such as associated Fuel handling, treatment or storage facilities; water

	<p>supply, treatment or storage facilities; the ash disposal system including ash dyke [if applicable]; bay/s for transmission system in the switchyard, dam, intake, water conductor system [if applicable] , and all the other assets, buildings/structures, equipments, plant and machinery, facilities and related assets required for the efficient and economic operation of the power generation facility;</p> <p>whether completed or at any stage of development and construction or intended to be developed and constructed for the purpose of supply of power as per this Agreement;</p>
"Power Station's Net Capacity"	<p>shall mean [.....] MW, being Installed Capacity of the Power Station measured at the bus-bar, reduced by the normative auxiliary power consumption as prescribed by CERC from time to time;</p> <p>In case of a dedicated transmission line connecting the bus-bar and the Interconnection Point, the Power Station's Net Capacity shall beMW, being the Installed Capacity of the Power Station measured at the Interconnection Point and reduced by the normative auxiliary power consumption and losses, if any, of such dedicated transmission line;</p>
"Preliminary Default Notice"	<p>shall have the meaning ascribed thereto in Article 11 of this Agreement;</p>
"Project Company"	<p>shall mean the company where incorporated by the Successful Bidder, as per Indian laws, to undertake all rights and obligations of the Seller and to sign this Agreement for the supply of power to the Procurer(s) as per the terms of this Agreement;</p>
"Provisional Bill"	<p>shall mean the bill raised by the Seller as ascribed thereto in Article 8.3.6 of this Agreement;</p>
"Prudent Utility Practices"	<p>shall mean the practices, methods and standards that are generally accepted internationally from time to time by electric utilities for the purpose of ensuring the safe, efficient and economic design, construction, commissioning, operation and maintenance of power generation equipment and which practices, methods and standards shall be adjusted as necessary, to take account of:</p> <p>a) operation and maintenance guidelines recommended by the manufacturers of the plant and equipment to be incorporated in the Power Station;</p>

	b) the requirements of Indian Law; and the physical conditions at the site of the Power Station;
"Quoted Tariff"	shall mean the Tariff indicated in Schedule 8.
"RBI"	shall mean the Reserve Bank of India;
"Rebate"	shall have the same meaning as ascribed thereto in Article 8.3.6 of this Agreement;
"Regional Energy Accounts" or "REA"/ "State Energy Account" or SEA	shall have the same meaning as in the Grid Code and issued by the relevant RPC secretariat or other appropriate agency for each Week and for each Month (as per their prescribed methodology), including the revisions and amendments thereof;
"RFP"	shall mean the Request For Proposal document along with all formats dated 03.12.2012 issued by the Procurer(s)/ Authorized Representative and shall include any modifications, amendments or alterations and clarifications thereto;
"RFP Documents"	shall mean the PPA entered into in respect of the procurement of power, by the Parties.
"RLDC"	shall mean the relevant Regional Load Dispatch Centre established under Sub-section (1) of Section 27 of the Electricity Act, 2003;
"RPC"	shall mean the relevant Regional Power Committee established by the Government of India for a specific region in accordance with the Electricity Act, 2003 for facilitating integrated operation of the power system in that region;
"Rupees" or "Rs."	shall mean Indian rupees, the lawful currency of India;
"SBAR"	shall mean the prime lending rate per annum applicable for loans with one (1) year maturity as fixed from time to time by the State Bank of India. In the absence of such rate, SBAR shall mean any other arrangement that substitutes such prime lending rate as mutually agreed to by the Parties;
"Scheduled Delivery Date"	shall have the meaning ascribed thereto in Article 4.1 of this Agreement;
"Scheduled Energy" or "Scheduled Generation"	Shall mean scheduled generation as defined in the ABT;
"Scheduled	shall mean the final outage plan as approved by the RPC

Outage"	as per the provisions of the Grid Code;
"Selected Bid"	shall mean the Bid of the Successful Bidder as accepted by the Procurer/ Authorized Representative, copy of which is attached herewith and marked as Schedule 10 of this Agreement;
"SERC"	shall mean the Electricity Regulatory Commission of any State in India constituted under Section-82 of the Electricity Act, 2003 or its successors, and includes a Joint Commission constituted under Sub-section (1) of Section 83 of the Electricity Act 2003;
"Settlement Period"	shall mean the time period for the issuance of daily generation and drawl schedules as provided in ABT;
"SLDC"	shall mean the centre established under Sub-section (1) of Section 31 of the Electricity Act 2003, relevant for the State(s) where either of the Interconnection Point, the Injection Point and/or the Delivery Point are located;
"SLDC Charges"	shall mean the charges levied by any of the relevant SLDCs for the supply of power by the Seller to the Procurer(s);
"State Transmission Utility" or "STU"	shall mean the Board or the Government company notified by the respective State Government under Sub-section (1) of Section 39 of the Act;
"STU Interface"	shall mean the point at which the CTU network is connected to the intrastate transmission system of the Procurer(s)'s State(s), and at which the Procurer(s) agree to receive power up to the Requisitioned Capacity; For generation source in the same state as that of the Procurer(s), the STU Interface shall be the bus-bar of the generating station from which power is contracted to be supplied, at an appropriate voltage level as specified by the STU.
"Successful Bidder"	shall mean the Bidder selected by the Procurer(s) / Authourized Representative pursuant to the RFP for supply of power by itself or through the Project Company to the Procurer(s) as per the terms of PPA and and to whom a LOI has been issued;
"Supplementary Bill"	shall mean a bill other than a Monthly Bill raised by any of the Parties in accordance with Article 8of this Agreement;
"Tariff"	shall mean the tariff as computed in accordance with Schedule 4 of this Agreement;
"Tariff Payment"	shall mean the payments to be made under Monthly Bills

	as referred to in Schedule 4 and the relevant Supplementary Bills;
"Termination Notice"	shall mean the notice given by either Parties for termination of this Agreement in accordance with Articles 3.4.2, 3.4.3, 3.4.4, 3.4.5, 4.1.1, 11.3.4, 11.4.5, 11.5.1 and Clause 7.2.3 of Schedule 7 of this Agreement;
"Term of Agreement"	shall have the meaning ascribed thereto in Article 2.2 of this Agreement;
[Insert if applicable] "Trading Licensee"	shall mean the Seller which is an Electricity Trader and has submitted an exclusive power purchase agreement executed with the Developer;
"Transmission Service Agreement"	<i>[Insert if the Seller is responsible for obtaining open access from the Injection Point to the Delivery Point]</i> shall mean the agreement(s) signed by the Seller and the relevant transmission licensee for transmission of power up to the Aggregate Contracted Capacity from the Injection Point to the Delivery Point;
"Unscheduled Interchange" or "UI"	shall have the meaning ascribed thereto in CERC (Terms and Conditions of tariff) Regulations 2004 as amended or revised from time to time; In case the Power Station and the Procurer(s) being within the same state, the Unscheduled Interchange shall be regulated by the respective SERC regulations;
"Unscheduled Outage"	shall mean an outage that is not a Scheduled Outage and is for the purpose of performing work on specific plant and equipments, which work could not be postponed till the next Scheduled Outage;
"Week"	shall mean a calendar week commencing from 00:00 hours of Monday, and ending at 24:00 hours of the following Sunday;
"Wheeling Charges" or "Transmission Charges"	shall mean the charges <i>to be paid by the Seller and reimbursed by the Procurer(s)</i> as transmission tariff for usage of intervening CTU networks for the transmission of power from the Injection Point up to the Delivery Point, as approved by the Appropriate Commission (excluding the charges for the STU network or charges of STU system operation or SLDC Charges, if any);

1.2 Interpretation

Save where the contrary is indicated, any reference in this Agreement to:

- 1.2.1 "Agreement" shall be construed as including a reference to its Schedules, Appendices and Annexures;
- 1.2.2 An "Article", a "Recital", a "Schedule" and a "paragraph / clause" shall be construed as a reference to an Article, a Recital, a Schedule and a paragraph/clause respectively of this Agreement;
- 1.2.3 A "crore" means a reference to ten million (10,000,000) and a "lakh" means a reference to one tenth of a million (1,00,000);
- 1.2.4 An "encumbrance" shall be construed as a reference to a mortgage, charge, pledge, lien or other encumbrance securing any obligation of any person or any other type of preferential arrangement (including, without limitation, title transfer and retention arrangements) having a similar effect;
- 1.2.5 "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;
- 1.2.6 A "person" shall be construed as a reference to any person, 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 a person shall be construed as including a reference to its successors, permitted transferees and permitted assigns in accordance with their respective interests;
- 1.2.7 "Rupee", "Rupees" and "Rs." shall denote Indian Rupees, the lawful currency of India;
- 1.2.8 The "winding-up", "dissolution", "insolvency", or "reorganization" 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, reorganization, dissolution, arrangement, protection or relief of debtors;
- 1.2.9 Words importing the singular shall include the plural and vice versa;
- 1.2.10 This Agreement itself or any other agreement or document shall be construed as a reference to this or to such other agreement or document

as it may have been, or may from time to time be, amended, varied, novated, replaced or supplemented;

- 1.2.11 A Law shall be construed as a reference to such Law including its amendments or re-enactments from time to time;
- 1.2.12 A time of day shall, save as otherwise provided in any agreement or document be construed as a reference to Indian Standard Time;
- 1.2.13 Different parts of this Agreement are to be taken as mutually explanatory and supplementary to each other and if there is any inconsistency between or among the parts of this Agreement, they shall be interpreted in a harmonious manner so as to give effect to each part;
- 1.2.14 The tables of contents and any headings or sub-headings in this Agreement have been inserted for ease of reference only and shall not affect the interpretation of this Agreement;
- 1.2.15 All interest payable under this Agreement shall accrue from day to day and be calculated on the basis of a year of three hundred and sixty five (365) days;
- 1.2.16 The words “hereof” or “herein”, if and when used in this Agreement shall mean a reference to this Agreement;
- 1.2.17 The terms “including” or “including without limitation” shall mean that any list of examples following such term shall in no way restrict or limit the generality of the word or provision in respect of which such examples are provided;
- 1.2.18 The contents of Schedule 10 shall be referred to for ascertaining accuracy and correctness of the representations made by the Successful Bidder / Seller in Clause 7.2.1 (vi) of Schedule 7 hereof.

2 ARTICLE 2 : TERM OF AGREEMENT

2.1 Effective Date

2.1.1 This Agreement shall come into effect from the date it is executed and delivered by the last of all the Parties and such date shall be referred to as the Effective Date.

2.2 Term of Agreement

2.2.1 This Agreement shall be valid for a term commencing from the Effective Date until the Expiry Date ("Term of Agreement"), unless terminated earlier pursuant to Article 2.3. Upon the occurrence of the Expiry Date, this Agreement shall, subject to Article 2.4, automatically terminate, unless mutually, extended by all the Parties on mutually agreed terms and conditions, at least ninety (90) days *prior to the Expiry Date*, subject to approval of the Karnataka Electricity Regulatory Commission.

2.3 Early Termination

2.3.1 This Agreement shall terminate before the Expiry Date:

- i. if either of the *Procurers* or the Seller exercises a right to terminate, pursuant to Articles 3.4.2, 3.4.3, 3.4.4, 3.4.5, 4.1.1, 11.3.4, 11.4.5, 11.5.1 or Clause 7.2.3 of Schedule 7 of this Agreement; or
- ii. in such other circumstances as the Seller and all *Procurers* may agree, in writing.

2.4 Survival

2.4.1 The expiry or termination of this Agreement shall not affect any accrued rights, obligations and liabilities of the Parties under this Agreement, including the right to receive liquidated damages as per the terms of this Agreement, nor shall it affect the survival of any continuing obligations for which this Agreement provides, either expressly or by necessary implication, which are to survive after the Expiry Date or termination including those under Article 3.4.2, Article 9 (Force Majeure), Article 11 (Events of Default and Termination), Article 12 (Liability and Indemnification), Article 14 (Governing Law and Dispute Resolution), Article 15 (Miscellaneous Provisions), and other Articles and Schedules of this Agreement which expressly or by their nature survive the Term or termination of this Agreement shall continue and survive any expiry or termination of this Agreement.

3 ARTICLE 3 : CONDITIONS SUBSEQUENT TO BE SATISFIED BY SELLER/ PROCURER(S)

3.1 Satisfaction of conditions subsequent by the Seller

3.1.1 The Seller agrees and undertakes to duly perform and complete the following activities at the Seller's own cost and risk within Scheduled Delivery Date as prescribed in clause 1.3.1 of RFP, unless such completion is affected by any Force Majeure event or due to the Procurers' failure to comply with their obligations under Article 3.2.1 of this Agreement, or if any of the activities is specifically waived in writing by the Procurer(s):

- a. Deleted
- b. The Seller shall have obtained all the necessary permission for the medium term open access for the intrastate transmission system from the Power Station bus bar to the Injection Point (except in case of dedicated transmission lines) and have executed all necessary agreements for such transmission access and provided a copy of the same to the Procurer(s);
- c. The Seller shall have obtained the necessary permission for medium term open access for the transmission system from the Injection Point up to the Delivery Point and shall have executed the Transmission Service Agreement with the transmission licensee for transmission of power from the Injection Point up to the Delivery Point and provided a copy of the same to the Procurer(s);
- d. The Seller shall have obtained all Consents, Clearances and Permits required for supply of power to the Procurer(s) as per the terms of this Agreement;
- e. The Seller shall have sent a written notice to all the Procurer(s) indicating the Aggregated Contracted Capacity for the Power Station as a whole expressed in MW.

3.2 Satisfaction of conditions subsequent by the Procurer(s)

3.2.1 The Procurer(s) agree(s) and undertake(s) to duly perform and complete the following activities at the Procurer's own cost and risk within Scheduled Delivery Date unless such completion is affected by any Force Majeure event or due to the Seller's failure to comply with their obligations under Article 3.1.1 of this Agreement or if any of the activities is specifically waived in writing by the Seller:

- a) The Procurer(s) shall facilitate the representation of the Seller in the relevant RPC forum in coordinating on applicable inter-state/regional transmission linkages required from the Injection Point to the Delivery Point.
- b) ***[Insert this clause where the Procurer is responsible to arrange for obtaining transmission linkage from the Power Station switchyard to the Delivery Point, in case the Power Station is located within the state of the Procurer and STU network is to be used]*** The Procurer(s) shall have obtained necessary transmission linkage for medium open access for the transmission system from the Power Station switchyard up to the Delivery Point and shall have executed the Transmission Service Agreement with the STU for transmission of power from the Power Station switchyard up to the Delivery Point and provided a copy of the same to the Seller. Further, the Procurer(s) shall indicate in writing to the Seller, the voltage level at which supply of power is to be made to the Procurer(s).
- c) The Procurer(s) shall have obtained the order of the Karnataka Electricity Regulatory Commission (KERC) for adoption of the tariff under Section 63 of the Electricity Act 2003 and given a copy of the same to the Seller

3.3 Joint responsibilities of the Procurer(s) and the Seller

3.3.1 The Procurer(s) and the Seller shall have jointly agreed on the specific date(s) for commencement of supply of power and quantum of the Contracted Capacity to be supplied to Procurer(s) from such date. Such mutually agreed date(s) shall not be later than the Scheduled Delivery Date, and the total quantum of power shall be equal to the Aggregate Contracted Capacity.

3.3.2 Deleted.

3.4 Consequences of non-fulfillment of conditions subsequent

3.4.1 Deleted.

3.4.2 All the Procurer(s) shall have the right to terminate this Agreement by giving a Termination Notice to the other Party in writing of at least seven (7) days in the event of non fulfillment of conditions as set out in Article 3.1. The termination of the Agreement shall take effect upon the expiry of the last date of the said notice period ("Termination Date").

If the Procurer(s) elect to terminate this Agreement in the event specified in the preceding paragraph of this Article, the Seller shall be liable to pay to the Procurer(s) on the Termination Date an amount of Rupees (.....) *[Insert amount not less than that derived on the*

basis of Rs. 7.5 lakhs per MW of the Contracted Capacity] only as liquidated damages.

The Procurer(s) shall be entitled to recover this amount of liquidated damages on the Termination Date, by invoking the Contract Performance Guarantee and shall then return the balance Contract Performance Guarantee, if any, to the Seller. If the Procurer(s) is/are unable to recover the amount of liquidated damages or any part thereof from the Contract Performance Guarantee, the amount of liquidated damages not recovered from the Contract Performance Guarantee, if any, shall be payable by the Seller to the Procurer(s) within ten (10) days from the Termination Date.

For the avoidance of doubt, it is clarified that this Article shall survive the termination of this Agreement.

- 3.4.3 In case of inability of the Seller to fulfill any one or more of the conditions specified in Article 3.1 due to any Force Majeure event, the time period for fulfillment of the Conditions Subsequent as mentioned in Article 3.1, shall be extended for the period of such Force Majeure event, subject to a maximum extension period of two (2) months, continuous or non-continuous in aggregate. Thereafter, this Agreement may be terminated by either the Procurer(s) or the Seller by giving a Termination Notice of at least seven (7) days, in writing to the other Party. The termination of the Agreement shall take effect upon the expiry of the last date of the said notice period.
- 3.4.4 Similarly, in case of inability of the Procurer(s) to fulfill the conditions specified in Article 3.2 due to any Force Majeure event, the time period for fulfillment of the condition subsequent as mentioned in Article 3.2, shall be extended for the period of such Force Majeure event, subject to a maximum extension period of two (2) months , continuous or non-continuous in aggregate. Thereafter, this Agreement may be terminated by either Procurer(s) or the Seller by giving a Termination Notice of at least seven (7) days, in writing to the other Party. The termination of the Agreement, shall take effect upon the expiry of the last date of the said notice period.
- 3.4.5 In case of inability of the Procurer(s) to perform the activities specified in Article 3.2 within the time period specified therein, otherwise than for the reasons directly attributable to the Seller or Force Majeure event, the time period for the fulfillment of condition subsequent by the Procurer(s) as mentioned in Article 3.2 would be extended for an additional time period which may be required by the Procurer(s) to complete the activities mentioned in Article 3.2, subject to a maximum additional time period of three (3) months. Thereafter, this Agreement may be terminated by the Seller at its option, by giving a Termination Notice of at least seven (7) days, in writing to the Procurer(s). If the Seller elects to terminate this

Agreement, the Procurer(s) shall, within a period of thirty (30) days of termination by the Seller, release the Contract Performance Guarantee of the Seller forthwith..

- 3.4.6 No Tariff adjustment shall be allowed on account of any extension of time arising under any of the sub-articles of Article 3.4;

Provided that due to the provisions of Articles 3.4.3, 3.4.4 and 3.4.5, any increase in the time period for completion of conditions subsequent mentioned under Article 3.1, shall also lead to an equal extension in the Scheduled Delivery Date..

3.5 Contract Performance Guarantee

- 3.5.1 The Performance Guarantee furnished under this Agreement shall be for guaranteeing the commencement and continuity of the supply of power up to the Contracted Capacity within the time specified in this Agreement.

- 3.5.2 The failure on the part of the Seller to furnish and maintain the Contract Performance Guarantee shall be a material breach of the term of this Agreement on the part of the Seller.

- 3.5.3 If the Seller fails to commence supply of power on the Scheduled Delivery Date specified in this Agreement, subject to conditions mentioned in Article 4.7.1, the Procurer(s) shall have the right to encash the Contract Performance Guarantee and appropriate in their favour as liquidated damages an amount specified in Article 4.8.1, without prejudice to the other rights of the Procurer(s) under this Agreement.

3.6 Deleted

3.7 Renewal of Contract Performance Guarantee

- 3.7.1 The Seller shall ensure the renewal of the Contract Performance Guarantee before a date, which is thirty (30) days prior to the expiry of the then existing validity of the Contract Performance Guarantee.

- 3.7.2 Such renewed Contract Performance Guarantee shall be initially valid for a period which is the lower of five (5) years or the balance Term of this Agreement.

- 3.7.3 If such extended Contract Performance Guarantee is not received as per the date specified above, the Procurer(s) shall have the right to encash the then existing Contract Performance Guarantee.

3.8 Return of Contract Performance Guarantee

- 3.8.1 The Procurer(s) shall return / release the Contract Performance Guarantee in the event of termination of this Agreement by any Party under Article 3.4.5 of this Agreement.
- 3.8.2 Subject to the provisions of Article 3.8.1, the Procurer(s) shall return / release the Contract Performance Guarantee to the Seller at the end of the Term of this Agreement.
- 3.8.3 The return / release of the Contract Performance Guarantee shall be without prejudice to other rights of the Procurer(s) under this Agreement.

4 ARTICLE 4 : SUPPLY OF POWER

4.1 Commencement of Supply of Power to Procurer(s)

4.1.1 The Seller shall be responsible to commence supply of power up to the Aggregated Contracted Capacity by the Scheduled Delivery Date as prescribed in Clause 1.3.1 of RFP in accordance with the provisions of this Agreement..

4.1.2 The Seller shall give the Procurer(s) and the concerned RLDC/SLDC at least Thirty (30) days advance preliminary written notice and at least Eleven (11 days advance final written notice, for commencement of supply of power.

4.2 Seller's Obligations

4.2.1 Subject to the terms and conditions of this Agreement, the Seller undertakes to be responsible, at Seller's own cost and risk, for:

(a) obtaining all Consents, Clearances and Permits other than those obtained under Article 3.1.1 and maintaining all Consents, Clearances and Permits in full force and effect during the Term of this Agreement; [Insert further in case Seller is a Trading Licensee; "The Seller shall further ensure that the Developer maintains all Consents, Clearances and Permits in full force and effects during the Term of this Agreement"]

(b) the commencement of supply of power, up to the Aggregated Contracted Capacity, to the Procurer(s) no later than the Scheduled Delivery Date , such that as much of the Contracted Capacity as can be made available through the use of Prudent Utility Practices will be made available reliably to meet the Procurers' scheduling and dispatch requirements throughout the Term of this Agreement;

(c) obtaining all the necessary permissions for the open access for the intrastate transmission system for evacuation of power from the Power Station bus bar to the Injection Point (except in case of dedicated transmission lines) and execute all necessary agreements for such transmission access and provide a copy of the same to the Procurer(s);

(d) obtaining open access for transmission of Aggregated Contracted Capacity of power from the Interconnection Point to the Delivery Point;

(e) Deleted;

- (f) Deleted;
- (g) providing on a timely basis, all relevant information to the Procurer(s) which may be required for receiving power at the Delivery Point; and
- (h) fulfilling all obligations undertaken by the Seller under this Agreement.
- (i) Deleted.
- (j) be responsible for payment of the Transmission Charges (from the Interconnection Point upto Injection Point) and applicable RLDC / SLDC charges, limited to the charges applicable to the Contracted Capacity of Procurer(s).
- (k) be responsible for making application for medium term open access for full quantity of LOI within 7 days of fax/Email copy of LOI from PCKL or date of signing of PPA whichever is later upto end of Contract Period, failing which, CPG shall be forfeited.

- (l) In case, granted capacity under MTOA is revised/relinquished by seller without the permission of procurer(s), then compensation is payable as per schedule 4 of PPA for the difference between the granted MTOA quantum and revised MTOA quantum.

4.2.2 Subject to the terms and conditions of this Agreement, the Procurer(s) shall:

- a) ensure the availability of Interconnection Facilities and evacuation of power from the Delivery Point before the Scheduled Delivery Date;
- b) be responsible for payment of the Transmission Charges (from the Injection Point onwards) and applicable RLDC / SLDC charges, limited to the charges applicable to the Contracted Capacity of Procurer(s). The Procurer(s) shall reimburse any of the above charges, if paid by the Seller;
- c) Deleted
- (d) *[Insert this clause where the Procurer(s) is responsible to arrange for obtaining transmission linkage from the Power Station switchyard in case the Power Station is located within the state of the Procurer(s)]* be responsible for making arrangements for evacuation of their respective Contracted Capacity from the Power Station switchyard to their respective Delivery Point
- (e) Deleted

(f) fulfill all obligations undertaken by the Procurer(s) under this Agreement.

4.3 Purchase and sale of Available Capacity and Scheduled Energy

4.3.1 Subject to the terms and conditions of this Agreement, the Seller undertakes to sell to the Procurer(s), and the Procurer(s) undertake to pay Tariff for all of the Available Capacity up to the Contracted Capacity and corresponding Scheduled Energy in accordance with Schedule 4.

4.3.2 Unless otherwise instructed by all the Procurers (jointly), the Seller shall sell all the Available Capacity to each Procurer in proportion of each Procurer's then existing Contracted Capacity pursuant to Dispatch Instructions of such Procurer.

4.4 Right to Contracted Capacity and Scheduled Energy

4.4.1 Subject to provisions of this Agreement, the entire Aggregate Contracted Capacity shall be for the exclusive benefit of the Procurer(s) and the Procurer(s) shall have the exclusive right to purchase the entire Aggregate Contracted Capacity from the Seller. The Seller shall not grant to any third party or allow any third party to obtain any entitlement to the Contracted Capacity and/or Scheduled Energy.

4.4.2 a) Notwithstanding Article 4.5.1, the Seller is free to sell such power to any third party prior to the Scheduled Delivery Date and any capacity which is in excess of the quantum of power agreed to be supplied under this Agreement.

b) Further notwithstanding Article 4.5.1, the Seller shall be permitted to sell power, being a part of the Contracted Capacity to third parties, if:

i) there is a part of Available Capacity corresponding to the Contracted Capacity which has not been Dispatched by the Procurer, ordinarily entitled to receive such part ('Concerned Procurer'); and

ii) such part has first been offered, at the same Tariff, to the other Procurer(s) (by the Seller), who were not ordinarily entitled to receive such part and they have chosen to waive or not to exercise their first right to receive such part of the Available Capacity within two (2) hours of being so offered the opportunity to receive such part subject to the provisions regarding scheduling as per IEGC.

4.4.3 If a Procurer does not avail of power up to the Available Capacity provided by the Seller corresponding to such Procurer's Contracted Capacity, and the provisions of Article 4.5.2 (b) have been complied with, the Seller shall be entitled to sell such Available Capacity not scheduled by the Procurer(s), to any person without losing the right to receive

Rs.1.00/unit from the Concerned Procurer for such unavailed Available Capacity. In such a case, the sale realization in excess of (Quoted Tariff minus Rs.1.00/unit), shall be equally shared by the Seller with the Concerned Procurer. In the event, the Seller sells such Available Capacity to any direct or indirect Affiliate of the Seller/ shareholders of the Seller without obtaining the prior written consent of the Procurer, the Seller shall be liable to sell such Available Capacity to such entity at Tariffs being not less than the Tariff payable by the Concerned Procurer whose capacity is being sold pursuant to this Article. If more than one Procurers do not avail of the Available Capacity corresponding to their Contracted Capacity, provisions of this Article shall be applicable to them mutatis mutandis and in such case, fifty percent (50%) in excess of (Quoted tariff minus Rs.1.00/unit) recovered by the Seller from sale to third party shall be retained by the Seller and the balance fifty percent (50%) shall be provided by the Seller to the Concerned Procurer(s) in the ratio of their Available Capacity not dispatched by such Concerned Procurer(s) and sold by the Seller to third parties. During this period, the Seller will also continue to receive the payment of Rs 1.00/unit from such Procurers.

4.5.4 The sale under Unscheduled Interchange shall not be considered as sale to third party for the purposes of this Agreement.

4.5.5 Upon the Procurers or any Procurer who has not availed of the Available Capacity, as envisaged under this Article, intimating to the Seller of its intention and willingness to avail of the part or whole of the Available Capacity corresponding to the Contracted Capacity not availed of and therefore sold to the third party, the Seller shall, notwithstanding anything contained in the arrangement between the Seller and any third party, commence supply of such capacity to the Concerned Procurer(s) from the later of two (2) hours from receipt of notice in this regard from the Concerned Procurer(s) or the time for commencement of supply specified in such notice subject to the provisions regarding scheduling as per IEGC.

4.5 Alternative Source of Power Supply

4.5.1 During the Operating Period, if the Seller is unable to provide supply of power to the Procurer(s) up to the Aggregate Contracted Capacity from the Power Station except due to a Force Majeure Event or due to a Procurer Event of Default, the Seller is free to supply power up to the Aggregate Contracted Capacity from an alternative generation source to meet its obligations under this Agreement. Such power shall be supplied to the Procurer(s) at the same Tariff as per the terms of this Agreement and subject to provisions of Article 4.6.2. In case the transmission and other incidental charges, including but not limited to application fees for open access, RLDC/SLDC charges, POC charges, POC losses etc., applicable from the alternative source of power supply are higher than the applicable Transmission Charges and Transmission

Losses from the Interconnection Point to the Delivery Point, the Seller would be liable to bear such additional charges and losses.

4.5.2 The Seller shall be permitted to supply power to the Procurer(s) from any alternative source during the Operating Period, excluding any period of supply from alternative generation source that the Seller avails prior to the commencement of supply from the generation source named in this Agreement as provided for in Article 4.8.

4.6 Extensions of Time

4.6.1 In the event that the Seller is prevented from performing its obligations under Article 4.1.1 by the Scheduled Delivery Date, as the case may be, due to:

- a) any Procurer Event of Default; or
- b) Force Majeure Events affecting the Procurer(s), or
- c) Force Majeure Events affecting the Seller,

The Scheduled Delivery Date and the Expiry Date shall be deferred, subject to the limit prescribed in Article 4.7.2, for a reasonable period but not less than 'day for day' basis, to permit the Seller or the Procurer(s) through the use of due diligence, to overcome the effects of the Force Majeure Events affecting the Seller or the Procurer(s), or till such time such Event of Default is rectified by the Procurer(s).

4.6.2 In case of extension occurring due to reasons specified in Article 4.7.1 (a), any of the dates specified therein can be extended, subject to the condition that the Scheduled Delivery Date would not be extended by more than two (2) months or the date on which the Seller elects to terminate this Agreement, whichever is later.

4.6.3 In case of extension due to reasons specified in Article 4.7.1(b) and (c), and if such Force Majeure Event continues even after the maximum period of two (2) months, any of the Parties may choose to terminate the Agreement as per the provisions of Article 11.5.

4.6.4 If the Parties have not agreed, within thirty (30) days after the affected Party's performance has ceased to be affected by the relevant circumstance, on the time period by which the, Scheduled Delivery Date or the Expiry Date should be deferred by, any Party may raise the Dispute to be resolved in accordance with Article 14.

4.6.5 As a result of such extension, the Scheduled Delivery Date and the Expiry Date newly determined shall be deemed to be the Scheduled Delivery Date and the Expiry Date for the purposes of this Agreement.

4.7 Liquidated Damages for delay in commencement of supply of power to Procurer(s)

4.7.1 If the Seller is unable to commence supply of power to the Procurer(s) by the Scheduled Delivery Date other than for the reasons specified in Article 4.7.1, the Seller shall pay to each *Procurer* liquidated damages as per this Article 4.8.1, proportionate to the then existing Contracted Capacity for the delay in such commencement of supply of power and making the Contracted Capacity available for dispatch by the Scheduled Delivery Date.

Provided that the Seller shall have the option to supply power from any alternative generation source from the Scheduled Delivery Date, for a continuous period not exceeding twelve (12) months at the same Tariff as per the terms of this Agreement. Provided further that the cumulative Availability from such alternative generation source in the twelve (12) months period shall not be less than the Normative Availability. If the Seller fails to commence such supply of power or fails to achieve the required Availability as mentioned above in this para, it shall pay to the Procurer(s) liquidated damages as per this Article 4.8.1.

In case the transmission and other incidental charges, including but not limited to application fees for open access, RLDC/SLDC charges, etc., applicable from the alternative source of power supply are higher than the applicable Transmission Charges from the Injection Point to the Delivery Point, the Seller would be liable to bear such additional charges.

The sum total of the liquidated damages payable by the Seller to the Procurer(s) shall be calculated as follows:

$$SLDb = [CC * d * DR1], \quad \text{if } d \leq 60$$

$$SLDb = [CC * 60 * DR1] + [CC * (d - 60) * DR2], \quad \text{if } d > 60$$

where:

- a) "SLDb" are the liquidated damages payable by the Seller during the period beginning with the day from the Scheduled Delivery Date or from the end of continuous period of supply from the alternative generation source or for the period during which the Availability from the alternative generating source is less than the Normative Availability, as the case may be, up to and including the day on which supply of power to the Procurer(s) actually commences from the generation source as provided in this Agreement;
- b) "CC" is the Contracted Capacity;
- c) "d" is the number of days in the period beginning with the day after the Scheduled Delivery Date or from the end of continuous period of supply from the alternative generation source or for the period during

which the Availability from the alternative generating source is less than the Normative Availability, as the case may be, up to and including the day on which supply of power to the Procurer(s) actually commences from the generation source as provided in this Agreement;

- d) "DR1" is Rs. Ten Thousand (10,000) of damages per MW per day of delay in case "d" is equal to or less than 60 days and "DR2" is Rs. Fifteen Thousand (15,000) of damages per MW per day of delay in case "d" is more than 60 days

4.7.2 The Seller's maximum liability under this Article 4.8 shall be limited to the amount of liquidated damages calculated in accordance with Article 4.8.1 for and up to two (2) Month of delay for commencement of supply of power from the Scheduled Delivery Date..

Provided that in case of failure of the Seller to start supply of power to Procurer(s) even after expiry of two (2) Month from its Scheduled Delivery Date, it shall be considered as a Seller Event of Default and provisions of Article 11 shall apply.

4.7.3 The Seller shall pay the amount calculated pursuant to Article 4.8.1 to the Procurer(s) within ten (10) days of the earlier of:

- a) the date on which the Seller commences supply of power to the Procurer(s), or
b) expiry of the two (2) months period mentioned in Article 4.8.2.

4.7.4 If the Seller fails to pay the amount of liquidated damages within the period of ten (10) days as specified in Article 4.8.3, the Procurer(s) shall be entitled to recover the said amount of the liquidated damages by invoking the Contract Performance Guarantee. If the then existing Contract Performance Guarantee is for an amount which is less than the amount of the liquidated damages payable by the Seller to the Procurer(s) under this Article 4.8, then the Seller shall be liable to forthwith pay the balance amount within ten (10) days of the invocation of the Contract Performance Guarantee by the Procurer(s).

4.7.5 The Parties agree that the formula specified in Article 4.8.1 for calculation of liquidated damages payable by the Seller under this Article 4.8, read with Article 11 is a genuine and accurate pre-estimation of the actual loss that will be suffered by the Procurer(s) in the event of Seller's delay in starting supply of power by the Scheduled Delivery Date.

4.7.6 Deleted.

4.8 Liquidated Damages for delay due to Procurer Event of Default or Force Majeure Event (affecting the Procurer)

4.8.1 If the Seller is otherwise ready to commence supply of power and has given due notice, as per provisions of Article 4.1.2, to the Procurer(s) of the date of commencement of power supply, where such date is on the Scheduled Delivery Date, but is not able to commence supply of power by the said date specified in the notice, due to a Procurer Event of Default or due to Force Majeure Event affecting the Procurer(s)) has continued for a period of more than three (3) continuous or non-continuous Months, the Seller shall, until the effects of the Procurer Event of Default or of Force Majeure Event affecting the Procurer(s)) no longer prevent the Seller from providing supply of power to the Procurer(s), be deemed to have an Available Capacity equal to the Aggregated Contracted Capacity relevant to that date and to this extent, be deemed to have been providing supply of power with effect from the date notified, and shall be treated as follows:

- a) In case of delay on account of the Procurer Event of Default, the Procurer(s) shall make payment to the Seller @ Rs.1.00/kwh in proportion to their Contracted Capacity, calculated on Normative Availability of Contracted Capacity for and during the period of such delay.
- b) *[Insert this para only in case Seller is not a Trading Licensee]* In case of delay due to Force Majeure Event affecting the Procurer(s)), the Procurer(s) shall not make payment to the Seller for the period of such events in excess of three (3) continuous or non-continuous Months
- c) In case of delay due to Force Majeure Event affecting the Procurer(s)) or Procurer Event of Default, the Procurer(s) shall be liable to make payments mentioned in (a) and (b) above, after commencement of supply of power. These amounts shall be paid from the date, being the later of a) the date of cessation of such Force Majeure Event affecting the Procurer(s)) or Procurer Event of Default and b) the completion of sixty (60) days from cessation of such Force Majeure event.

For the avoidance of doubt, it is specified that the charges payable under this Article 4.9.1 shall be paid by the Procurer(s) in proportion to their then Contracted Capacity.

4.9 Liquidated Damages for delay due to Force Majeure Event

4.9.1 If the Seller is otherwise ready to commence supply of power and has given due notice, as per provisions of Article 4.1.2, to the Procurer(s) of the date of commencement of power supply, where such date is on Scheduled Delivery Date, but is not able to commence supply of power by the said date specified in the notice, due to a Force Majeure Event,

provided such Force Majeure Event has continued for a period of more than three (3) continuous or non-continuous Months, the Seller shall, until the effects of the Force Majeure Event no longer prevent the Seller from providing supply of power to the Procurer, be deemed to have an Available Capacity equal to the Contracted Capacity relevant to that date and to this extent, be deemed to have been providing supply of power with effect from the date notified, and shall be treated as follows

- a) *[Insert this para only in case Seller is not a Trading Licensee]* In case of delay due to Force Majeure not attributable to the Procurer(s), the Procurer(s) shall not make payment for the period of such events in excess of three (3) continuous or non-continuous Months.
- b) In case of delay due to Force Majeure attributable to the Procurer(s), the Procurer(s) shall not make payment to the Seller for the period of such events in excess of three (3) continuous or non-continuous Months.
- c) In case of delay due to Force Majeure Event, the Procurer(s) shall not be liable to make payments mentioned in (a) and (b) above, after commencement of supply of power..

4.10 In every case referred to in Article 4.9.1 and 4.10.1 hereinabove, the Seller shall undertake to commence supply of the Contracted Capacity, relevant to such date, to the Procurer(s) as soon as reasonably practicable [and in no event later than two (2) Weeks or such longer period as mutually agreed between the Seller and the Procurers after the point at which it is no longer prevented from doing so by the effects of Force Majeure Events or Procurer Event of Default (as applicable)]. If the Seller is unable to provide supply of the Contracted Capacity in such a situation, then:

- a) the Seller shall repay to the Procurer(s), all sums received by way of Liquidated damages in accordance with Article 4.9.1 for the deemed supply of power with interest at the same rate as Late Payment Surcharge; and
- b) If the Seller fails to provide supply of power to Procurer(s) by the Scheduled Delivery Date, it shall also pay liquidated damages to the Procurer(s) calculated in accordance with Article 4.7.

4.11 *Limit on amounts payable due to default*

4.11.1 The Parties expressly agree that the Procurers' only liability for any loss of profits or any other loss of any other kind or description whatsoever (except claims for indemnity under Article 12), suffered by the Seller by reason of the Procurers' failure to meet its obligations under Article 4.3.1

shall be to pay the Seller the amounts specified in Article 4.9 and Article 11.

4.11.2 Similarly, Seller's only liability for any loss suffered by the Procurer(s) of any kind or description whatsoever (except claims for indemnity under Article 12), by reason of the Seller's failure to meet its obligation of providing supply of power on the Scheduled Delivery Date, shall be as per Article 4.8 and Article 11.

4.12 Transmission Losses

4.12.1 Transmission losses from the Interconnection Point onwards would be borne by the Procurer(s), and power lost on account of transmission loss would be to the account of the Procurer(s).

5 ARTICLE 5: CAPACITY, AVAILABILITY AND DISPATCH

5.1 Obligation to Supply the Contracted Capacity

5.1.1 Notwithstanding any Scheduled Outage or Unscheduled Outage of the generating unit(s) and /or of the transmission system, the Seller shall offer for sale the Contracted Capacity to the Procurer(s) at the Interconnection Point and arrange for transmission up to the Delivery Point.

5.2 Allocation of Generation Capacity

5.2.1 The Seller shall provide percent (.....%) [*Insert number*] of the Power Station's Net Capacity to the Procurer(s) as per the terms of this Agreement.

5.3 Availability

5.3.1 The [*Insert "Seller" if Seller is NOT a Trading Licensee, or insert "Seller shall be responsible to ensure that the Developer" if Seller is a Trading Licensee*] shall comply/complies with the provisions of the applicable Law regarding Availability including, in particular, to the provisions of the ABT and Grid Code relating to declaration of Availability and the matters incidental thereto.

5.3.2 In case the Aggregate Contracted Capacity is a part of the Power Station's Net Capacity; in the event of declared capacity being less than the sum total of all contracted capacities of the Power Station having duration of contracts in excess of one year, the available capacity to the Procurer(s) for dispatch shall be reduced proportionately. However if the declared capacity exceeds the sum total of all contracted capacities of the Power Station having duration of contracts in excess of one year, the excess capacity will be at the disposal of the Seller.

5.4 Scheduling and Dispatch

5.4.1 The [*Insert "Seller" if Seller is NOT a Trading Licensee, or "Seller shall be responsible to ensure that the Developer" if Seller is a Trading Licensee*] shall comply/complies with the provisions of the applicable Law regarding Dispatch Instructions, in particular, to the provisions of the ABT and Grid Code relating to scheduling and Dispatch and the matters incidental thereto.

5.4.2 The Seller further agrees that the Availability entitlement of the Procurer(s) for dispatch over any Settlement Period cannot be offered to any third party other than for conditions under Article 4.5.2. If the [*Insert "Seller" if Seller is NOT a Trading Licensee, or "Seller or Developer" if Seller is a Trading Licensee*] willfully offers the power meant for dispatch to

the Procurer(s) to any third party without complying with the conditions specified in Article 4.4.2, the [*Insert "Seller" if Seller is NOT a Trading Licensee, or "the Seller and Developer" if Seller is a Trading Licensee*] agree(s) to and acknowledges the Procurers' right to instruct the RLDC / SLDC, as the case may be, not to schedule such power to any third party, after due approval from the Appropriate Commission.

5.5 Demonstration of Power Station's Net Capacity

5.5.1 Deleted.

5.5.2 Deleted.

5.5.3 Deleted.

5.6 Derating- Deleted

5.6.1 Deleted

5.6.2 Deleted.

5.6.3 Deleted.

6 ARTICLE 6: METERING

6.1 Meters

- 6.1.1 For installation of Meters, Meter testing, Meter calibration and Meter reading and all matters incidental thereto, the Seller and the Procurer(s) shall follow and be bound by the Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006, the Grid Code and ABT as amended and revised from time to time.

7 ARTICLE 7: INSURANCES

7.1 Insurance

7.1.1 The [*Insert “Seller” in case Seller is not a Trading Licensee or “Seller shall ensure that Developer” in case Seller is a Trading Licensee*] shall effect and maintain or cause to be effected and maintained during and before the Operating Period, Insurances against such risks, with such deductibles and with such endorsements and co-insured(s), which the Prudent Utility Practices would ordinarily merit maintenance of and as required under the Financing Agreements.

7.2 Application of Insurance Proceeds

7.2.1 Save as expressly provided in this Agreement or the Insurances, the proceeds of any insurance claim made due to loss or damage to the Power Station or any part of the Power Station shall be first applied to reinstatement, replacement or renewal of such loss or damage.

7.2.2 If a Force Majeure Event renders the Power Station no longer economically and technically viable and the insurers under the Insurances make payment on a “total loss” or equivalent basis, the Procurer(s) shall have no claim on such proceeds of such Insurance.

7.3 Effect on liability of the Procurer(s)

7.3.1 Notwithstanding any liability or obligation that may arise under this Agreement, any loss, damage, liability, payment, obligation or expense which is insured or for which the [*Insert “Seller” if Seller is NOT a Trading Licensee, or “Seller and Developer” if Seller is a Trading Licensee*] can claim compensation, under any Insurance shall not be charged to or payable by the Procurer(s).

8 ARTICLE 8: BILLING AND PAYMENT

8.1 General

8.1.1 From the commencement of supply of power, Procurer(s) shall pay the Seller the monthly Tariff Payment, on or before the Due Date, comprising of Tariff for every Contract Year, determined in accordance with this Article 8 and Schedule 4. All Tariff Payments by the Procurer(s) shall be in Indian Rupees.

8.2 Delivery and Content of Monthly Bills/Provisional Bills

8.2.1 The Seller shall issue to each Procurer a signed Monthly Bill for the immediately preceding Month not later than ten (10) days of the next Month. In case the Monthly Bill for the immediately preceding Month is issued after ten (10) days of the next Month, the Due Date for payment of such Monthly Bill shall be extended by thirty (30) days.

Provided that:

- a. if the date of commencement of supply of power falls during the period between the first (1st) day and up to and including the fifteenth (15th) day of a Month, the first Monthly Bill shall be issued for the period until the last day of such Month, or
- b. if the date of commencement of supply of power falls after the fifteenth (15th) day of a Month, the first Monthly Bill shall be issued for the period commencing from the Delivery Date until the last day of the immediately following Month.

Provided further that if a Monthly Bill is received on or before the second (2nd) day of a Month, it shall be deemed to have been received on the second (2nd) Business Day of such Month.

8.2.2 Each Monthly Bill and Provisional Bill shall include:

- i. Availability and REA for the relevant Month for Monthly Bill and RLDC's daily energy account for Provisional Bill;
- ii. the Seller's computation of various components of the monthly Tariff Payment in accordance with Schedule 4; and
- iii. supporting data, documents and calculations in accordance with this Agreement.

8.3 Payment of Monthly Bills

8.3.1 The Procurer(s) shall pay the amount payable under the Monthly Bill on the Due Date to such account of the Seller, as shall have been previously notified by the Seller in accordance with Article 8.3.4 below.

8.3.2 All payments made by the Procurer(s) shall be appropriated by the Seller in the following order of priority:

- i) towards Late Payment Surcharge, if any;
- ii) towards the earlier unpaid Monthly Bill(s), if any; and
- iii) towards the then current Monthly Bill.

8.3.3 All payments required to be made under this Agreement shall only include any deduction or set off for:

- i) deductions required by the Law; and
- ii) amounts claimed by the Procurer(s) from the Seller, through an invoice duly acknowledged by the Seller, to be payable by the Seller, and not disputed by the Seller within thirty (30) days of receipt of the said Invoice and such deduction or set-off shall be made to the extent of the amounts not disputed. It is clarified that the Procurer(s) shall be entitled to claim any set off or deduction under this Article, after expiry of the said thirty (30) Days period.

Provided further, the maximum amounts that can be deducted or set-off by all the Procurers taken together under this Article in a Contract Year shall not exceed Rupees [*Insert amount calculated as Rs. 2.5 lakhs per MW of Contracted Capacity*] only, except under sub Article (i) above.

8.3.4 The Seller shall open a bank account at [*Insert name of place*] (the "Seller's Designated Account") for all Tariff Payments to be made by Procurer(s) to the Seller, and notify Procurer(s) of the details of such account at least thirty (30) Days before the dispatch of the first Monthly Bill. Procurer(s) shall also designate a bank account at [*Insert name of place*] (the "Procurer's Designated Account") for payments to be made by the Seller (including Supplementary Bills) to Procurer(s) and notify the Seller of the details of such account thirty (30) Days before the Scheduled Delivery Date. The Procurer(s) and the Seller shall instruct their respective bankers to make all payments under this Agreement to the Seller' Designated Account or the Procurer's Designated Account, as the case may be, and shall notify either Party of such instructions on the same day.

8.3.5 In the event of delay in payment of a Monthly Bill by the Procurer(s) beyond its Due Date, a Late Payment Surcharge shall be payable by such Procurer(s) to the Seller at the rate of two percent (2%) in excess of the applicable SBAR per annum, on the amount of outstanding payment, calculated on a day to day basis (and compounded with monthly rest), for each day of the delay. The Late Payment Surcharge shall be claimed by the Seller through the Supplementary Bill.

8.3.6 For payment of any Bill before Due Date, the following Rebate shall be paid by the Seller to the Procurer in the following manner. *[Note: These Rebate rates along with the slabs can be changed and decided by the Procurer at the time of issuing the RFP Documents]*

- a) The Provisional Bill shall be raised by the Seller on the last Business Day of the Month where the tariff shall be based on the Declared Capacity for the entire Month and on the final implemented Scheduled Energy up to 25th day of the Month. Rebate shall be payable at the rate of two point two five percent (2.25%) of the amount (which shall be the full amount due under the Provisional Bill) credited to Seller's account on first day of the Month and Rebate amount shall reduce at the rate of zero point zero five percent (0.05%) for each day, up to fifth (5th) day of the Month.
- b) Applicable rate of Rebate at (a) above shall be based on the date on which payment has been actually credited to the Seller's account. Any delay in transfer of money to the Seller's account, on account of public holiday, bank holiday or any other reasons shall be to the account of the Procurer(s).
- c) Two percent (2%) Rebate shall be provided for credit of payment to the Seller's account made within one (1) day of the presentation of Monthly Bill for the Month for which the Provisional Bill was raised earlier.
- d) For credit to Seller's account made on other days the Rebate on Monthly Bill shall be as under:

Number of days before Due Date of Monthly Bill	Rates of Rebate applicable
29	Two percent (2.00%)
Each day thereafter up to the Due Date	Two percent (2%) less $[0.033\% \times \{29 \text{ less number of days before Due Date when the payment is made by the Procurer(s)}\}]$

In case of presentation of Monthly Bill beyond the sixth (6th) day of the Month, two percent (2%) Rebate will be applicable only on the day of presentation of Monthly Bill and beyond that Rebate will be applicable as per the table above.

- e) Rebate of two point two five percent (2.25%) to two point zero five percent (2.05%) will be available to those Procurer(s) who credit one hundred percent (100%) of the Provisional Bill within first five (5) days of the Month to Seller's account/ designated account and balance amount, if any, based on Monthly Bill (as per REA) within the Month.

- f) In the event only part amount of Provisional Bill is credited to the Seller's account, within first five (5) days and the balance amount is credited to the Sellers account during other days of the Month, Rebate will be paid on such part amount, at the rate of two percent (2%) plus zero point zero three three percent (0.033%) per day for the number of days earlier than the 6th day when such part amount is credited to the Sellers' account;
- g) The above Rebate will be allowed only to the Procurer(s) who credit to the Seller's account the full Monthly Bill.
- h) No Rebate shall be payable on the Bills raised on account of Change in Law relating to taxes, duties and cess;
- i) If the Provisional Bill has not been paid by the date of receipt of the Monthly Bill then such Provisional Bill shall not be payable, provided in case the Provisional Bill has already been paid, then only the difference between the Monthly Bill and Provisional Bill shall be payable.

8.4 Payment Mechanism

Letter of Credit:

- 8.4.1 The Procurer(s) shall provide to the Seller, in respect of payment of its Monthly Bills and/or Supplementary Bills, a monthly unconditional, revolving and irrevocable letter of credit ("Letter of Credit"), opened and maintained by the Procurer(s), which may be drawn upon by the Seller in accordance with this Article. The Procurer(s) shall provide the Seller draft of the Letter of Credit proposed to be provided to the Seller one (1) Month before the Scheduled Delivery Date.
- 8.4.2 The Procurer(s) shall through a scheduled bank at *[Identified Place(s)]* open a Letter of Credit in favour of the Seller, to be made operative from a date prior to the Due Date of its first Monthly Bill under this Agreement. The Letter of Credit shall have a term of twelve (12) Months and shall be renewed annually, for an amount equal to:
 - i) for the first Contract Year, equal to one (1.0) time the estimated average monthly billing based on Normative Availability;
 - ii) for each subsequent Contract Year, equal to the one (1.0) time the average of the monthly Tariff Payments of the previous Contract Year.

Provided that the Seller shall not draw upon such Letter of Credit prior to the Due Date of the relevant Monthly Bill and/or Supplementary Bill, and shall not make more than one drawal in a Month.

Provided further that if at any time, such Letter of Credit amount falls short of the amount specified in Article 8.4.2 otherwise than by reason of

drawal of such Letter of Credit by the Seller, the Procurer/relevant Procurer shall restore such shortfall within seven (7) days.

8.4.3 The Procurer(s) shall cause the scheduled bank issuing the Letter of Credit to intimate the Seller, in writing regarding establishing of such irrevocable Letter of Credit.

8.4.4 In case of drawal of the Letter of Credit by the Seller, in accordance with Article 8.4, the amount of the Letter of Credit shall be reinstated in accordance with the terms of Article 8.4.11.3.

8.4.5 If the Procurer(s) fails to pay a Monthly Bill or Supplementary Bill or part thereof within and including the Due Date, then, subject to Article 8.6.7, the Seller may draw upon the Letter of Credit, and accordingly the bank shall pay without any reference or instructions from the Procurer, an amount equal to such Monthly Bill or Supplementary Bill or part thereof plus Late Payment Surcharge, if applicable, in accordance with Article 8.3.5 above, by presenting to the scheduled bank issuing the Letter of Credit, the following documents:

- i) a copy of the Monthly Bill or Supplementary Bill which has remained unpaid by the Procurer;
- ii) a certificate from the Seller to the effect that the bill at item (i) above, or specified part thereof, is in accordance with the Agreement and has remained unpaid beyond the Due Date; and
- iii) calculations of applicable Late Payment Surcharge, if any.

8.4.6 Further, on the occurrence of such an event as envisaged herein, the Seller shall immediately inform all the Procurers of the said failure of the Procurer to pay the Monthly Bill or Supplementary Bill or part thereof and shall send regular updates to all the Procurers, which shall not be less than one (1) day in every week, containing details of the amount claimed by the Seller as per the provisions of this Article and payments made by the Procurer pursuant to such claim.

8.4.7 The Procurer(s) shall ensure that the Letter of Credit shall be renewed not later than forty five (45) days prior to its expiry.

8.4.8 All costs relating to opening and maintenance of the Letter of Credit shall be borne by the Procurer(s), however, Letter of Credit negotiation charges shall be borne and paid by the Seller.

8.4.9 Where necessary, the Letter of Credit may also be substituted by an unconditional and irrevocable bank guarantee or an equivalent instrument as mutually agreed by the Procurer(s) and the Seller.

8.4.10 Deleted.

8.4.11 **Collateral Arrangement**

8.4.11.1 Deleted .

8.4.11.2 Deleted.

8.4.11.3 If the Letter of Credit is insufficient to pay for the due payments to the Seller or is not replenished for the drawals made, then within a period of seven (7) days from the date such shortfall in the Letter of Credit occurs, the Letter of Credit shall be reinstated to the requisite amount specified in this Agreement.

8.5 Third Party Sales on Default

8.5.1 Upon the occurrence of an event where the Procurer(s) has/ have not made payment by the Due Date of an Invoice through the Payment Mechanism provided in Article 8.4 of this Agreement, the Seller shall follow the steps as enumerated in Articles 8.5.3

8.5.2 Deleted.

8.5.3 On the occurrence of the event mentioned in Article 8.5.1 and after giving a notice of at least seven (7) days to the defaulting Procurer(s), the Seller shall have the obligation to offer twenty five (25) per cent of the Contracted Capacity pertaining to such defaulting Procurer(s)¹ ("Default Electricity") to the other non-defaulting Procurers. The non defaulting Procurers have the right to receive the whole or any part of such Default Electricity by giving a notice within a further two (2) Business Days, in the following manner

a) In ratios equal to their then existing Contracted Capacities at the same Tariff as would have been applicable to the defaulting Procurer. Provided that, if any of the non-defaulting Procurer(s) does not elect to receive the Default Electricity so offered, the Seller shall offer the balance of the Default Electricity to other non-defaulting Procurer(s) at the same Tariff in proportion to their additional requirement as intimated.

b) At a lower Tariff as may be specified by non-defaulting Procurer(s) to the extent of their capacity requirements, in descending order of the Tariff. Provided that, the Seller has the right to obtain tariff quotes from third party(s) for sale of Default Electricity not requisitioned under (a) above. The tariff quotes received from the non-defaulting Procurer(s) and such third party(s) shall be ranked in descending order of the tariff and the Seller shall sell Default Electricity in such descending order and in compliance with Article 8.5.4, to the extent applicable.

In case of both (a) and (b) above if non-defaulting Procurer(s) receive Default Electricity, then, , such non defaulting Procurer(s) shall within seven

(7) days of exercising the right of election, either open an additional Letter of Credit/ enhance the existing Letter of Credit in accordance with the principles set forth in Article 8.4 to secure payment for that part of the Default Electricity as such non-defaulting Procurer elects to receive.

Provided further that if the non-defaulting Procurer(s) continue to receive Default Electricity for period more than two(2) months then within two (2) Months of election by the non-defaulting Procurer(s) as mentioned above, unless the event outlined in Article 8.5.9 has occurred, such Procurer(s) shall open a Letter of Credit/enhance the existing Letter of Credit in accordance with the principles set forth in Article 8.4..

8.5.4 ***[Insert in case of multiple Procurers]*** If all the non defaulting Procurers do not make the election to receive the Default Electricity or a part thereof, within two (2) Business Days of it being so offered under Article 8.5.3, or all such non-defaulting Procurers expressly waive their first right to receive the same, the Seller shall have the right (but not the obligation) to make available and sell the Default Electricity or a part thereof to a third party, namely:

- a) any consumer, subject to applicable Law; or
- b) any licensee under the Electricity Act, 2003;

8.5.5 If the amount in the Letter of credit is not reinstated by the defaulting Procurer within thirty (30) days of the non-payment by the defaulting Procurer of an Invoice by its Due Date, the provisions of Article 8.5.3 and Article 8.5.4 shall apply with respect to one hundred per cent (100%) of the Contracted Capacity.

8.5.6 In the case of Article 8.5.4, the Seller shall ensure that sale of power to the shareholder(s) of the Seller or to any direct or indirect Affiliate of the Seller/ the shareholder(s) of the Seller is not at a price less than the Tariff.

8.5.7 In case of third party sales or sales to any other non-defaulting Procurers *[Insert further in case of multiple Procurers ""]* as permitted by this Article 8.5, the adjustment of the surplus revenue over Tariff (applicable to the defaulting Procurer) attributable to such Default Electricity sold, shall be adjusted as under :

- a) the surplus up to the Tariff shall be used towards the extinguishment of the subsisting payment liability of the defaulting Procurer towards the Seller; and
- b) the surplus if any above the Tariff shall be retained by the Seller.

8.5.8 The liability of the defaulting Procurer(s) towards making payments in accordance with Article 4.9.1 (a) to the Seller even for Default Electricity

sold to third parties or other non- defaulting Procurers or remaining unsold during such periods will remain unaffected.

Provided such payment liability shall cease on the date which occurs on the expiry of a period of three (3) months from the date of occurrence of a Procurer Event of Default under Article 11.2.1 (i), provided if prior to such date, such Procurer Event of Default has not ceased and regular supply of power for a period of at least ninety (90) continuous Days has not occurred.

8.5.9 Sales to any person or Party, other than the defaulting Procurer under Article 8.5, shall cease and regular supply of power to the defaulting Procurer in accordance with the provisions of this Agreement shall commence and be restored on any of the two following dates :

a) the day on which the defaulting Procurer pays the amount due to the Seller and renews the Letter of Credit ; or

b) any date before this date at the option of Seller .

8.6 Disputed Bill

8.6.1 If a Party does not dispute a Monthly Bill, Provisional Bill or a Supplementary Bill raised by the other Party by the Due Date, such Bill shall be taken as conclusive.

8.6.2 If a Party disputes the amount payable under a Monthly Bill, Provisional Bill or a Supplementary Bill, as the case may be, that Party shall, within thirty (30) days of receiving such Bill, issue a notice (the "Bill Dispute Notice") to the invoicing Party setting out:

i) the details of the disputed amount;

ii) its estimate of what the correct amount should be; and

iii) all written material in support of its claim.

8.6.3 If the invoicing Party agrees to the claim raised in the Bill Dispute Notice issued pursuant to Article 8.6.2, the invoicing Party shall revise such Bill within seven (7) days of receiving the Bill Dispute Notice. The disputing Party shall thereafter within seven (7) Days of receiving the revised Bill from the invoicing Party, make the payment thereunder, and if the disputing Party has already made the excess payment, the invoicing Party shall refund to the disputing Party such excess amount within fifteen (15) days of receiving the Bill Dispute Notice. In such a case excess amount shall be refunded along with interest at the same rate as Late Payment Surcharge, which shall be applied from the date on which such excess payment was made by the disputing Party to the invoicing Party and up to and including the date on which such payment has been received as refund.

- 8.6.4 If the invoicing Party does not agree to the claim raised in the Bill Dispute Notice issued pursuant to Article 8.6.2, it shall, within fifteen (15) days of receiving the Bill Dispute Notice, furnish a notice (Bill Disagreement Notice) to the disputing Party providing:
- i) reasons for its disagreement;
 - ii) its estimate of what the correct amount should be; and
 - iii) all written material in support of its counter-claim.
- 8.6.5 Upon receipt of the Bill Disagreement Notice by the disputing Party under Article 8.6.4, authorized representative(s) or a director of the board of directors/ member of board of the disputing Party and the invoicing Party shall meet and make best endeavours to amicably resolve such dispute within fifteen (15) days of receipt of the Bill Disagreement Notice.
- 8.6.6 If the Parties do not amicably resolve the Dispute within fifteen (15) days of receipt of Bill Disagreement Notice pursuant to Article 8.6.4, the matter shall be referred to Dispute resolution in accordance with Article 14.
- 8.6.7 In case of Disputed Bills, it shall be open to the aggrieved Party to approach the Appropriate Commission for Dispute resolution in accordance with Article 14 and also for interim orders protecting its interest including for orders for interim payment pending Dispute resolution and the Parties shall be bound by the decision of the Appropriate Commission, including in regard to interest or Late Payment Surcharge, if any directed to be paid by the Appropriate Commission.
- 8.6.8 If a Dispute regarding a Monthly Bill, Provisional Bill or a Supplementary Bill is settled pursuant to Article 8.6 or by the Dispute resolution mechanism provided in this Agreement in favour of the Party that issues a Bill Dispute Notice, the other Party shall refund the amount, if any incorrectly charged and collected from the disputing Party or pay as required, within five (5) days of the Dispute either being amicably resolved by the Parties pursuant to Article 8.6.5 or settled by Dispute resolution mechanism along with interest at the same rate as Late Payment Surcharge from the date on which such payment had been made to the invoicing Party or the date on which such payment was originally due, as may be applicable.
- 8.6.9 For the avoidance of doubt, it is clarified that despite a Dispute regarding an Invoice, the Procurer(s) shall, without prejudice to its/ their right to Dispute, be under an obligation to make payment, of the lower of (a) an amount equal to simple average of last three (3) Months Invoices (being the undisputed portion of such three Months' invoices) and (b) Monthly Invoice which is being disputed, provided such Monthly Bill has been raised based on the REA and in accordance with this Agreement.

8.7 Quarterly and Annual Reconciliation

8.7.1 The Parties acknowledge that all payments made against Monthly Bills, Provisional Bills and Supplementary Bills shall be subject to quarterly reconciliation at the beginning of the following quarter of each Contract Year and annual reconciliation at the end of each Contract Year to take into account REA, Tariff adjustment payments, Tariff Rebate, Late Payment Surcharge, or any other reasonable circumstance provided under this Agreement.

8.7.2 The Parties, therefore, agree that as soon as all such data in respect of any quarter of a Contract Year or a full Contract Year as the case may be has been finally verified and adjusted, the Seller and Procurer(s) shall jointly sign such reconciliation statement. Within fifteen (15) days of signing of a reconciliation statement, the Seller or Procurer(s), as the case may be, shall raise a Supplementary Bill for the Tariff adjustment payments for the relevant quarter/ Contract Year and shall make payment of such Supplementary Bill for the Tariff adjustment payments for the relevant quarter/ Contract Year, as may be due as a result of such reconciliation. Late Payment Surcharge/ interest shall be payable in such a case from the date on which such payment had been made to the invoicing Party or the date on which any payment was originally due, as may be applicable. Any Dispute with regard to the above reconciliation shall be dealt with in accordance with the provisions of Article 14.

8.8 Payment of Supplementary Bill

8.8.1 Either Party may raise a bill on the other Party ("Supplementary Bill") for payment on account of:

- i) Adjustments required by the Regional Energy Account (if applicable);
- ii) Tariff Payment for change in parameters, pursuant to provisions in Schedule 4; or
- iii) Change in Law as provided in Article 10,

and such Supplementary Bill shall be paid by the other Party.

8.8.2 The Procurer(s) shall remit all amounts due under a Supplementary Bill raised by the Seller to the Seller's Designated Account by the Due Date and notify the Seller of such remittance on the same day or the Seller shall be eligible to draw such amounts through the Letter of Credit. Similarly, the Seller shall pay all amounts due under a Supplementary Bill raised by Procurer(s) by the Due Date to concerned Procurer's designated bank account and notify such Procurer(s) of such payment on the same day. For such payments by the Procurer(s), Rebate as applicable to Monthly Bills pursuant to Article 8.3.6 shall equally apply.

- 8.8.3 In the event of delay in payment of a Supplementary Bill by either Party beyond its Due Date, a Late Payment Surcharge shall be payable at the same terms applicable to the Monthly Bill in Article 8.3.5.
- 8.9** The copies of all notices/ offers which are required to be sent as per the provisions of this Article 8, shall be sent by a Party, simultaneously to all Parties.

9 ARTICLE 9 : FORCE MAJEURE

9.1 Definitions

9.1.1 In this Article, the following terms shall have the following meanings:

9.2 Affected Party

9.2.1 An affected Party means any of the Procurers or the Seller/Developer whose performance has been affected by an event of Force Majeure.

9.2.2 Deleted

9.2.3 **[Insert where the Seller is responsible for obtaining necessary transmission linkage]** An event of Force Majeure affecting the CTU/ STU or any other agent of the Seller, which has affected the transmission facilities from the Power Station to the Delivery Point, shall be deemed to be an event of Force Majeure affecting Seller.

9.2.4 Deleted

9.2.5 Similarly, any event of Force Majeure affecting the performance of the Procurers' contractor for setting up or operating Interconnection Facilities shall be deemed to be an event of Force Majeure affecting Procurer(s) only if the Force Majeure event is resulting in a delay in the performance of Procurer's contractors.

9.3 Force Majeure

9.3.1 A 'Force Majeure' means any event or circumstance or combination of events and circumstances including those stated below that wholly or partly prevents or unavoidably delays an Affected Party in the performance of its obligations under this Agreement, but only if and to the extent that such events or circumstances are not within the reasonable control, directly or indirectly, of the Affected Party and could not have been avoided if the Affected Party had taken reasonable care or complied with Prudent Utility Practices:

Force Majeure Events

act of God, including, but not limited to lightning, drought, fire and explosion (to the extent originating from a source external to the site), earthquake, volcanic eruption, landslide, flood, cyclone, typhoon, tornado, or exceptionally adverse weather conditions which are in excess of the statistical measures for the last hundred (100) years,

- (i) Force Majeure Events attributable to the Procurer(s)
 - (a) Nationalization or compulsory acquisition by any Indian Governmental Instrumentality (under the State Government(s) of the Procurer(s) or the Central Government of India) of any material assets or rights of the Seller;
 - (b) the unlawful, unreasonable or discriminatory revocation of, or refusal to renew, any Consents, Clearances and Permits required by the Seller to perform its obligations under the RFP Documents or any unlawful, unreasonable or discriminatory refusal to grant any Consents, Clearances and Permits required for the development/ operation of the Power Station , provided that a Competent Court of Law declares the revocation or refusal to be unlawful, unreasonable and discriminatory and strikes the same down.
 - (c) any other unlawful, unreasonable or discriminatory action on the part of an Indian Government Instrumentality (under the State Government(s) of the Procurer(s) or the Central Government of India) which is directed against the supply of power by the Seller to the Procurer(s), provided that a Competent Court of Law declares the action to be unlawful, unreasonable and discriminatory and strikes the same down.
- (ii) Force Majeure Events not attributable to the Procurer(s)
 - (a) Nationalization or compulsory acquisition by any Indian Governmental Instrumentality (other than those under the State Government(s) of the Procurer(s)) of any material assets or rights of the Seller;
 - (b) the unlawful, unreasonable or discriminatory revocation of, or refusal to renew, any Consents, Clearances and Permits required by Seller to perform its obligations under the RFP Documents or any unlawful, unreasonable or discriminatory refusal to grant any Consents, Clearances and Permits required for the development / operation of the Power Station , provided that a Competent Court of Law declares the revocation or refusal to be unlawful, unreasonable and discriminatory and strikes the same down.
 - (c) any other unlawful, unreasonable or discriminatory action on the part of an Indian Government Instrumentality (other than those under the State Government(s) of the Procurer(s) or the Central Government of India) which is directed against the supply of power by the Seller to the Procurer(s), provided that

a Competent Court of Law declares the action to be unlawful, unreasonable and discriminatory and strikes the same down.

(iii)

- (a) any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, terrorist or military action; or
- b) radio active contamination or ionising radiation originating from a source in India or resulting from another Indirect Non Natural Force Majeure Event mentioned above excluding circumstances where the source or cause of contamination or radiation is brought or has been brought into or near the Power Station by the Affected Party or those employed or engaged by the Affected Party.
- c) Industry wide strikes and labor disturbances having a nationwide impact in India.

9.4 Force Majeure Exclusions

- 9.4.1 Force Majeure shall not include (i) any event or circumstance which is within the reasonable control of the Parties and (ii) the following conditions, except to the extent that they are consequences of an event of Force Majeure:
- a. Unavailability, late delivery, or changes in cost of the plant, machinery, equipment, materials, spare parts, Fuel or consumables for the Power Station;
 - b. Non-performance resulting from normal wear and tear typically experienced in power generation materials and equipment;
 - c. Strikes or labour disturbance at the facilities of the Affected Party;
 - d. Insufficiency of finances or funds or the agreement becoming onerous to perform; and
 - e. Non-performance caused by, or connected with, the Affected Party's:
 - i. Negligent or intentional acts, errors or omissions;
 - ii. Failure to comply with an Indian Law; or
 - iii. Breach of, or default under this Agreement or RFP.

9.5 Notification of Force Majeure Event:

9.5.1 The Affected Party shall give notice to the other Party of any event of Force Majeure as soon as reasonably practicable, but not later than seven (7) days after the date on which such Party knew or should reasonably have known of the commencement of the event of Force Majeure. If an event of Force Majeure results in a breakdown of communications rendering it unreasonable to give notice within the applicable time limit specified herein, then the Party claiming Force Majeure shall give such notice as soon as reasonably practicable after reinstatement of communications, but not later than one (1) day after such reinstatement.

Provided that such notice shall be a pre-condition to the Affected Party's entitlement to claim relief under this Agreement. Such notice shall include full particulars of the event of Force Majeure, its effects on the Party claiming relief and the remedial measures proposed. The Affected Party shall give the other Party regular (and not less than monthly) reports on the progress of those remedial measures and such other information as the other Party may reasonably request about the Force Majeure Event

9.5.2 The Affected Party shall give notice to the other Party of (i) the cessation of the relevant event of Force Majeure; and (ii) the cessation of the effects of such event of Force Majeure on the performance of its rights or obligations under this Agreement, as soon as practicable after becoming aware of each of these cessations.

9.6 Duty to Perform and Duty to Mitigate

9.6.1 To the extent not prevented by a Force Majeure Event pursuant to Article 9.3, the Affected Party shall continue to perform its obligations pursuant to this Agreement. The Affected Party shall use its reasonable efforts to mitigate the effect of any Force Majeure Event as soon as practicable.

9.7 Available Relief for a Force Majeure Event

9.7.1 Subject to this Article 9:

- (a) no Party shall be in breach of its obligations pursuant to this Agreement except to the extent that the performance of its obligations was prevented, hindered or delayed due to a Force Majeure Event;

- (b) every Party shall be entitled to claim relief in relation to a Force Majeure Event in regard to its obligations, including but not limited to those specified under Article 4.6;
- (c) It is clarified that no Tariff shall be paid by the Procurer(s) for the Contracted Capacity affected by a Force Majeure Event affecting the Seller/Developer *[Insert "Seller" if Seller is NOT a Trading Licensee, or insert "Developer" if Seller is a Trading Licensee]*, for the duration of such Force Majeure Event affecting the Seller/Developer *[Insert "Seller" if Seller is NOT a Trading Licensee, or insert "Developer" if Seller is a Trading Licensee]*.

10 ARTICLE 10: CHANGE IN LAW

10.1 Definitions

In this Article 10, the following terms shall have the following meanings:

10.1.1 "Change in Law" means the occurrence of any of the following events after the date, which is seven (7) days prior to the Bid Deadline resulting into any additional recurring/ non-recurring expenditure by the Seller or any income to the Seller:

- the enactment, coming into effect, adoption, promulgation, amendment, modification or repeal (without re-enactment or consolidation) in India, of any Law, including rules and regulations framed pursuant to such Law;
- a change in the interpretation or application of any Law by any Indian Governmental Instrumentality having the legal power to interpret or apply such Law, or any Competent Court of Law;
- the imposition of a requirement for obtaining any Consents, Clearances and Permits which was not required earlier;
- a change in the terms and conditions prescribed for obtaining any Consents, Clearances and Permits or the inclusion of any new terms or conditions for obtaining such Consents, Clearances and Permits; except due to any default of the Seller;
- any change in tax or introduction of any tax made applicable for supply of power by the Seller as per the terms of this Agreement.

but shall not include (i) any change in any withholding tax on income or dividends distributed to the shareholders of the Seller, or (ii) change in respect of UI Charges or frequency intervals by an Appropriate Commission or (iii) any change on account of regulatory measures by the Appropriate Commission including calculation of Availability.

10.2 Application and Principles for computing impact of Change in Law

10.2.1 While determining the consequence of Change in Law under this Article 10, the Parties shall have due regard to the principle that the purpose of compensating the Party affected by such Change in Law, is to restore through monthly Tariff Payment, to the extent contemplated in this Article 10, the affected Party to the same economic position as if such Change in Law has not occurred.

10.3 Relief for Change in Law : Deleted

10.4 Notification of Change in Law

10.4.1 If the Seller is affected by a Change in Law in accordance with Article 10.1 and the Seller wishes to claim relief for such a Change in Law under this Article 10, it shall give notice to the Procurer(s) of such Change in Law as soon as reasonably practicable after becoming aware of the same or should reasonably have known of the Change in Law.

10.4.2 Notwithstanding Article 10.4.1, the Seller shall be obliged to serve a notice to the Procurer(s) under this Article 10.4.2, even if it is beneficially affected by a Change in Law. Without prejudice to the factor of materiality or other provisions contained in this Agreement, the obligation to inform the Procurer(s) contained herein shall be material.

Provided that in case the Seller has not provided such notice, the Procurer(s) shall have the right to issue such notice to the Seller.

10.4.3 Any notice served pursuant to this Article 10.4.2 shall provide, amongst other things, precise details of:

- (a) the Change in Law; and
- (b) the effects on the Seller.

10.5 Tariff Adjustment Payment on account of Change in Law

10.5.1 Subject to Article 10.2, the adjustment in monthly Tariff Payment shall be effective from:

- (i) the date of adoption, promulgation, amendment, re-enactment or repeal of the Law or Change in Law; or
- (ii) the date of order/ judgment of the Competent Court or tribunal or Indian Governmental Instrumentality, if the Change in Law is on account of a change in interpretation of Law.

10.5.2 The payment for Change in Law shall be through Supplementary Bill as mentioned in Article 8.8. However, in case of any change in Tariff by reason of Change in Law, as determined in accordance with this Agreement, the Monthly Invoice to be raised by the Seller after such change in Tariff shall appropriately reflect the changed Tariff.

11 ARTICLE 11: EVENTS OF DEFAULT AND TERMINATION

11.1 Seller Event of Default

11.1.1 The occurrence and continuation of any of the following events, unless any such event occurs as a result of a Force Majeure Event or a breach by Procurer(s) of its obligations under this Agreement or a Procurer Event of Default, shall constitute a Seller Event of Default:

- (i) the failure to commence supply of power to the Procurer(s) up to the Contracted Capacity, relevant to the Scheduled Delivery Date, by the end of 2 months, as specified in the proviso to Article 4.7.2 [Insert the period specified in the proviso to Article 4.7.2], or
- (ii) after the Delivery Date, the interruption of power supply by the Seller for a continuous period of fifteen (15) Days and such default is not rectified within five (05) Days from the receipt of first notice from the Procurer(s) in this regard, or
- (iii) *[Insert this in case of base load procurement]* After the Delivery Date, the *[Insert "Seller" if Seller is NOT a Trading Licensee, or insert "Developer" if Seller is a Trading Licensee]* fails to achieve Normative Availability for a period of Six (6) consecutive or non-consecutive Months within any continuous period of *twelve (12) Months'*; OR
- (iv) the Seller fails to make any payment (a) of an amount exceeding Rupees One (1) Crore in aggregate required to be made to Procurer(s) under this Agreement, within three (3) Months after the Due Date of undisputed invoice(s) /demand raised by the said Procurer(s) on the Seller or (b) of an amount up to Rupees One (1) Crore required to be made to Procurer(s) under this Agreement within six (6) Months after the Due Date of undisputed invoice(s)/ demand; or
- (v) any of the representations and warranties made by the Seller in Schedule 7 of this Agreement; being found to be untrue or inaccurate. Further, in addition to the above, any of representations made or the undertakings submitted by the Successful Bidder at the time of submission of the Bid being found to be breached or inaccurate. and submission of the Contract Performance Guarantee;

Provided however, prior to considering any event specified under this sub-article to be an Event of Default, the Procurer(s) shall give a notice to the Seller in writing of at least thirty (30) days, or

- (vi) if

- a) the Seller assigns, mortgages or charges or purports to assign, mortgage or charge any of its assets or rights related to the Power Station in contravention of the provisions of this Agreement; or
- b) the Seller transfers or novates any of its rights and/ or obligations under this agreement, in a manner contrary to the provisions of this Agreement; except where such transfer
 - (i). is in pursuance of a Law; and does not affect the ability of the transferee to perform, and such transferee has the financial capability to perform, its obligations under this Agreement or
 - (ii). is to a transferee who assumes such obligations under this Agreement and the Agreement remains effective with respect to the transferee;
- (vii) if (a) the Seller becomes voluntarily or involuntarily the subject of any bankruptcy or insolvency or winding up proceedings and such proceedings remain uncontested for a period of thirty (30) days, or (b) any winding up or bankruptcy or insolvency order is passed against the Seller, or (c) the Seller goes into liquidation or dissolution or has a receiver or any similar officer appointed over all or substantially all of its assets or official liquidator is appointed to manage its affairs, pursuant to Law,
Provided that a dissolution or liquidation of the Seller will not be a Seller Event of Default if such dissolution or liquidation is for the purpose of a merger, consolidation or reorganization and where the resulting company continues to **meet** the Qualification Requirements in terms of the RFP ,and retains creditworthiness similar to the Seller and expressly assumes all obligations of the Seller under this Agreement and is in a position to perform them; or
- (viii) the Seller repudiates this Agreement and does not rectify such breach within a period of thirty (30) days from a notice from the Procurer(s) in this regard; or
- (ix) except where due to any Procurer's failure to comply with its material obligations, the Seller is in breach of any of its material obligations pursuant to this Agreement or of any of the RFP Documents where the Procurer(s) and Seller are parties, and such material breach is not rectified by the Seller within thirty (30) days of receipt of first notice in this regard given by Procurer(s) .
- (x) any direct or indirect change in the shareholding of the Seller in contravention of the terms of this Agreement; or
- (xi) failure to renew or replace the Contract Performance Guarantee, as per the terms of this Agreement; or

- (xii) occurrence of any other event which is specified in this Agreement to be a material breach/ default of the Seller.

11.2 Procurer Event of Default

11.2.1 The occurrence and the continuation of any of the following events, unless any such event occurs as a result of a Force Majeure Event or a breach by the Seller of its obligations under this Agreement or a Seller Event of Default, shall constitute the Event of Default on the part of defaulting Procurer:

- (i) a defaulting Procurer fails to meet any of its obligations, as specified in Article 4.3; or
- (ii) a defaulting Procurer fails to pay (with respect to a Monthly Bill or a Supplementary Bill) an amount exceeding fifteen (15%) of the undisputed part of the most recent Monthly/ Supplementary Bill for a period of ninety (90) days after the Due Date and the Seller is unable to recover the amount outstanding to the Seller through the Letter of Credit; or
- (iii) the defaulting Procurer repudiates this Agreement and does not rectify such breach even within a period of thirty (30) days from a notice from the Seller in this regard; or
- (iv) except where due to any Seller's failure to comply with its obligations, the defaulting Procurer(s) is/are in material breach of any of its obligations pursuant to this Agreement or of any of the other RFP Documents where the Procurer(s) and the Seller are Parties, and such material breach is not rectified by the defaulting Procurer within thirty (30) days of receipt of notice in this regard from the Seller to the Procurer(s); or
- (v) any representation and warranties made by the Procurer(s) in Schedule 7 of this Agreement, being found to be untrue or inaccurate. Provided however, prior to considering any event specified under this sub-article to be an Event of Default, the Seller shall give a notice to the Procurer in writing of at least thirty (30) days; or
- (vi) if
 - a Procurer becomes voluntarily or involuntarily the subject of any bankruptcy or insolvency or winding up proceedings and such proceedings remain uncontested for a period of thirty (30) days, or
 - any winding up or bankruptcy or insolvency order is passed against the Procurer(s), or

- a Procurer goes into liquidation or dissolution or a receiver or any similar officer is appointed over all or substantially all of its assets or official liquidator is appointed to manage its affairs, pursuant to Law,

Provided that it shall not constitute a Procurer Event of Default, where such dissolution or liquidation of Procurer or such Procurer is for the purpose of a merger, consolidation or reorganization and where the resulting entity has the financial standing to perform its obligations under this Agreement and has creditworthiness similar to Procurer or such Procurer and expressly assumes all obligations of Procurer or such Procurer under this Agreement and is in a position to perform them; or;

- (vii) occurrence of any other event which is specified in this Agreement to be a material breach or default of the Procurer(s).

11.3 Procedure for cases of Seller Event of Default

11.3.1 Upon the occurrence and continuation of any Seller Event of Default under Article 11.1, Procurer(s) shall have the right to deliver to the Seller a notice with a copy to the Appropriate Commission, of their intention to terminate this Agreement (Procurer Preliminary Default Notice), which shall specify in reasonable detail, the circumstances giving rise to the issue of such notice.

11.3.2 Following the issue of Procurer Preliminary Default Notice, the Consultation Period of ninety (90) days or such longer period as the Parties may agree, shall apply and it shall be the responsibility of the Parties to discuss as to what steps shall have to be taken with a view to mitigate the consequences of the relevant Event of Default having regard to all the circumstances.

11.3.3 During the Consultation Period, the Parties shall, save as otherwise provided in this Agreement, continue to perform their respective obligations under this Agreement.

11.3.4 Within a period of seven (7) days following the expiry of the Consultation Period unless the Parties shall have otherwise agreed to the contrary or the Seller Event of Default giving rise to the Consultation Period shall have ceased to exist or shall have been remedied, the Procurer(s) may terminate this Agreement by giving a written Termination Notice of thirty (30) days to the Seller with a copy to the Appropriate Commission. The Tariff of the Seller shall be reduced by twenty percent (20%) for the period of Seller Event of Default.

11.3.5 Further, in addition to the reduction in tariff as per the provision in Article 11.3.4, the Seller shall be liable to pay to the Procurer(s), charges

equivalent to twelve (12) months energy calculated at Normative Availability @ Rs.1.00/kwh. Such payment shall be made by the Seller to the Procurer(s) within thirty (30) days of the termination of the Agreement. In case of inability of the Seller to make such payment within the stipulated time period of thirty (30) days, the Procurer(s) shall have the right to encash the Contract Performance Guarantee, if any available, as on that date and appropriate the proceeds of such encashment towards the payment due from the Seller. Any amount remaining unpaid on the part of the Seller shall be considered as a material breach and the Procurer(s) shall have the right to enforce such claim as per the provisions of the Law.

11.4 Termination for Procurer Event of Default

11.4.1 Upon the occurrence and continuation of any Procurer Event of Default pursuant to Article 11.2.1 (ii) , the Seller shall follow the remedies provided under Article 8.5.3.

11.4.2 Without in any manner affecting the rights of the Seller under Article 11.4.1, on the occurrence of any Procurer Event of Default specified in Article 11.2 the Seller shall have the right to deliver to the Procurer(s), a Seller Preliminary Default Notice, which notice shall specify in reasonable detail the circumstances giving rise to its issue.

11.4.3 Following the issue of a Seller Preliminary Default Notice, the Consultation Period of ninety (90) days or such longer period as the Parties may agree, shall apply and it shall be the responsibility of the Parties to discuss as to what steps shall be taken with a view to mitigate the consequences of the relevant Event of Default having regard to all the circumstances.

11.4.4 During the Consultation Period, the Parties shall continue to perform their respective obligations under this Agreement.

11.4.5 After a period of seven (7) days following the expiry of the Consultation Period and unless the Parties shall have otherwise agreed to the contrary or the Procurer Event of Default giving rise to the Consultation Period shall have ceased to exist or shall have been remedied, the Seller shall be free to sell the Contracted Capacity and corresponding available capacity of the Procurer(s) committing Procurer Event of Default to any third party of the Seller's choice.

Provided such Procurer shall have the liability to make payments for the energy calculated based on Normative Availability @ Rs.1.00/kwh. to the Seller for the period upto the Expiry Date, subject to twelve months from the eighth day after the expiry of the Consultation Period.

Provided further that in such period, in case the Seller is able to sell electricity to any third party at a price which is in excess of the tariff, then

such excess realization will reduce the payments due from such Procurer(s).

For the avoidance of doubt, the above excess adjustment would be applied on a cumulative basis for such period. During such period, the Seller shall use its best effort to sell the Contracted Capacity and corresponding available capacity of Procurer or such Procurer generated or capable of being generated to such third parties at the most reasonable terms available in the market at such time, having due regard to the circumstances at such time and the pricing of electricity in the market at such time.

Provided further, the Seller shall ensure that sale of power to the shareholders of the Seller or any direct or indirect Affiliate of the Seller/ shareholders of the Seller, is not at a price less than the Tariff, without obtaining the prior written consent of such Procurer(s). Such request for consent would be responded to within a maximum period of three (3) days failing which it would be deemed that the Procurer has given his consent.

Provided further that at the end of such period, this Agreement shall automatically terminate but only with respect to such Procurer and thereafter, such Procurer shall have no further liability of Rs.1.00/kwh towards the Seller.

Provided further, the Seller shall have the right to terminate this Agreement with respect to such Procurer(s) even before the expiry of such period provided on such termination, the future liability of Rs.1.00/kwh of such Procurer(s) shall cease immediately.

11.5 Termination due to Force Majeure

11.5.1 If the Force Majeure Event or its effects continue to be present beyond the period as specified in Article 4.7.3, either Party shall have the right to cause termination of the Agreement. In such an event, , this Agreement shall terminate on the date of such Termination Notice. In case of such termination, the Contract Performance Guarantee shall be returned to the Seller as per the provisions of Article 3.8.

12 ARTICLE 12: LIABILITY AND INDEMNIFICATION

12.1 Indemnity

12.1.1 The Seller shall indemnify, defend and hold Procurer(s) harmless against:

- a) any and all third party claims, actions, suits or proceedings against the Procurer(s) for any loss of or damage to property of such third party, or death or injury to such third party, arising out of a breach by the Seller of any of its obligations under this Agreement, except to the extent that any such claim, action, suit or proceeding has arisen due to a negligent act or omission, breach of this Agreement or breach of statutory duty on the part of Procurer(s), its contractors, servants or agents; and
- b) any and all losses, damages, costs and expenses including legal costs, fines, penalties and interest actually suffered or incurred by Procurer(s) from third party claims arising by reason of:
 - (i) breach by the Seller of any of its obligations under this Agreement, (provided that this Article 12 shall not apply to such breaches by the Seller, for which specific remedies have been provided for under this Agreement) except to the extent that any such losses, damages, costs and expenses including legal costs, fines, penalties and interest (together to constitute “Indemnifiable Losses”) has arisen due to a negligent act or omission, breach of this Agreement or breach of statutory duty on the part of Procurer(s), its contractors, servants or agents, or
 - (ii) any of the representations or warranties of the Seller under this Agreement being found to be inaccurate or untrue.

12.1.2 Procurer(s) shall indemnify, defend and hold the Seller harmless against:

- a) any and all third party claims, actions, suits or proceedings against the Seller, for any loss of or damage to property of such third party, or death or injury to such third party, arising out of a breach by Procurer(s) of any of its obligations under this Agreement except to the extent that any such claim, action, suit or proceeding has arisen due to a negligent act or omission, breach of this Agreement or breach of statutory duty on the part of the Seller, its contractors, servants or agents; and
- b) any and all losses, damages, costs and expenses including legal costs, fines, penalties and interest (‘Indemnifiable Losses’) actually suffered or incurred by the Seller from third party claims arising by reason of

- (i) a breach by Procurer(s) of any of its obligations under this Agreement (Provided that this Article 12 shall not apply to such breaches by Procurer(s), for which specific remedies have been provided for under this Agreement.), except to the extent that any such Indemnifiable Losses have arisen due to a negligent act or omission, breach of this Agreement or breach of statutory duty on the part of the Seller, its contractors, servants or agents, or
- (ii) any of the representations or warranties of the Procurer(s) under this Agreement being found to be inaccurate or untrue.

12.2 Monetary Limitation of Liability

12.2.1 A Party ("Indemnifying Party") shall be liable to indemnify the other Party ("Indemnified Party") under this Article 12 for any indemnity claims made in a Contract Year only up to an amount of Rupees (.....) [*Insert amount calculated @ Rupees Six Thousand/MW (Rs.6000/MW)*]. [*Insert further in case of multiple Procurers, "With respect to the Procurer(s), the above limit of Rupees (.....) [Insert amount] shall be divided in the ratio of their Contracted Capacity existing on the date of the indemnity claim."*]

12.3 Procedure for claiming Indemnity

12.3.1 Third party claims

- a. Where the Indemnified Party is entitled to indemnification from the Indemnifying Party pursuant to Article 12.1.1 (a) or 12.1.2 (a), the Indemnified Party shall promptly notify the Indemnifying Party of such claim, proceeding, action or suit referred to in Article 12.1.1 (a) or 12.1.2 (a) in respect of which it is entitled to be indemnified. Such notice shall be given as soon as reasonably practicable after the Indemnified Party becomes aware of such claim, proceeding, action or suit. The Indemnifying Party shall be liable to settle the indemnification claim within thirty (30) days of receipt of the above notice. Provided however that, if:
 - i) the Parties choose to contest, defend or litigate such claim, action, suit or proceedings in accordance with Article 12.3.1 (b) below; and
 - ii) the claim amount is not required to be paid/ deposited to such third party pending the resolution of the Dispute,

the Indemnifying Party shall become liable to pay the claim amount to the Indemnified Party or to the third party, as the case may be, promptly following the resolution of the Dispute, if such Dispute is not settled in favour of the Indemnified Party.

- b. The Indemnified Party may contest, defend and litigate a claim, action, suit or proceeding for which it is entitled to be Indemnified under Article 12.1.1 (a) or 12.1.2 (a) and the Indemnifying Party shall reimburse to the Indemnified Party all reasonable costs and expenses incurred by the Indemnified party. However, such Indemnified Party shall not settle or compromise such claim, action, suit or proceedings without first getting the consent of the Indemnifying Party, which consent shall not be unreasonably withheld or delayed.

An Indemnifying Party may, at its own expense, assume control of the defence of any proceedings brought against the Indemnified Party if it acknowledges its obligation to indemnify such Indemnified Party, gives such Indemnified Party prompt notice of its intention to assume control of the defence, and employs an independent legal counsel at its own cost that is reasonably satisfactory to the Indemnified Party.

12.4 Indemnifiable Losses

- 12.4.1 Where an Indemnified Party is entitled to Indemnifiable Losses from the Indemnifying Party pursuant to Article 12.1.1 (b) or 12.1.2 (b), the Indemnified Party shall promptly notify the Indemnifying Party of the Indemnifiable Losses actually incurred by the Indemnified Party. The Indemnifiable Losses shall be reimbursed by the Indemnifying Party within thirty (30) days of receipt of the notice seeking Indemnifiable Losses by the Indemnified Party. In case of non payment of such losses after a valid notice under this Article 12.4, such event shall constitute a payment default under Article 11.

12.5 Infringement of Intellectual Property Rights

12.5.1

- a) The Seller shall, subject to the Procurer(s) compliance with Article 12.5.1 (b), indemnify and hold harmless the Procurer(s) and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of whatsoever nature, including attorney's fees and expenses, which the Procurer(s) may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright or other intellectual property right registered or otherwise existing at the date of the Agreement by reason of the setting up of the Power Station by the *[Insert "Seller" if Seller is NOT a Trading Licensee, or insert "Developer" if Seller is a Trading Licensee]*.

Such indemnity shall not cover any use of the Power Station or any part thereof other than for the purpose indicated by or to be reasonably inferred from the Agreement, any infringement resulting from the

misuse of the Power Station or any part thereof, or any products produced in association or combination with any other equipment, plant or materials not supplied by the[Insert "Seller" if Seller is NOT a Trading Licensee, or "Developer" if Seller is a Trading Licensee], pursuant to the Agreement.

- b) If any proceedings are brought or any claim is made against the Procurer(s) arising out of the matters referred to in Article 12.5.1 (a), the Procurer shall promptly give the Seller a notice thereof, and the Seller shall at its own expense take necessary steps and attend such proceedings or claim and any negotiations for the settlement of any such proceedings or claim. The Seller shall promptly notify the Procurer of all actions taken in such proceedings or claims.
- c) If the Seller fails to notify the Procurer within twenty-eight (28) days after receipt of such notice from the Procurer under Article 12.5.1 (b) above, that it intends to attend any such proceedings or claim, then the Procurer shall be free to attend the same on their own behalf at the cost of the Seller. Unless the Seller has so failed to notify the Procurer within the twenty eight (28) days period, the Procurer shall make no admission that may be prejudicial to the defence of any such proceedings or claims.
- d) The Procurer shall, at the Seller's request, afford all available assistance to the Seller in attending to such proceedings or claim, and shall be reimbursed by the Seller for all reasonable expenses incurred in so doing.

12.5.2

- a) The Procurer(s), subject to the Seller's compliance with Article 12.5.2 (b) shall indemnify and hold harmless the Seller and its employees, officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs and expenses of whatsoever nature, including attorney's fees and expenses, which the Seller may suffer as a result of any infringement by the Procurer(s) or alleged infringement of any patent, utility model, registered design, trademark, copyright or other intellectual property right registered..
- b) If any proceedings are brought or any claim is made against the Seller arising out of the matters referred to in Article 12.5.2 (a) the Seller shall promptly give the Procurer a notice thereof, and the Procurer shall at its own expense take necessary steps and attend such proceedings or claim and any negotiations for the settlement of any such proceedings or claim. The /Procurer shall promptly notify the Seller of all actions taken in such proceedings or claims.

- c) If the Procurer fails to notify the Seller within twenty-eight (28) days after receipt of such notice from the Seller under Article 12.5.2 (b) above, that it intends to attend any such proceedings or claim, then the Seller shall be free to attend the same on its own behalf at the cost of the Procurer(s). Unless the Procurer has so failed to notify the Seller within the twenty (28) days period, the Seller shall make no admission that may be prejudicial to the defence of any such proceedings or claim.
- d) The Seller shall, at the Procurer(s) request, afford all available assistance to the Procurer(s) in attending to such proceedings or claim, and shall be reimbursed by the Procurer(s) for all reasonable expenses incurred in so doing.

12.6 Limitation on Liability

- 12.6.1 Except as expressly provided in this Agreement, neither the Seller nor Procurer(s) nor its/ their respective officers, directors, agents, employees or Affiliates (or their officers, directors, agents or employees), shall be liable or responsible to the other Party or its Affiliates, officers, directors, agents, employees, successors or permitted assigns or their respective insurers for incidental, indirect or consequential damages, connected with or resulting from performance or non-performance of this Agreement, or anything done in connection herewith, including claims in the nature of lost revenues, income or profits (other than payments expressly required and properly due under this Agreement), any increased expense of, reduction in or loss of power generation or equipment used therefore, irrespective of whether such claims are based upon breach of warranty, tort (including negligence, whether of the Procurer(s), the Seller or others), strict liability, contract, breach of statutory duty, operation of law or otherwise.
- 12.6.2 Procurer(s) shall have no recourse against any officer, director or shareholder of the Seller or any Affiliate of the Seller or any of its officers, directors or shareholders for such claims excluded under this Article. The Seller shall have no recourse against any officer, director or shareholder of Procurer(s), or any Affiliate of Procurer(s) or any of its officers, directors or shareholders for such claims excluded under this Article.

12.7 Duty to Mitigate

- 12.7.1 The Parties shall endeavour to take all reasonable steps so as mitigate any loss or damage which has occurred under this Article 12.

13 ARTICLE 13: ASSIGNMENTS AND CHARGES

13.1 Assignments

13.1.1 This Agreement shall be binding upon, and inure to the benefit of the Parties and their respective successors and permitted assigns. This Agreement shall not be assigned by any Party other than by mutual consent between the Parties to be evidenced in writing:

Provided that, such consent shall not be withheld if the Procurer(s) seeks to transfer to any transferee all of its rights and obligations under this Agreement; and

- (a) such transferee is either the owner or operator of all or substantially all of the distribution system of such Procurer(s) and /or such transferee is a successor entity of the Procurer(s); and
- (b) this Agreement and the other RFP Documents shall continue to remain valid and binding on such successor.

13.1.2 Deleted.

13.2 Permitted Charges

13.2.1 Neither Party shall create or permit to subsist any encumbrance over all or any of its rights and benefits under this Agreement.

13.2.2 Deleted

13.2.3 Deleted.

14 ARTICLE 14: GOVERNING LAW AND DISPUTE RESOLUTION

14.1 Governing Law

14.1.1 This Agreement shall be governed by and construed in accordance with the Laws of India. Any legal proceedings in respect of any matters, claims or disputes under this Agreement shall be under the jurisdiction of appropriate courts in Karnataka.

14.2 Amicable Settlement and Dispute Resolution

14.2.1 Amicable Settlement

14.2.1.1 Either Party is entitled to raise any claim, dispute or difference of whatever nature arising under, out of or in connection with this Agreement ("Dispute") by giving a written notice (Dispute Notice) to the other Party, which shall contain:

- (i) a description of the Dispute;
- (ii) the grounds for such Dispute; and
- (iii) all written material in support of its claim.

14.2.1.2 The other Party shall, within thirty (30) days of issue of Dispute Notice issued under Article 14.2.1.1, furnish:

- (i) counter-claim and defences, if any, regarding the Dispute; and
- (ii) all written material in support of its defences and counter-claim.

14.2.1.3 Within thirty (30) days of issue of Dispute Notice by any Party pursuant to Article 14.2.1.1 if the other Party does not furnish any counter claim or defence under Article 14.2.1.2 or thirty (30) days from the date of furnishing counter claims or defence by the other Party, both the Parties to the Dispute shall meet to settle such Dispute amicably. If the Parties fail to resolve the Dispute amicably within thirty (30) days from the later of the dates mentioned in this Article 14.2.1.3, the Dispute shall be referred for dispute resolution in accordance with Article 14.3.

14.3 Dispute Resolution

14.3.1 Dispute Resolution by the Appropriate Commission

14.3.1.1 (a) Any Dispute arising from a claim made by any Party for any change in Tariff or any matter related to Tariff or claims made by any Party which partly or wholly relate to any change in the Tariff of any of such claims could result in change in the Tariff, shall be submitted to adjudication by the Appropriate Commission. Appeal against the

decisions of the Appropriate Commission shall be made only as per the provisions of the Electricity Act, 2003, as amended from time to time.

- (b) Where SERC is the Appropriate Commission, all disputes between the Procurers and the Seller shall be referred to KERC.

14.3.1.2 The obligations of the Procurer(s) under this Agreement towards the Seller shall not be affected in any manner by reason of inter-se disputes amongst the Procurer(s).

14.3.2 Dispute Resolution through Arbitration

14.3.2.1 If the Dispute arises out of or in connection with any claims not covered in Article 14.3.1.1 (a), such Dispute shall be resolved by arbitration under the Indian Arbitration and Conciliation Act, 1996 and the Rules of the Indian Council of Arbitration, in accordance with the process specified in this Article. In the event of such Dispute remaining unresolved as referred to in Article 14.2.1.3 hereof, any party to such Dispute may refer the matter to Registrar under the Rules of the Indian Council of Arbitration.

- i) The Arbitration Tribunal shall consist of three (3) arbitrators to be appointed in accordance with the Indian Council of Arbitration Rules
- ii) The place of arbitration shall be Bangalore.. The language of the arbitration shall be English.
- iii) The Arbitration Tribunal's award shall be substantiated in writing. The Arbitration Tribunal shall also decide on the costs of the arbitration proceedings and the allocation thereof.
- iv) The provisions of this Article shall survive the termination of this PPA for any reason whatsoever.

14.4 Parties to Perform Obligations

14.4.1 Notwithstanding the existence of any Dispute and difference referred to the Appropriate Commission or the Arbitration Tribunal as provided in Article 14.3 and save as the Appropriate Commission or the Arbitration Tribunal may otherwise direct by a final or interim order, the Parties hereto shall continue to perform their respective obligations (which are not in dispute) under this Agreement.

15 ARTICLE 15: MISCELLANEOUS PROVISIONS

15.1 Deleted

15.2 Deleted

15.3 Amendment

15.3.1 This Agreement may only be amended or supplemented by a written agreement between the Parties and after obtaining the approval of the Appropriate Commission, where necessary.

15.4 Third Party Beneficiaries

15.4.1 This Agreement is solely for the benefit of the Parties and their respective successors and permitted assigns and shall not be construed as creating any duty, standard of care or any liability to, any person not a party to this Agreement.

15.5 Waiver

15.5.1 No waiver by either Party of any default or breach by the other Party in the performance of any of the provisions of this Agreement shall be effective unless in writing duly executed by an authorised representative of such Party:

15.5.2 Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement nor time or other indulgence granted by one Party to the other Parties shall act as a waiver of such breach or acceptance of any variation or the relinquishment of any such right or any other right under this Agreement, which shall remain in full force and effect.

15.6 Entirety

15.6.1 This Agreement and the Schedules are intended by the Parties as the final expression of their agreement and are intended also as a complete and exclusive statement of the terms of their agreement.

15.6.2 Except as provided in this Agreement, all prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement or supply of power up to the Contracted Capacity under this Agreement to the Procurer(s) by the Seller shall stand superseded and abrogated.

15.7 Confidentiality

15.7.1 The Parties undertake to hold in confidence this Agreement and RFP Documents and not to disclose the terms and conditions of the transaction contemplated hereby to third parties, except:

- a) to their professional advisors;
- b) to their officers, contractors, employees, agents or representatives, financiers, who need to have access to such information for the proper performance of their activities; or
- c) disclosures required under Law.

without the prior written consent of the other Parties.

15.7.2 Notwithstanding the provisions under Article 15.7.1, the Seller agrees and acknowledges that the Procurer(s) may at any time, disclose the terms and conditions of the Agreement and the other RFP Documents to any person, to the extent stipulated under the Law or the Competitive Bidding Guidelines.

15.8 Affirmation

15.8.1 The Seller and Procurer(s), both affirm that:

- a) neither it nor its respective directors, employees, or agents has paid or undertaken to pay or shall in the future pay any unlawful commission, bribe, pay-off or kick-back; and
- b) it has not in any other manner paid any sums, whether in Indian currency or foreign currency and whether in India or abroad to the other Party to procure this Agreement, and the Seller and Procurer(s) hereby undertake not to engage in any similar acts during the Term of Agreement.

15.9 Severability

15.9.1 The invalidity or enforceability, for any reason, of any part of this Agreement shall not prejudice or affect the validity or enforceability of the remainder of this Agreement, unless the part held invalid or unenforceable is fundamental to this Agreement.

15.10 Relationship of the Parties

This Agreement shall not be interpreted or construed to create an association, joint venture, or partnership or agency or any such other relationship 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.

15.11 Counterparts

15.11.1 This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which collectively shall be deemed one and the same Agreement.

15.12 Notices

15.12.1 All notices or other communications which are required to be given under this Agreement shall be in writing and in the English language.

15.12.2 If to the Seller, all notices or other communications which are required must be delivered personally, by registered post or facsimile or any other method duly acknowledged to the addresses below:

Address :
Attention :
Email :
Fax. No. :
Telephone No. :

15.12.3 If to the Procurer(s), all notices or communications must be delivered personally or by registered post or facsimile or any other mode duly acknowledged to the address(es) below:

Procurer(s)
Address :
Attention :
Email :
Fax. No. :
Telephone No. :

15.12.4 All notices or communications given by facsimile shall be confirmed by sending a copy of the same via post office in an envelope properly addressed to the appropriate Party for delivery by registered mail. All notices shall be deemed validly delivered upon receipt evidenced by an acknowledgement of the recipient, unless the Party delivering the notice can prove in case of delivery through the registered post that the recipient refused to acknowledge the receipt of the notice despite efforts of the postal authorities.

15.12.5 Any Party may by notice of at least fifteen (15) days to the other Party change the address and/or addresses to which such notices and communications to it are to be delivered or mailed.

15.13 Language

15.13.1 All agreements, correspondence and communications between the Parties relating to this Agreement and all other documentation to be prepared and supplied under the Agreement shall be written in English, and the Agreement shall be construed and interpreted in accordance with English language.

15.13.2 If any of the agreements, correspondence, communications or documents are prepared in any language other than English, the English translation of such agreements, correspondence, communications or documents shall prevail in matters of interpretation.

15.14 Breach of Obligations

15.14.1 The Parties acknowledge that a breach of any of the obligations contained herein would result in injuries. The Parties further acknowledge that the amount of the liquidated damages or the method of calculating the liquidated damages specified in this Agreement is a genuine and reasonable pre-estimate of the damages that may be suffered by the non-defaulting party in each case specified under this Agreement.

15.15 Nomination Restriction

15.15.1 Notwithstanding anything contained to the contrary in this Agreement, wherever a reference is made to the right of the Procurer(s) to nominate a third Party to receive benefits under this Agreement, such third Party shall have a financial standing comparable to that of the Procurer in question.

15.16 Commercial Acts

15.16.1 The Procurer(s) and Seller unconditionally and irrevocably agree that the execution, delivery and performance by each of them of this Agreement and any other RFP Documents to which it is a Party constitute private and commercial acts rather than public or governmental acts.

15.17 Restriction of Shareholders / Owners' Liability

15.17.1 Parties expressly agree and acknowledge that none of the shareholders of the Parties hereto shall be liable to the other Parties for any of the contractual obligations of the concerned Party under this Agreement. Further, the financial liabilities of the shareholder/s of each Party to this

Agreement, shall be restricted to the extent provided in the Indian Companies Act, 1956.

15.18 Taxes and Duties

- 15.18.1 The Seller shall bear and promptly pay all statutory taxes, duties, levies and cess, assessed/ levied on the Seller, contractors or their employees, that are required to be paid by the Seller as per the Law in relation to the execution of the Agreement and for supplying power as per the terms of this Agreement.
- 15.18.2 Procurer(s) shall be indemnified and held harmless by the Seller against any claims that may be made against Procurer(s) in relation to the matters set out in Article 15.8.1.
- 15.18.3 Procurer(s) shall not be liable for any payment of, taxes, duties, levies, cess whatsoever for discharging any obligation of the Seller by the Procurer(s) on behalf of Seller or its personnel, provided the Seller has consented in writing to Procurer(s) for such work, which consent shall not be unreasonably withheld.

15.19 No Consequential or Indirect Losses

- 15.19.1 The liability of the Seller and the Procurer(s) shall be limited to that explicitly provided in this Agreement.

Provided that notwithstanding anything contained in this Agreement, under no event shall the Procurer(s) or the Seller claim from one another any indirect or consequential losses or damages.

15.20 Discretion

Except where this Agreement expressly requires a Party to act fairly or reasonably, a Party may exercise any discretion given to it under this Agreement in any way it deems fit.

15.21 Order of priority in application

In case of inconsistencies between the agreement(s) executed between the Parties, applicable Law including rules and regulations framed thereunder, the order of priority as between them shall be the order in which they are placed below::

- applicable Law, rules and regulations framed thereunder,
- this Agreement

15.22 Independent Entity

- 15.22.1 The Seller shall be an independent entity performing its obligations pursuant to the Agreement.
- 15.22.2 Subject to the provisions of the Agreement, the Seller shall be solely responsible for the manner in which its obligations under this Agreement are to be performed. All employees and representatives of the Seller or contractors engaged by the Seller in connection with the performance of the Agreement shall be under the complete control of the Seller and shall not be deemed to be employees, representatives, contractors of Procurer(s) and nothing contained in the Agreement or in any agreement or contract awarded by the Seller shall be construed to create any contractual relationship between any such employees, representatives or contractors and the Procurer(s).

15.23 Fraudulent and Corrupt Practices

- 15.23.1 The Seller and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the subsistence of this Agreement. Notwithstanding anything to the contrary contained in the Agreement, the Procurer(s) may terminate the Agreement without being liable in any manner whatsoever to the Seller, if it determines that the Seller has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the Bid process. In such an event, the Procurer (s) shall forfeit the bid bond, without prejudice to any other right or remedy that may be available to the Procurer(s) hereunder or subsistence otherwise.
- 15.23.2 Without prejudice to the rights of the Procurer (s) under Article 15.23.1 hereinabove and the rights and remedies which the Procurer(s) may have under this Agreement, if a Seller is found by the Procurer(s) to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Bid process, or after the issue of LOI or after the execution of the PPA, the Procurer(s) may terminate the Agreement without being liable in any manner whatsoever to the Seller. Further, in such an event, the Procurer (s) shall forfeit the Contract Performance Guarantee.
- 15.23.3 Further, the Seller shall not be eligible to participate in any tender or RFP issued by the Procurer(s) during a period of 2 (two) years from the date such Seller is found by the Procurer(s) to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practices, as the case may be.

15.23.4 For the purposes of this Article 15.23, the following terms shall have the meaning hereinafter respectively assigned to them:

(a) **“corrupt practice”** means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Bid process (for avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of the Procurer(s) who is or has been associated or dealt in any manner, directly or indirectly with the Bid process or the LOI or has dealt with matters concerning the PPA or arising there from, before or after the execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of the Procurer(s), shall be deemed to constitute influencing the actions of a person connected with the Bid Process); or (ii) engaging in any manner whatsoever, whether during the Bid Process or after the issue of the LOI or after the execution of the PPA, as the case may be, any person in respect of any matter relating to the Power Station or the LOI or the PPA, who at any time has been or is a legal, financial or technical adviser of the Procurer(s) in relation to any matter concerning the Project;

(b) **“fraudulent practice”** means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the Bid process;

(c) **“coercive practice”** means impairing or harming, or threatening to impair or harm, directly or indirectly, any person or property to influence any person’s participation or action in the Bid process;

(d) **“undesirable practice”** means (i) establishing contact with any person connected with or employed or engaged by the Procurer(s) with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Bid process; or (ii) having a conflict of interest; and

(e) **“restrictive practice”** means forming a cartel or arriving at any understanding or arrangement among bidders with the objective of restricting or manipulating a full and fair competition in the Bid process

15.24 Compliance with Law

Despite anything contained in this Agreement but without prejudice to this Article, if any provision of this Agreement shall be in deviation or inconsistent with or repugnant to the provisions contained in the Electricity Act, 2003, or any rules and regulations made thereunder, such provision of this Agreement shall be deemed to be amended to the extent required

to bring it into compliance with the aforesaid relevant provisions as amended from time to time.

IN WITNESS WHEREOF the Parties have caused the Agreement to be executed through their duly authorized representatives as of the date and place set forth above.

For and on behalf of
[Procurer]

For and on behalf of
[Seller]

Name, Designation and Address

Name, Designation and Address

Signature with seal

Signature with seal

Witness:

1.

2.

Witness:

1.

2.

1 SCHEDULE 1: NAMES AND DETAILS OF THE PROCURER(S)

Name of the Procurer(s)	Address of the Registered Office of Procurer(s)	Law under which incorporated	Contracted Capacity (MW)	Delivery Point²
BESCOM	BESCOM, K. R. Circle, Bangalore.	Companies Act 1956		
MESCOM	MESCOM, Corporate Office, Paradigm Plaza, A. B. Shetty Circle, Mangalore 575 001.	Companies Act 1956		
HESCOM	HESCOM, Navanagar, P. B Road, Hubli.	Companies Act 1956		
GESCOM	GESCOM, Station Main Road, Gulbarga.	Companies Act 1956		
CESC, Mysore	927, L. J. Avenue, CESC Mysore New Kantharaja urs Road, Saraswathipuram, Mysore.	Companies Act 1956		

² Procurer / Authorized Representative to insert the details of the Delivery Point(s) including the names of the place, district and State in which the Delivery Point(s) is located

2 SCHEDULE 2: Deleted

3 SCHEDULE 3: AVAILABILITY FACTORS

3.1 The following matters shall be determined as per the provisions of the Grid Code and ABT:

- a) Availability declaration and calculation of Availability or Availability Factor;
- b) Requirement for spinning reserves;
- c) Procedure for revision of Availability;
- d) Consequences of failure to demonstrate capacity or misdeclarations of capacity;
- e) Scheduling and Dispatch; and
- f) Other matters which may be related to Availability or Availability Factor.

4 SCHEDULE 4: TARIFF

4.1 General

- i) The method of determination of Tariff Payments for any Contract Year during the Term of Agreement shall be in accordance with this Schedule.
- ii) The Quoted Tariff for each generation source shall be paid in single part as mentioned in Schedule 8 of this Agreement.
- iii) The Tariff for each generation source shall be payable based on the Scheduled energy. In case of Availability as per REA being lower than 85%, the penalty in accordance with 4.2.5 of this Schedule has to be paid by the Seller.

4.2 Monthly Tariff Payment

4.2.1 Components of Monthly Tariff Payment

The Monthly Bill for any Month in a Contract Year shall consist of the following:

- i) Monthly Tariff payment for each generation source shall be based on Availability and Scheduled Energy in accordance with Clause 4.2.2 of Schedule 4;
- ii) Penalty determined in accordance with Clause 4.2.5 of Schedule 4 (applicable on a cumulative basis and included in each Monthly Bill);

4.2.2 Monthly Tariff Payment for each generation source (Applicable for all categories of power generation source)

- 4.2.2.1 The Monthly Tariff payment for each generation source for any Month in a Contract Year shall be calculated as below:

$$\text{Tariff} = \text{Quoted Tariff} \times \text{Scheduled Energy}$$

4.2.3 Deleted

4.2.4 Deleted

4.2.5 Contract Year Penalty for Availability below Eighty five Percent (85%) during the Contract Year for each Generation Source

- 4.2.5.1 In case the Availability for a Contract Year is less than Eighty five Percent (85%), the Seller shall pay a penalty at the rate of twenty percent (20%) of the Quoted Tariff (in Rs./kWh) applied on the energy (in kWh) corresponding to the difference between Eighty five Percent (85%),and Availability during such Contract Year.

4.2.5.2 If during that Contract Year, Availability of the Power Station of the[Insert "Seller" if Seller is NOT a Trading Licensee, or "Developer" if Seller is a Trading Licensee] is greater than the Minimum Offtake Guarantee but "the Procurer" / "all the Procurers taken together" has / have not scheduled energy corresponding to Minimum Off-take Guarantee during that Contract Year, then Seller will raise an invoice for the following amount, on the Procurer(s),

- i) an amount corresponding to Minimum Off-take Energy @ Rs.1.00/Kwh for all the months in that Contract Year multiplied by $\{1 - (X/Y)\}$ where:

X is the Scheduled Energy during the Contract Year (in kWh); and

Y is the Energy corresponding to Minimum Offtake Guarantee for the Procurer during the Contract Year (in kWh).

"The amount calculated as above shall be applicable for each Procurer who has scheduled energy less than energy corresponding to Minimum Offtake Guarantee".

4.3 Deviation from the Schedule

4.3.1 Variation between Scheduled Energy and actual energy at the Interconnection Point shall be accounted for through Unscheduled Interchange (UI) as per provisions of the Grid Code and ABT.

4.4 Transmission/Wheeling Charges and RLDC/ SLDC Charges

4.4.1 [The payment of Transmission Charges / Wheeling Charges to the CTU/ STU, from the Injection Point to the Delivery Point shall be paid by the Seller and would be reimbursed by the Procurer(s).

4.4.2 The payment of the RLDC/ SLDC charges shall be the responsibility of the Procurer(s).

4.5 Deleted.

4.6 Deleted

4.7 Settlement of Bills

4.7.1 The penalty of actual Availability shortfall during the Contract Year, deviation from the schedule, Transmission Charges and RLDC/ SLDC Charges, will be settled as detailed in Clauses 4.2.2, 4.2.5, 4.3 and 4.4 of this Schedule.

4.8. Compensation payable by Seller in the event of failure to meet Seller: obligations

The Seller shall be liable for payment of compensation for shortfall energy at the Energy Exchange Rate cleared for S1 region prevailing at the respective curtailment hour, in the event of failure to meet obligations as listed at Article 4.2.1 (I).

4.9. The Compensation payable by Seller as per clause 4.8 of Schedule 4 is in addition to the Penalty payable as per clause 4.2.5 of Schedule 4 of PPA.

5. SCHEDULE 5: DETAILS OF GENERATION SOURCE AND SUPPLY OF POWER

(A) Details of generation source/Utility

Details of the generation source

(Note: In case of Bidder being a Trading Licensee, details in this format is to be furnished by the Bidder in relation to the supplier of power with whom the power purchase agreement has been executed by the Trading Licensee)

A. Details of generation sources/Utility (to be furnished by the Bidder)

Sl. No	Particulars	
	Location of power station (Specify place, district and state)	Quantum of power contracted with other purchasers, if any (in MW)
Generation source 1		
Generation source 2		

Signature:

Name:

Designation:

Date:

Place:

(Note: In case of Seller being an Trading Licensee, details in this format is to be furnished by the Bidder in relation to the supplier of power with whom the power purchase agreement has been executed by the Trading Licensee)

(B) Details of Power Supply

Sr. No	Particulars	
1.	Nature of Load	Base Load

6. SCHEDULE 6: Deleted

7 SCHEDULE 7: REPRESENTATION AND WARRANTIES

7.1 Representations and Warranties by the Procurer(s)

Each Procurer hereby represents and warrants to and agrees with the Seller as follows and acknowledges and confirms that the Seller is relying on such representations and warranties in connection with the transactions described in this Agreement:

7.1.1

- i) The Procurer has all requisite powers and has been duly authorized to execute and consummate this Agreement;
- ii) This Agreement is enforceable against the Procurer in accordance with its terms;
- iii) The consummation of the transactions contemplated by this Agreement on the part of the Procurer will not violate any provision of nor constitute a default under, nor give rise to a power to cancel any charter, mortgage, deed of trust or lien, lease, agreement, license, permit, evidence of indebtedness, restriction, or other contract to which the Procurer is a party or to which the Procurer is bound, which violation, default or power has not been waived;
- iv) The Procurer is not insolvent and no insolvency proceedings have been instituted, nor threatened or pending by or against the Procurer;
- v) There are no actions, suits, claims, proceedings or investigations pending or, to the best of the Procurer's knowledge, threatened in writing against the Procurer at law, in equity, or otherwise, and whether civil or criminal in nature, before or by, any court, commission, arbitrator or governmental agency or authority, and there are no outstanding judgments, decrees or orders of any such courts, commission, arbitrator or governmental agencies or authorities, which materially adversely affect its ability to comply with its obligations under this Agreement.
- vi) The quantum of Contracted Capacity of Procurer does not exceed the projected additional demand forecast for the next three (3) years, as required under the Bidding Guidelines. In case the quantum of Contracted Capacity of Procurer exceeds the additional demand forecast for the next three (3) years, the Procurer has already obtained the approval of the Appropriate Commission for the quantum of power proposed to be procured, as required under Para 3.1 (i) of the Bidding Guidelines.

7.1.2 Each Procurer makes all the representations and warranties above to be valid as on the date of this Agreement.

7.2 Representation and Warranties of the Seller

7.2.1 The Seller hereby represents and warrants to and agrees with the Procurer(s) as follows and acknowledges and confirms that the Procurer(s) is/are relying on such representations and warranties in connection with the transactions described in this Agreement:

- i) The Seller has all requisite power and has been duly authorized to execute and consummate this Agreement;
- ii) This Agreement is enforceable against the Seller in accordance with its terms;
- iii) The consummation of the transactions contemplated by this Agreement on the part of the Seller will not violate any provision of nor constitute a default under, nor give rise to a power to cancel any charter, mortgage, deed of trust or lien, lease, agreement, license, permit, evidence of indebtedness, restriction, or other contract to which the Seller is a party or to which the Seller is bound which violation, default or power has not been waived;
- iv) The Seller is not insolvent and no insolvency proceedings have been instituted, or not threatened or pending by or against the Seller;
- v) There are no actions, suits, claims, proceedings or investigations pending or, to the best of Seller's knowledge, threatened in writing against the Seller at law, in equity, or otherwise, and whether civil or criminal in nature, before or by, any court, commission, arbitrator or governmental agency or authority, and there are no outstanding judgments, decrees or orders of any such courts, commission, arbitrator or governmental agencies or authorities, which materially adversely affect its ability to supply power or to comply with its obligations under this Agreement.
- vi) The Seller/ Successful Bidder has neither made any statement nor provided any information in his Bid, which was materially inaccurate or misleading at the time when such statement was made or information was provided. Further, all the confirmations, undertakings, declarations and representations made in the Bid are true and accurate and there is no breach of the same.

7.2.2 The Seller makes all the representations and warranties above to be valid as on the date of this Agreement.

7.2.3 In the event that any of the representations and warranties made by the Seller in the Article above not true or are incorrect, the occurrence of such event would amount to a Seller Event of Default under Article 11.1 of this Agreement and the Procurer shall have the right to terminate this Agreement in accordance with Article 11 of this Agreement.

8 SCHEDULE 8: QUOTED TARIFF

(Quoted Tariff from Format 4.10 of RFP of the Selected Bid to be inserted here)

9 SCHEDULE 9: FORMAT OF THE CONTRACT PERFORMANCE GUARANTEE

To be on non-judicial stamp paper of appropriate value as per Stamp Act relevant to place of execution. To be provided separately in the name of each of the Procurer(s), in proportion to their Contracted Capacity)

In consideration of the[Insert name of the Successful Bidder with address] agreeing to undertake the obligations under the PPA and the other RFP Documents and BESCO, MESCOM, GESCOM, HESCO & CESC, Mysore (herein after referred to as Procurer(s)), agreeing to execute the RFP Documents with the Successful Bidder for procurement of power on medium term basis through tariff based competitive bidding process for meeting the requirements of the Procurer(s), the [Insert name and address of the bank issuing the guarantee and address of the head office] (hereinafter referred to as "Guarantor Bank") hereby agrees unequivocally, irrevocably and unconditionally to pay to the Procurer(s) at[Insert address of Procurer(s)] forthwith on demand in writing from the Procurer(s) or any Officer authorized by it in this behalf, any amount up to and not exceeding Rupees only [Insert the amount of the bank guarantee computed on the basis of Seven point five (7.5) lakhs/MW with respect to the Contracted Capacity of each procurer as per the terms of PPA] on behalf of M/s. [Insert name of the Successful Bidder].

This guarantee shall be valid and binding on the Guarantor Bank up to and including[Insert date of validity of CPG] and shall in no event not be terminable by notice or any change in the constitution of the Bank or the term of the PPA or by any other reasons whatsoever and our liability hereunder shall not be impaired or discharged by any extension of time or variations or alternations made, given, or agreed with or without our knowledge or consent, by or between parties to the respective agreement.

Our liability under this Guarantee is restricted to Rs. (Rs. only). Our Guarantee shall remain in force until [Insert the date of validity of the Guarantee]. The Procurer(s) shall be entitled to invoke this Guarantee up to thirty (30) days of the last date of the validity of this Guarantee by issuance of a written demand to invoke this guarantee.

The Guarantor Bank hereby expressly agrees that it shall not require any proof in addition to the written demand from the Procurer(s), made in any format, raised at the above mentioned address of the Guarantor Bank, in order to make the said payment to the Procurer(s) .

The Guarantor Bank shall make payment hereunder on first demand without restriction or conditions and notwithstanding any objection by,

..... [Insert name of the Successful Bidder] and/or any other person. The Guarantor Bank shall not require the Procurer(s) to justify the invocation of this BANK GUARANTEE, nor shall the Guarantor Bank have any recourse against the Procurer(s) in respect of any payment made hereunder.

This BANK GUARANTEE shall be interpreted in accordance with the laws of India and the courts at [Location to be inserted by Procurer/Authorized Representative] shall have exclusive jurisdiction.

The Guarantor Bank represents that this BANK GUARANTEE has been established in such form and with such content that it is fully enforceable in accordance with its terms as against the Guarantor Bank in the manner provided herein.

This BANK GUARANTEE shall not be affected in any manner by reason of merger, amalgamation, restructuring, liquidation, winding up, dissolution or any other change in the constitution of the Guarantor Bank.

This BANK GUARANTEE shall be a primary obligation of the Guarantor Bank and accordingly the Procurer(s) shall not be obliged before enforcing this BANK GUARANTEE to take any action in any court or arbitral proceedings against the Successful Bidder/Seller, to make any claim against or any demand on the Successful Bidder/Seller or to give any notice to the Successful Bidder/Seller or to enforce any security held by the Procurer(s) or to exercise, levy or enforce any distress, diligence or other process against the Successful Bidder/Seller.

The Guarantor Bank acknowledges that this BANK GUARANTEE is not personal to the Procurer(s) and may be assigned, in whole or in part, (whether absolutely or by way of security) by the Procurer(s) to any entity to whom it is entitled to assign its rights and obligations under the PPA.

The Guarantor Bank hereby agrees and acknowledges that the Procurer(s) shall have a right to invoke this Bank Guarantee either in part or in full, as it may deem fit.

Notwithstanding anything contained hereinabove, our liability under this Guarantee is restricted to Rs. crores (Rs. crores only) and it shall remain in force until[Date to be inserted is three (3) months after the scheduled date), with an additional claim period of thirty (30) days thereafter. This BANK GUARANTEE shall be extended from time to time for such period, as may be desired by [Insert name of the Successful Bidder/Seller]. We are liable to pay the guaranteed amount or any part thereof under this Bank Guarantee only if the Procurer(s) serves upon us a written claim or demand.

In witness whereof the Bank, through its authorized officer, has set its hand and stamp on this day of at

Witness:

1.
Name and Address.

Signature

Name:

2.
Name and Address

Designation with Bank Stamp

Attorney as per power of attorney No.

.....

For:

..... [Insert Name of the Bank]

Banker's Stamp and Full Address:

Dated this day of 20.....

Notes:

The Stamp Paper should be in the name of the Executing Bank.

10 SCHEDULE 10: SELECTED BID

[The Bid of the Successful Bidder to be inserted in this Schedule]

11 SCHEDULE 11: LIST OF BANKS - DELETED

12 SCHEDULE 12: SUBSTITUTION RIGHTS OF THE LENDERS - DELETED

13 SCHEDULE 13: CAPITAL STRUCTURE SCHEDULE - DELETED