

**ENCLOSURE -I**

**POWER PURCHASE AGREEMENT (PPA)**  
**FOR**  
**PROCUREMENT OF 500 MW RTC POWER**  
**FOR SHORT TERM**  
**THROUGH**  
**TARIFF BASED COMPETITIVE BIDDING PROCESS**  
**FOR MEETING THE BASE LOAD REQUIREMENTS FROM**  
**01<sup>st</sup> SEPTEMBER 2013 TO 30<sup>th</sup> JUNE 2014**

**Between**

**Bangalore Electricity Supply Company Ltd.**  
**("Procurer 1")**

**And**

**Mangalore Electricity Supply Company Ltd**  
**("Procurer 2")**

**And**

**Chamudeshwari Electricity Supply Corporation Ltd**  
**("Procurer 3")**

**And**

**Gulbarga Electricity Supply Company Ltd.**

**·**  
**("Procurer 4")**

**and**

**Hubli Electricity Supply Company Ltd.**

**·**  
**("Procurer 5")**

**AND**

**SELLER**

## POWER PURCHASE AGREEMENT

**This POWER PURCHASE AGREEMENT is made on this day ----- of ----- at ----- between**

- (1) Bangalore Electricity Supply Company Ltd (the “Procurer 1”)
- (2) Mangalore Electricity Supply Company Ltd (the “Procurer 2”)
- (3) Chamundeshwari Electricity Supply Corporation Ltd (the “Procurer 3”)
- (4) Gulbarga Electricity Supply Company Ltd (the “Procurer 4”)
- (5) Hubli Electricity Supply Company Ltd (the “Procurer 5”)

And

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

[The “Procurer1”, “Procurer 2”, “Procurer 3” “ procurer 4”and “Procurer 5” are (hereinafter collectively referred to as the “Procurer(s)” and individually as a “Procurer”), and each of the “Procurer” and “the “Seller” are individually referred as “Party” and collectively to as the “Parties”]

AND

(Seller’s Name) a company incorporated and existing under the Companies Act, 1956, with its registered office at \_\_\_\_\_ (hereinafter referred to as “Seller” which expression shall unless repugnant to or inconsistent with the context, mean and include successors and permitted assigns) of the SECOND PART.

(Each of the parties is individually referred to as a “Party” and collectively to as the “Parties”).

WHEREAS

- A) The Procurers are Distribution licensee under Section 14 provision of the Electricity Act, 2003 and is carrying on Business of supply of Electricity in the State of Karnataka in their jurisdictional area.
- B) Pursuant to the Bidding process, ..... [Insert name of Successful Bidder] has been selected by the Authorized Representative, as the Seller for sale and supply of Electricity in bulk to the Procurer(s), for the 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 3 of this Agreement.

- D) The Parties hereby agree to execute this Power Purchase Agreement setting out the terms and conditions for the sale of Power up to the Contracted capacity by the Seller to the Procurer(s).
- E) The Procurer(s) agree, on the terms and conditions of this Agreement, to procure Power up to the Contracted Capacity and pay the Seller the Tariff as determined in accordance with the terms of this Agreement.
- F) [Insert in case of generation source of the Seller being in the same state of the Procurer(s) or the Seller intends to connect the generation source to the STU Interface] The Procurer(s) and the Seller have mutually agreed on the delivery point (s) for supplying power to the Procurer (s) and have incorporated the same in the Schedule-1 of this agreement.

Now Therefore, in consideration of the foregoing and the respective covenants and agreements set forth in this Power Purchase Agreement ( the 'PPA' or the 'Agreement') and other consideration, the receipt , sufficiency and adequacy of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows :

## ARTICLE 1

### **DEFINITIONS AND INTERPRETATION**

#### **1.1.1 Definitions**

1.1.2 The terms used in this Agreement, and in all of the Schedules hereto including, without limitation, any other document related to 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 as amended or re-enacted from time to time:

“Act” or  
“Electricity Act  
2003” Electricity Act 2003 or any further amendments made subsequent to the same;

“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;

“Applicable Law” Means the Electricity Act, 2003 and other statutes, delegated legislation (rules, regulations, bye laws), Notifications, binding orders of Govt. Agency, as and to the extent applicable to the Parties and the substratum of this Agreement.

“Bank” Means a reference to Nationalized Bank/Scheduled Bank as notified by the Reserve Bank of India.

“Business Day” Means a day other than Sunday or a statutory holiday, on which the Banks remain open for business in the State of Karnataka

“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;

"Central  
Transmission  
Utility" or "CTU" Shall mean the Utility notified by the Central Government under Section-38 of the Electricity Act 2003;

" Commission" Means the Central Electricity Regulatory Commission or Karnataka Electricity Regulatory Commission

“Competent Court of  
Law” shall means any Court situated in the City of Bangalore in Karnataka State.

“Contract  
Performance  
Guarantee” Shall have the meaning ascribed in RFP

“Contract Period” shall mean the period commencing from 01<sup>st</sup> September 2013 to 30<sup>th</sup> June 2014

"Contracted  
Capacity" With respect to each Procurer, shall mean the allocation of the Contracted Capacity to each of the Procurers as

provided in Schedule 1 hereof.

“Control Centre”	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;
"Dispatch Instruction"	shall mean any instruction issued by the Procurer(s) through the concerned SLDC / RLDC to the Seller, in accordance with applicable Grid Code and this Agreement;
"Declared Capacity"	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;
"Delivery Point"	shall mean, for Inter-State transmission of power, regional periphery of the seller to be taken as Delivery Point. For Intra-State transmission of power, interconnection point of seller with STU to be taken as Delivery Point.
“Developer” <i>[Insert this definition in case the Seller is a Trading Licensee]</i>	shall mean the owner of the Power Station from which the Seller shall supply the Aggregate Contracted Capacity to the Procurer(s);
“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 this Agreement;
"Due Date"	shall mean the 30 <sup>th</sup> day after a Fortnightly 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 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 there under 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;
“Earnest Money Deposit” (Bid Security)	shall have the meaning ascribed in RFP document

"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;
"Injection Point"	shall mean the .....as specified by the Seller in RFP Bid Document.
"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 fortnightly Invoice by any of the Parties;
"KERC"	shall mean the Karnataka Electricity Regulatory Commission;
"Minimum bid capacity offered" at Delivery Point	shall mean 50 MW for supply source located outside Karnataka State (Inter State and within SR) and 5 MW for Seller located in Karnataka State (Intra State).
"Month"	shall mean calendar month, unless the context otherwise requires in this Agreement;
Normative Availability	shall mean Eighty Five percent (85%) Availability of the Aggregate Contracted Capacity at Delivery Point on monthly basis.
Procurer(s) Periphery	shall mean the STU (KPTCL) interface(s) within the region of the Procurer(s), where power is delivered to the Procurer(s) after it is injected by the Seller.
"Quoted Tariff"	shall have a meaning as per RFP document
"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;
"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;
"Scheduled Delivery	shall mean commencement of power supply of Contracted

Date”	Capacity i.e., 01st September 2013.
“Scheduled Energy” or “Scheduled Generation”	shall mean Scheduled Generation as defined in the ABT / relevant Regulations framed by Appropriate Commission;
“Selected Bid”	shall mean the Bid of the Successful Bidder as accepted by the Authorized Representative
“Seller”	shall mean the Successful Bidder who submitted the Contract Performance Guarantee and executes the PPA and other RFP document with the Procurer and who shall be responsible for supplying power to the Procurer at the Delivery Point for the term of PPA as per the terms and conditions specified therein.
“SLDC”	shall mean the centre established under Sub-section (1) of Section 31 of the Electricity Act 2003.
“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. 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 Authorized Representative pursuant to the RFP for supply of power by to the Procurer(s) as per the terms of PPA and RFP Documents, and to whom a LOI has been issued;
“Unscheduled Interchange” or “UI”	shall have the meaning ascribed thereto in relevant CERC Regulations 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; In the absence of SERC regulations / Intra State ABT, UI charges shall be made applicable as per CERC, Regulations from time to time.

## **1.1 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 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;
- 1.2.4 "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;
- 1.2.5 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;
- 1.2.6 Words importing the singular shall include the plural and vice versa;
- 1.2.7 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;
- 1.2.8 A Law shall be construed as a reference to such Law including its amendments or re-enactments from time to time;
- 1.2.9 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;
- 1.2.10 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;
- 1.2.11 The words "hereof" or "herein", if and when used in this Agreement shall mean a reference to this Agreement;
- 1.2.12 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;



## ARTICLE 2

### **TERM OF AGREEMENT**

#### **2.1 Effective Date**

This Agreement shall commence from the date it is executed and delivered by the Parties

#### **2.2 Term of the Agreement**

This Agreement shall be valid for a term commencing from the Effective Date to 30<sup>th</sup> June 2014 ("Term of Agreement"), unless terminated earlier.

#### **2.3 Survival**

The expiry or termination of this Agreement shall not affect accrued rights and obligations of the Parties under this Agreement, nor shall it affect any continuing obligations for which this Agreement provides, either expressly or by necessary implication.

## ARTICLE 3

### **CONDITIONS SUBSEQUENT TO BE SATISFIED BY SELLER/ PROCURER(S)**

#### **3.1 Seller's Obligation**

- 3.1.1 Responsible for making application under short term open access for full contracted capacity of LOI within 3 working days on receipt of fax/Email copy of LOI from PCKL, failing which EMD shall be forfeited.
- 3.1.2 Responsible for obtaining prior permission of Procurer(s) while revising the schedules, failing which compensation and penalty are payable as per Article 6 of PPA.
- 3.1.3 The Seller agrees and undertakes to obtain necessary permissions for scheduling of contracted power up to procurer(s) periphery through short term open access / medium term open access at the Seller's own cost and risk and ensure the commencement of supply from Scheduled Delivery date.

#### **3.2 Procurers' Obligation**

- a) Ensure the availability of Interconnection Facilities and evacuation of power from the Delivery Point before the Scheduled Delivery Date.
- b) The Procurer(s) shall reimburse the Short Term Open Access charges as per order no. L-1/44/2010-CERC dated 29.06.2013 and as amended from time to time the CTU withdrawal (Karnataka withdrawal charges) and losses for Interstate Generator and no Transmission Charges and losses shall be reimbursed for Intrastate Generator.

### **3.3 Contract Performance Guarantee**

- 3.3.1 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.
- 3.3.2 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.
- 3.3.3 If the Seller fails to commence supply of power on the Scheduled Delivery Date specified in this Agreement, the Procurer(s) shall have the right to encash the Contract Performance Guarantee and appropriate in their favour as liquidated damages without prejudice to the other rights of the Procurer(s) under this Agreement.

### **3.4 Return of Contract Performance Guarantee**

- 3.4.1 The Procurer(s) shall return / release the Contract Performance Guarantee in the event of termination of this Agreement by Seller for Procurer(s) default within 30 days.
- 3.4.2 Subject to the provisions of Article 3.4.1, the Procurer(s) shall return / release the Contract Performance Guarantee to the Seller at the end of the Term of this Agreement.
- 3.4.3 The return / release of the Contract Performance Guarantee shall be without prejudice to other rights of the Procurer(s) under this Agreement.

## **ARTICLE 4**

### **CAPACITY, AVAILABILITY AND DISPATCH**

#### **4.1 Availability**

- 4.1.1 "Seller shall comply/complies with the provisions of the applicable Law regarding Availability including, in particular, to the provisions of the ABT and Grid Code from time to time relating to declaration of Availability and the matters incidental thereto.

#### **4.2 Scheduling and Dispatch**

- 4.2.1 Seller shall comply/complies with the provisions of the applicable Law regarding Dispatch Instructions, in particular, to the provisions of the ABT and Grid Code from time to time relating to scheduling and Dispatch and the matters incidental thereto.
- 4.2.2 In case of exigencies either party may request to other party for revision of agreed Schedule as per the Grid Code.
- 4.2.3 Variation between scheduled energy and actual energy at the Delivery Point shall be accounted for through UI as per the provisions of the Grid Code and UI regulations from time to time.

## ARTICLE 5

### **5.1 Commencement Of Supply Of Power To Procurer(s)**

5.1.1 The Seller shall be responsible to commence supply firm power of ....MW by the Scheduled Delivery Date in accordance with the provisions of this Agreement.

5.1.2 If the Seller fails to commence supply of power on the Scheduled Delivery date specified in this Agreement. The “Procurer” shall have the right to encash the Contract Performance Guarantee.

#### **5.1.3 Right to Contracted Capacity and Scheduled Energy**

5.1.3.1 Subject to provisions of this Agreement, the entire 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 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.

Further notwithstanding Article 5.1.3.1 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.

#### **5.1.4 Alternate source of power supply**

If the Seller is unable to provide supply of power to the Procurer(s) up to the Contracted Capacity from the Delivery Point except due to a Force Majeure Event, the Seller is free to supply power up to the 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. In case the Open Access Charges 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 Open Access Charges from Delivery Point to Procurer(s) Periphery, the Seller would be liable to bear such additional charges.

## ARTICLE 6

### **BILLING & PAYMENT**

#### **6.1 General**

From the commencement of supply of power, Procurers shall pay the Seller the fortnightly tariff payment on or before the due date.

#### **6.2 Payment**

6.2.1 The Seller shall issue a signed Fortnightly bill to each Procurer .

6.2.2 Procurer shall pay the tariff as per Schedule – 5 for the scheduled energy at Delivery Point on fortnightly basis based on Schedule Energy and final bill as per Regional Energy Account (REA) / State Energy Account (SEA).

6.2.3 Payment for Liquidated Damages for failure to supply the Instructed Capacity

- Both the parties would ensure that actual scheduling does not deviate by more than 15% of the Contracted power as per the approved open access on monthly basis.
- In case deviation from Procurer side is more than 15% of contracted energy for which open access has been allocated on monthly basis, Procurer shall pay compensation at 20% of Tariff per KWh for the quantum of shortfall in excess of permitted deviation of 15% while continuing to pay open access charges as per the contract.

6.2.4 In case deviation from Seller side is more than 15% of contracted energy for which open access has been allocated on monthly basis, Seller shall pay compensation to Procurer at 20% of Tariff per KWh for the quantum of shortfall in excess of permitted deviation of 15% in the energy supplied and pay for the open access charges to the extent not availed by the Procurer.

If Seller fails to schedule the capacity approved for the open access for the concerned period on account of loss of Generation i.e failure of Generator/Transmission constraints then Seller shall provide an undertaking regarding the failure of Generator and confirming that power has not been sold to a third party during the period. For the purpose of clarity, third party would mean party other than ESCOMs of Karnataka and notified customers of the Sellers. The list of notified customers would be submitted by Seller 15 days before the commencement of supply of Power. The list will also specify the quantum of power which needs to be supplied to notified customers as per their agreements with Seller. In case, rescheduling is required, rescheduling will be done proportionately. This list, upon submission will be an integral part of the Agreement.

- 6.2.5 The payment of Short term Open Access Charges including RLDC / SLDC charges to the CTU / STU from the Delivery Point to Procurer(s) Periphery shall be paid by the Seller which would be reimbursed by the Procurer.
- 6.2.6 The open access transaction shall be made in the name of BESCO, for the purpose of open access charges beyond delivery point, the ESCOMs of Karnataka and KPTCL system are internalized.

### **6.3 Payment & Rebate**

- 6.3.1 **Payment:** Procurer(s) / PCKL shall make the payment to Seller on 7<sup>th</sup> day from the date of bill excluding the date of receipt of the fortnightly energy bills in Procurer(s) / PCKL office. In the event if the receipt of the energy bills in Procurer(s) / PCKL office being holiday, the next working day shall be reckoned as the date of receipt of Bills. If the due date of payment happens to be a holiday, the immediate next working day shall be considered as the due date for payment. In case of timely payment by Procurer(s) / PCKL, adjustment for the admissible rebate as per Clause No. 6.3.2 hereinafter shall be made while making the payment against the bill.
- 6.3.2 **Rebate:** Bidders shall allow 2% rebate only on bill amount, if Procurer(s) / PCKL make full payment to Bidders on or by 7<sup>th</sup> day from the date of bill excluding the date of receipt in Procurer(s) / PCKL office. If payments are made by Procurer(s) / PCKL after 7 days within a period of one month from the date of receipt of bill in Procurer(s) / PCKL office, a rebate of 1% shall be allowed.
- 6.3.3 **Surcharge:** The Payment made after 30 days from the date of receipt of invoice the surcharge shall be payable at 15% per annum for the outstanding amount.

### **6.4 Payment Term / Payment Security to be made available by the Procurer**

The Procurer(s) shall provide revolving Letter of Credit (LC) equivalent to 100% of the fortnightly average energy corresponding to Contracted Capacity at the tariff indicated in the PPA. The Letter of Credit (LC) shall be opened prior to commencement to supply of power.

### **6.5 Disputed Invoices**

- 6.5.1 If the Procurer does not question or dispute an Invoice within 120 (one hundred and twenty) days of receiving it, the fortnightly Invoice shall be considered correct and complete.
- 6.5.2 If the Procurers disputes any item or part of an item set out in any Invoice then Procurers shall serve a notice (“Invoice Dispute Notice”) on the Seller setting out the disputed amount.

## **ARTICLE 7**

### **FORCE MAJEURE AND CHANGE IN LAW**

#### **7.1 Force Majeure**

- i) Any restriction imposed by RLDC/SLDC in scheduling of power due to breakdown of Transmission/Grid constraint shall be treated as Force Majeure without any liability on either side.
- ii) Any of the events or circumstances, or combination of events and circumstances such as act of God, exceptionally adverse weather conditions, lightning, flood, cyclone, earthquake, volcanic eruption, fire or landslide or acts of terrorism causing disruption of the system.
- iii) The contracted power will be treated as deemed reduced for the period of Transmission Constraint. The non / part availability of transmission corridor should be certified by concerned RLDC / SLDC.

## **7.2 Duty to Mitigate**

To the extent not prevented by a Force Majeure event, 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 event of Force Majeure as soon as practicable.

## **7.3 Change in Law**

Change in Law includes:

- i) Any change in transmission charges and Open access charges.
- ii) Any change in taxes (excluding income tax), duties, cess or introduction of any tax, duty, cess made applicable for supply of power by the Seller.

The change in tariff on account of Change in Law subjected to approval of the Karnataka Electricity Regulatory Commission (KERC).

# **ARTICLE 8**

## **GOVERNING LAW AND DISPUTE RESOLUTION**

### ***8.1 Governing Law***

- 8.1.1 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 Bangalore, Karnataka

### ***8.2 Amicable Settlement***

- 8.2.1 If any disputes or difference of any kind whatsoever(a "Dispute") shall arise between Purchaser and Seller in connection with, or arising out of or relating to this agreement or breach, termination or validity hereof, Procurer and Seller shall attempting for a period of existence of dispute in the first instance by mutual discussions between the parties.

### ***8.3 Arbitration***

- 8.3.1 Where any dispute arises claiming any change in or regarding determination of tariff or any tariff related matters or which partly or wholly could result in change in tariff, such dispute shall be adjudicated by the Appropriate Commission.

All other disputes shall be resolved by arbitration under the Indian Arbitration and Conciliation Act, 1996

## **ARTICLE 9**

### **9.1 CONFIDENTIALITY**

9.1.1 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.

9.1.2 Notwithstanding the provisions under this agreement, 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.

## **ARTICLE 10**

### **MISCELLANEOUS PROVISIONS**

#### **10.1 Amendment**

This Agreement may only be amended or supplemented by a written agreement between the Parties after obtaining the approval of the Karnataka Electricity Regulatory Commission (KERC), where necessary

#### **10.2 Third Party Beneficiaries**

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.

#### **10.3 Waiver**

10.3.1 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 authorized representative of such Party:

10.3.2 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.

**10.4 Language**

The language of this Agreement shall be English and all documents, notices, waivers and all other written communication or otherwise between the Parties in connection with this Agreement shall be in English.

**10.5 Assignments**

10.5.1 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.

10.5.2 *[Insert in case the Seller chooses the option of Lender’s substitution rights]* Seller shall be entitled to assign its rights and obligations under this Agreement in favor of the Selectee duly appointed pursuant to the terms of this Agreement.

**10.6 Notices**

All notices to be given under this Agreement shall be in writing and in the English Language and must be delivered personally or sent by registered or certified mail, telecopier, e-mail, telefax or telegram to the addresses below:

Address of Procurer(s)

Address of Seller(s)

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**10.7 Severability**

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 fundamental to this agreement.

**10.8 Breach of Obligations**

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



## ***10.9 Nomination Restriction***

10.9.1 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.

## **10.10 Commercial Acts**

10.10.1 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.

## ***10.11 No Consequential or Indirect Losses***

10.11.1 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.

## ***10.12 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.

## ***10.13 REPRESENTATION AND WARRANTIES***

### ***10.13.1 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:

10.13.2 The Procurer has all requisite powers and has been duly authorized to execute and consummate this Agreement;

- i) This Agreement is enforceable against the Procurer in accordance with its terms;
- ii) 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;

- iii) The Procurer is not insolvent and no insolvency proceedings have been instituted, nor threatened or pending by or against the Procurer;
- iv) 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.

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

#### ***10.14 Representation and Warranties of the Seller***

10.14.1 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.

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

IN WITNESS WHEREOF, the Parties have executed and delivered this Agreement as of the date first above written, through their authorized representatives at \_\_\_\_\_  
FOR PROCURER FOR SELLER

\_\_\_\_\_  
[Authorized Signatory] [Authorized Signatory]

**WITNESS**

**Name:[.]**  
**Address:[.]**

**WITNESS**

**Name: [.]**  
**Address:[.]**

## SCHEDULE 1

### Names and Details of the Procurer(s)

<b>Name of the Procurer(s)</b>	<b>Address of the Registered Office of Procurer(s)</b>	<b>Law under which incorporated</b>	<b>Contracted Capacity (MW)</b>	<b>Delivery Point</b>
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		

**SCHEDULE 2:**

**DETAILS OF GENERATION SOURCE AND SUPPLY OF RTC POWER AND QUOTED TARIFF**

**2.1 Details of Generation sources /Utility and list of purchasers to be furnished by the seller**

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

Sl. No	Particulars	
	<b>Location of Power Station (Specify Place, District and State)</b>	<b>Quantum of Power contracted with other Purchasers/customers , if any (in MW)</b>
Generation source 1		
Generation source 2		

Signature:

Name:

Designation:

Date:

Place:

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

**2.2 Details of Power Supply**

Sr. No	Particulars	
1.	<b>Fuel used for generation</b>	
2.	<b>Nature of Load</b>	Base Load /

### SCHEDULE 3

#### **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 Peak power on **Short 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 Three (3) 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.  
2. ....  
Name and Address

Signature  
Name:  
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.**



***SCHEDULE 4: SELECTED BID***

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

***SCHEDULE 5: QUOTED TARIFF***

[Quote tariff from format 6.2 of RFP of the Selected Bid to be inserted here]