MODEL
AGREEMENT
FOR
PROCUREMENT OF POWER
UNDER MEDIUM TERM
ON
FINANCE, OWN AND OPERATE BASIS

Ministry of Power
Government of India

December, 2024

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Part I

Preliminary

AGREEMENT FOR PROCUREMENT OF POWER[1]

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

BETWEEN

1 [The Distribution Company], a company incorporated under the provisions of the Companies Act, 1956/2013, represented by its[Managing Director/Authorised Person]and having its registered offices at …… (hereinafter referred to as the "**Utility**" which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) of One Part;

AND

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

WHEREAS:

(A) The Utility has resolved to procure electricity from a power generating station that would deliver a Contracted Capacity of *** MW at the Delivery Point corresponding to ***MW of gross generation[2] on finance, own and operate (the "**FOO**") basis, in accordance with the terms and conditions to be set forth in an agreement for procurement of power to be entered into under and in accordance with the provisions of the Electricity Act, 2003.

(B) The Utility had accordingly invited proposals by its Request for Qualification dated *** (the "**Request for Qualification**" or "**RFQ**") for short listing of Bidders who

[1] **Instructions for project-specific customisation of this document**

This Model Agreement for procurement of Power (the "MAPP) may be customised for project-specific use in accordance with the instructions below:

Note 1: The provisions in curly brackets are to be retained in the draft Agreement for Procurement of Power forming part of Bidding Documents and shall be suitably modified after the issuance of Letter of Award (LOA) in order to reflect the bid specific particulars in the Agreement for Procurement of Power. (See Appendix-I)

Note 2: Blank spaces are to be retained in the draft Agreement for Procurement of Power and shall be suitably filled after the issuance of LOA in order to reflect bid specific particulars in the Agreement for Procurement of Power. However, blank spaces shall be retained in all schedules, which contain formats that are to be used after the Agreement for Procurement of Power is executed. (See Appendix-I)

Note 3: Footnotes marked "£" are to be retained in the draft Agreement for Procurement of Power. These Footnotes are for the Guidance of the selected Bidders and shall be omitted before executing the Agreement for Procurement of Power. However, Footnotes marked "$" or "$$" shall be retained in the Agreement for Procurement of Power as a part thereof. (See Appendix-I)

[2] The gross generation is to be computed from contracted capacity at delivery point by adding transmission losses, auxiliary consumption upto the generator terminals.,

offer tosupply electricity from power generating station, and had shortlisted certain Bidders including, *inter alia*, the selected bidder.

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

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

(E) Omitted.

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

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

ARTICLE 1

DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

1.2 Interpretation

1.2.1 In this Agreement, unless the context otherwise requires,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1.3 Measurements and arithmetic conventions

All measurements and calculations shall be in the metric system and calculations done to 3 (three) decimal places, with the fourth digit of 5 (five) or above being rounded up and below 5 (five) being rounded down.

1.4 Priority of agreements, clauses and schedules

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

(a) this Agreement; and

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

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

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

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

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

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

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

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

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

Part II

The Procurement Contract

ARTICLE 2

SCOPE OF THE PROJECT

2.1 Scope of the Project

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

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

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

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

ARTICLE 3

GRANT OF PROCUREMENT CONTRACT

3.1 The Procurement Contract

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

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

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

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

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

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

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

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

3.2 Substitution of the Utility

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

3.2.2 In the event of additional Licensees operating in the same area of supply post the signing of this Agreement, the existing PPA may be reallocated in full or part by the competent authority to the other licensees in proportion to the number of consumers/ demand of power with the different licensees and the present Agreement shall apply to all such subsequent Licensees.

ARTICLE 4

CONDITIONS PRECEDENT

4.1 Conditions Precedent

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

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

(a) Omitted.

(b) Omitted.

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

(d) Omitted.

(e) Omitted.

(f) Provided to the Supplier, an unconditional, revolving and irrevocable Letter of Credit in accordance with the provisions of Clause 13.2.1.

Provided that upon request in writing by the Utility, the Supplier may, in its discretion, grant extension of time, not exceeding 90 (Ninety) days, for fulfilment of the Conditions Precedent set forth in this Clause 4.1.2.

4.1.3 The Conditions Precedent required to be satisfied by the Supplier within a period of 30 (ninety) days from the date of this Agreement shall be deemed to have been fulfilled when the Supplier shall have:

(a) provided Performance Security to the Utility;

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

(c) deposited a certified true copy of this Agreement with the RLDC and SLDC having jurisdiction and obtained a receipt thereof, in accordance with the provisions of Clauses14.3.3 and 19.4.1;

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

(e) The Supplier shall have executed the Fuel Supply Agreement upon the fulfillment of all the conditions laid down in the Letter of Assurance;

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

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

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

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

4.2 Damages for delay by the Utility

In the event that (i) the Utility does not procure fulfilment or waiver of any or all of the Conditions Precedent set forth in Clause 4.1.2 within the period specified in respect thereof, and (ii) the delay has not occurred as a result of breach of this Agreement by the Supplier or due to Force Majeure, the Utility shall pay to the Supplier Damages in an amount calculated at the rate of 0.5% (zero point five per cent) of the Performance Security for each day's delay until the fulfilment of such Conditions Precedent, subject to a maximum of the Performance Security-and upon making such maximum, the Supplier may at its sole discretion, terminate this Agreement.

4.3 Damages for delay by the Supplier

In the event that (i) the Supplier does not procure fulfilment or waiver of any or all of the Conditions Precedent set forth in Clause 4.1.3 within the period specified in that Clause and (ii) the delay has not occurred as a result of failure to fulfil the obligations under Clause 4.1.2 or other breach of this Agreement by the Utility or due to Force Majeure, the Supplier shall pay to the Utility Damages in an amount calculated at the rate of 0.5% (zero point five per cent) of the Performance Security for each day's delay until the fulfilment of such Conditions Precedent, subject to a maximum amount equal to the Bid Security, and upon reaching such maximum, the Utility may, in its sole discretion, terminate the Agreement. Provided that in the event of delay by the Utility in procuring fulfilment of the Conditions Precedent specified in Clause 4.1.2, no Damages shall be due or payable by the Supplier under this Clause 4.3 until the date on which the Utility shall have procured fulfilment of the Conditions Precedent specified in Clause 4.1.2.

4.4 Deemed Termination upon delay

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

4.5 Extension of Term of Agreement

In the event the damages are paid by the defaulting party as per provisions of clause 4.2 and 4.3 and the Agreement has not been terminated as per the provisions of Clause 4.4, the term of the Agreement shall be deemed to have been extended corresponding to the period of delay in fulfilment of conditions precedent. For eg – If there is a delay of 15 days in the fulfilment of conditions precedent and the defaulting party has paid the applicable damages, the Appointed date shall start after 15 days from the originally stipulated Appointed Date.

4.6 Date of Commencement of Supply

The date of commencement of supply shall be 1st April 2025. The date of commencement shall be advanced by such number of days by which the Appointed Date has been extended as per Clause 4.5

ARTICLE 5

OBLIGATIONS OF THE SUPPLIER

5.1 Obligations of the Supplier

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

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

Explanation:

Availability of the Power Station to its full capacity shall, in respect of any hour, mean the capacity of the Power Station to the extent it is offered by the Supplier for producing and supplying electrical energy equal to the Contracted Capacity over a period of one hour, after accounting for auxiliary consumption, and transmission losses upto the Delivery Point, and for any month or year, as the case may be, the hours during that month or year when the Contracted Capacity of the Power Station is fully available for production of electricity shall be expressed as a percentage of total hours in that month or year, as the case may be, (the "**Availability**"). For the avoidance of doubt, the Parties agree that Availability shall, during the months when Appointed Date or the date of Termination occurs, be determined with reference to the number of days when the Power Station was in operation, and shall be determined likewise for any single day of operation. The Parties further agree that if the Contracted Capacity of the Power Station is not Available for production of electricity to its full capacity during any hour, or part thereof, not being less than a quarter of an hour, such hour or part thereof shall, in the computation of Availability, be reduced proportionate to the Non-Availability during that hour. The Parties also agree that the determination of Availability hereunder shall be solely for the purposes of this Agreement and shall not in any manner affect the rights and obligations of the Supplier for and in respect of scheduling and despatch of electricity under Applicable Laws and the rules and regulations thereunder.

5.2 Obligations relating to Change in Ownership

The Supplier shall not undertake or permit any Change in Ownership without giving prior information to Utility.

In case the Supplier is a Trading Licensee"The provisions of Clause 5.2 shall be applicable if the Supplier is a Trading Licensee. In addition, the Supplier in such case shall also ensure that similar provisions as contained in Clause 5.2are incorporated in the exclusive Power Purchase Agreement submitted by the Supplier. In such case, the aforesaid provisions shall be applicable with respect to …….. (name of the majority investor in the Developer as specified in the Power Purchase Agreement submitted by the Supplier as a part of the Bid). The Supplier shall ensure the compliance of the provisions mentioned in this Clause 5.2. and any default on the part of the Supplier in compliance of the same shall be a Supplier Default in terms of Clause19.1. The Utility(s) shall have the right to verify the compliance of the provision as mentioned in this Clause 5.2."

5.3 Obligations relating to transmission charges

The inter-state transmission of electricity shall be undertaken solely at the risk and cost of the Utility and all liabilities arising out of any failure of inter-state transmission shall be borne by the Utility. If the Power Station is connected to intra-state transmission system of a state other than the state where the Utility is located, such intra-state transmission of electricity shall be undertaken solely at the risk and cost of the Supplier and all liabilities arising out of any failure of intra-state transmission shall, subject to the provisions of Clause 11.4.3, be borne by the Supplier.

A. Inter State Transmission Charges

The Utility shall be liable for inter-state transmission charges under Applicable Laws. It is clarified that Transmission Charges up to the Delivery Point shall be borne by the Supplier.

B. Intra State Transmission Charges

Transmission Charges up to the Delivery Point shall be borne by the Supplier.

5.4 Obligations relating to transmission losses

A. Inter-State Transmission losses:

The Utility shall be liable for inter-state transmission losses under Applicable Laws. It is clarified that Transmission losses up to the Delivery Point shall be borne by the Supplier.

B. Intra-State Transmission Losses

The Supplier shall bear transmission losses up to the Delivery Point. For avoidance of doubt the parties agree that the Contracted Capacity shall be delivered at the Delivery Point.

5.5 Obligations relating to SLDC and RLDC charges

The Supplier shall be liable for payment of all the charges, due and payable under Applicable Laws by the Supplier to the respective SLDC and/or respective RLDC (as the case may be) for and in respect of all its supplies to the Utility..

5.6 Obligations relating to taxes

The Supplier shall pay, at all times during the subsistence of this Agreement, all taxes, levies, duties, cesses and all other statutory charges payable in respect of the Power Station.

5.7 Obligations relating to reporting requirements

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

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

ARTICLE 6

OBLIGATIONS OF THE UTILITY

6.1 Obligations of the Utility

6.1.1 The Utility agrees to provide support to the Supplier and undertakes to observe, comply with and perform, subject to and in accordance with the provisions of this Agreement and Applicable Laws and upon written request from the Supplier, and subject to the Supplier complying with Applicable Laws, provide reasonable support and assistance to the Supplier in procuring the Applicable Permits required from any Government Instrumentality for operation of the Project; Utility shall ensure adequate GNA for drawal of power from inter-state transmission system for contracted capacity and under Applicable Laws;

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

ARTICLE 7

REPRESENTATIONS AND WARRANTIES

7.1 Representations and warranties of the Supplier

The Supplier represents and warrants to the Utility that:

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

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

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

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

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

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

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

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

(i) it has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal

liabilities which in the aggregate have or may have a material adverse effect on its ability to perform its obligations under this Agreement;

(j) it shall at no time undertake or permit any Change in Ownership except in accordance with the provisions of Clause 5.2; and that its promoters together with their Associates, hold not less than 51% (fifty one per cent) of its issued and paid up Equityas on the date of this Agreement;

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

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

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

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

(o) no representation or warranty by it contained herein or in any other document furnished by it to the Utility or to any Government Instrumentality in relation to Applicable Permits contains or will contain any untrue or misleading statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;

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

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

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

7.2 Representations and warranties of the Utility

The Utility represents and warrants to the Supplier that:

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

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

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

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

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

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

7.3 Disclosure

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

ARTICLE 8

DISCLAIMER

8.1 Disclaimer

8.1.1 The Supplier acknowledge that prior to the execution of this Agreement, the Supplier has, after a complete and careful examination, made an independent evaluation of the Request for Qualification, Request for Proposals, Scope of the Agreement, Specifications and Standards, transmission network, Site, existing structures, local conditions, and any information provided by the Utility or obtained, procured or gathered otherwise, and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder.

8.1.2. The Utility affirm, the accuracy, adequacy, correctness reliability and/or completeness of assessment, assumption, statement or information provided by it.

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

8.1.4 In the event that either Party becomes aware of any mistake or error relating to any of the matters set forth in Clause 8.1.1 above, that Party shall immediately notify the other Party, specifying the mistake or error;

Part III

Operations

ARTICLE 9

PERFORMANCE SECURITY BY THE SUPPLIER

9.1 Performance Security

9.1.1 The Supplier shall, for the performance of its obligations hereunder, provide to the Utility no later than 30 (thirty) days from the date of this Agreement, an irrevocable and unconditional guarantee from a Schedule Bank for a sum equivalent to Rs. ***** crore (Rupees ***** crore)[16] in the form set forth in Schedule-B (the "**Performance Security**") valid for a period ending 6 (six) months after date of commencement of supply. The amount towards the Performance Security can be paid through NEFT/RTGS/ also.

9.1.2 Omitted.

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

9.1.4 Notwithstanding anything to the contrary contained in this Agreement, in the event Performance Security is not provided by the Supplier within a period of 45(forty five) days from the date of this Agreement the Utility may encash the Bid Security and appropriate the proceeds thereof as Damages, and thereupon all rights, privileges, claims and entitlements of the Supplier under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Supplier, and this Agreement, shall be deemed to have been terminated with the consent of the Supplier.

9.2 Appropriation of Performance Security

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

[16]To be calculated @ Rs. 10,00,000 (Rs. ten lakh) per MW of Contracted Capacity.

9.2.1 Omitted.

9.3 References to Performance Security

References to Performance Security occurring in this Agreement for and in respect of any period prior to the delivery of the Performance Security by one party to the other, or in respect of any period subsequent to the expiry or release thereof, as the case may be, shall be construed solely for the purposes of calculating the amount of Damages payable by the parties.

Provided that in case of Damages payable by the Supplier so determined shall be appropriated from the Bid Security prior to the submission of the Performance Security.

ARTICLE 10
ALLOCATION OF CAPACITY

10.1 Contracted Capacity

Pursuant to the provisions of this Agreement, the Supplier shall dedicate a capacity of *****MW to the Utility as the capacity contracted hereunder for and (the "**Contracted Capacity**")[18] and the Contracted Capacity shall at all times be operated and utilised in accordance with the provisions of this Agreement.

10.2 Dispatch of unutilized Contracted Capacity

10.2.1 In the event the Utility, does not schedule a quantum of power out of its Contracted Capacity before opening of bidding window of power exchange for day ahead collective transactions, the Supplier shall be entitled to sell such un requisitioned power on power exchange under day ahead or real time collective transaction or intra day transaction.
Provided that in such cases, Utility shall not be entitled to recall full or part of its unrequisitioned capacity.

Provided further that if the Supplier is able to sell the unrequisitioned power, sharing of gain from such sale of such power shall be as per applicable rules issued by the Ministry of Power.

10.3 Substitute Supply

In the event the Availability of the Power Station is reduced on account of scheduled maintenance, unscheduled maintenance, delay in commercial operation, shortage of Fuel or Force Majeure, the Supplier may, supply electricity from any alternative source, and such supply shall, for payment of Fixed Charge and Variable Charge, be deemed to be supply under and in accordance with the provisions of this Agreement. Provided further that such supply of electricity from any alternative source shall be limited to 180(one eighty) days at a time and 365(three hundred and sixty five) days for the entire Contract Period. For the avoidance of doubt, the Parties agree that in the event the Utility rejects any supply of electricity offered hereunder from an alternative source, the Supplier shall be deemed to be in compliance with this Agreement for the purpose of determination of Availability and payment of Fixed Charge.

Provided also that the Supplier may supply the Contracted Capacity in a flexible manner by bundling with renewable sources and storage power as per Government of India orders in this regard.

10.4 Omitted.

10.5 Supply on Round the Clock Basis

The Supplier shall ensure the Availability of the Power Station on round the clock basis.

Part IV

Financial Covenants

ARTICLE 11

TARIFF

11.1 Tariff

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

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

11.2 Base Fixed Charge

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

11.3 Fixed Charge

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

11.4 Computation of Fixed Charge

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

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

For avoidance of doubt, for the purpose of claiming the Fixed Charges, billing to be done based on cumulative availability from 1st April till the last day of the billing month.

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

Provided that the Availability to be considered for calculation of Fixed Charges shall be reconciled annually on cumulative basis.

11.4.3 In the event that any shortfall in supply of electricity to the Utility occurs on account of deficiency in intra state transmission system in accordance with the provision of Clause 5.3, Availability shall be deemed to be reduced in accordance with the provisions of Clause 11.5.2 and the Non-Availability arising as a consequence thereof shall, for the purposes of payment of Fixed Charge, be deemed to be Availability to the extent of 50% (fifty per cent) of the Non-Availability hereunder. Provided, however, that the Supplier may, in its sole discretion, Despatch the Power Station to the extent of full or part Non-Availability hereunder for supply to other Utilities or Buyers, as the case may be, and to the extent of full or part Non-Availability hereunder for supply to other Buyers, and to the extent of such Despatch, the Utility shall not be liable to payment of any Fixed Charge due and payable in accordance with the provisions of this Clause 11.4.3. Provided further that sharing of gain from sale of such power shall be in the same manner as provided for sale of un-requisitioned power in applicable rules issued by the Ministry of Power, as amended from time to time. For the avoidance of doubt, the Parties expressly agree that if such deficiency in transmission is caused by an action or omission attributable to the Supplier, it shall not be reckoned for the purposes of computing Availability hereunder.

11.5 Declaration of Availability

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

11.5.2 In the event that any shortfall in supply of electricity to the Utility occurs on account of any deficiency in intra state transmission system in accordance with clause 5.3, the Availability shall be deemed to be reduced to the extent of reduction in transmission of electricity, and the reduction referred to hereinabove shall be deemed as Non-Availability on account of deficiency in transmission. For the avoidance of doubt and by way of illustration, the Parties agree that if such deficiency in transmission is equal to 20% (twenty per cent) of the entitlement of the Utility in the Contracted Capacity, the Availability shall be deemed to be 80% (eighty per cent) and the Non-Availability hereunder shall be notified by the [Supplier *if Supplier is NOT a Trading Licensee, or*

Developer through the Supplier *if Supplier is a Trading Licensee*]to the Utility forthwith.

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

Provided that where the Fuel is being supplied under allocated coal linkage, the Supplier shall have an option to arrange the Fuel from an alternate source. The Utility shall be intimated if the increase in Variable Charge is greater than 30 % (thirty percent).

Provided that if the Utility does not schedule the power, the Supplier shall have the option to offer such power in the power exchange.

Provided further that compliance of any order issued by the central government in respect of blending of imported fuel shall be binding on the parties.

Provided also that in case of shortage of linkage coal and the Supplier arranges coal from alternate sources, the Energy Charge shall be calculated as per methodology specified in Schedule F.

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

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

11.5.6 Notwithstanding the provisions of Clause 11.5.5, any reduction in Availability arising out of outage due to Emergency or a Force Majeure Event shall not be deemed to be Mis-declaration if the Supplier shall have notified the Utility in accordance with the provisions of Clauses17.5.

11.6 Damages

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

Provided that a penalty at the rate of upto 1 % (one per cent) of annual Fixed Charge shall be applicable in case of failure to achieve ramp rate of 1% per minute as per methodology described in Schedule-G.

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

11.7 Variable Charge

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

11.8 Taxes and duties

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

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

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

11.9 Billing and Payment

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

computation of the Fixed Charge and Variable Charge to be paid by the Utility to the Supplier in respect of the immediately preceding month in accordance with the provisions of this Agreement.

Provided that the Monthly Invoice and supporting documents specified in 11.9.2 submitted through email shall also be acceptable to the Utility. However, hard copies of Monthly Invoice and supporting documents specified in 11.9.2 should reach office of the Utility within 5 days of email.

11.9.2 The Supplier shall, with each Monthly Invoice submit, (a) a certificate that the amounts claimed in the invoice are correct and in accordance with the provisions of the Agreement; (b) proof of Availability for the period billed, comprising evidence of communications regarding the extent of Non-Availability from time to time; s3; (d) detailed calculations of the Fixed Charge for Availability in accordance with this Article 11; (e) detailed calculations of the Variable Charge, in respect of the electricity dispatched, computed in accordance with Article 12; (f) detailed calculations of the Damages in accordance with the provisions of Clause 11.6; (g) details in respect of taxes/duties payable/reimbursable in accordance with the provisions of this Agreement; (h) details of the Fixed Charge to be adjusted by the Supplier in respect of sale of power to Buyers; (i) details in respect of Damages payable in accordance with the provisions of this Agreement; (j) adjustments, if any, on account of revision of the transmission charges referred to in Clause 5.3; (k) proportionate adjustment on account of transmission losses to be determined in accordance with Clause 5.4; and (l) the net amount payable under the Monthly Invoice.

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

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

11.10 Disputed Amounts

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

delayed payments. For the avoidance of doubt, the Utility shall be entitled to raise a dispute regarding any Disputed Amounts, whether due or already paid in accordance with this Agreement, at any time.

11.10.2 If any amount is payable by either Party to the other Party upon determination of a dispute regarding any Disputed Amount under the Dispute Resolution Procedure, such amount shall be deemed to be payable on the date when it first became due under this Agreement, and provisions of the applicable rules issued by the Ministry of Powers, as amended from time to time, shall be applicable on such amounts.

11.11 Discount for early payment

The Parties expressly agree that in the event the Utility pays the billed amount within the periods as specified below, it shall be entitled to deduct specified percentage of the amount by way of discount for early payment:

(i) Upto5 days from the date of submission of the invoice – 1.5%

(ii) Upto 10 days from the date of submission of the invoice-1.4%

(iii) Upto 15 days from the date of submission of the invoice-1.3%

(iv) Upto 20 days from the date of submission of the invoice-1.2%

(v) Upto25 daysfrom the date of submission of the invoice – 1.1%

(vi) Upto 30 days from the date of submission of the invoice– 1.0%

Provided that the counting of days shall be exclusive of the day of submission of invoice.

Provided further that in case of computation of days, the number of days shall be counted consecutively without considering any holiday.

ARTICLE 12

12. VARIABLECHARGE

12.1 Variable Charge

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

12.2 Base Variable Charge

The Parties agree that the variable charge, in accordance with the offer of the Supplier for the Base Year, shall be Rs. ....(Rupees ....)[$] per kWh, [comprising Rs....(Rupees...)per kWh as the cost of Fuel/generating cost and trading margin in case supplier is trading licensee and Rs....(Rupees) per kWh as the cost of transportation of which Rs.....(Rupees....) per kWh shall be in respect of domestic transportation, (the "**Base Variable Charge**") which shall be revised in accordance with the provisions of Clause 12.3 to determine the Variable Charge for the relevant period.

12.3 Computation of Variable Charge

Option j: Lumpsum Tariff

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

12.3.2 The Parties agree that the generating cost component of Base Variable Charge specified in Clause 12.2 shall be increased for every Accounting Year following the Base Year so as to reflect 50% (fifty per cent) of the variation in WPI occurring between January 31 immediately preceding the Base Year and January 31 immediately preceding the Accounting Year for which such revision is undertaken. For the avoidance of doubt and by way of illustration, if (a) the Base Variable Charge specified hereinabove is assumed as 80 paise (eighty paise) and (b) WPI between the two aforesaid dates, the latter being 1 (one) year after the first such date, increases by 5% (five per cent), the Variable Charge in the Accounting Year following the first Accounting Year shall be 82 paise (eighty two paise).

ARTICLE 13

PAYMENT SECURITY

13.1 Omitted.

13.2 Letter of Credit

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

13.2.2 All costs and expenses relating to opening and maintenance of the Letter of Credit shall be borne by the Utility.

13.3 Recovery

13.3.1 In the event the Utility fails to pay the Monthly Invoice on or before the relevant Payment Due Date(s) or the amount covered by the Letter of Credit is at any time less than the Monthly Payment or is insufficient for recovery of payment due against the Monthly Invoice and the Letter of Credit, as the case may be, and if the Tariff or part thereof remains unpaid for a period of 1 (one) month from the Payment Due Date, then the recovery shall be made in accordance with the procedure provided in the applicable rules issued by the Ministry of Power, as amended from time to time.

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

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

13.4 Payment security for Termination

The Parties agree and acknowledge that upon Termination and on failure of the Utility to make the Termination Payment within 30 (thirty) days of demand by the Supplier, , shall be appropriated every month and paid to the Supplier until discharge of the Termination Payment and any interest thereon. For the avoidance of doubt, the Utility expressly agrees and undertakes that until its liability for an in respect of the Termination Payment is fully discharged.

13.5 Operationalization of Payment security mechanism

In case of non-maintenance of adequate payment security mechanism provisions of applicable rules issued by the Ministry of Power, as amended from time to time shall apply.

ARTICLE 14

DESPATCH OF CONTRACTED CAPACITY

14.1 Despatch of Contracted Capacity

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

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

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

However, if the Utility does not schedule the full or part of Contracted Capacity, Supplier may sell the same through the power exchange in line with the applicable rules issued by the Ministry of Power, as amended from time to time.

14.2 Settlement of DSM charges

14.2.1 All payments due to or from the Supplier on account of any deviation in terms of the DSM Regulations (the "**Deviation Settlement Mechanism**" or "**DSM**") shall be solely to the account of and borne by the Supplier

14.3 Overriding powers of the Utility

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

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

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

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

14.4 Ramp up of Despatch

In the event the Utility Despatches less than 2% (two per cent) of Contracted Capacity at any time and requires ramping up of generation thereafter, it shall allow a period of 4 (four)hours to the Supplier for reaching Availability equal to the Contracted Capacity. For the avoidance of doubt, the Parties agree that in the event the Supplier fails to reach such Availability within [4 (four)]hours, the shortfall thereof shall be deemed to be Mis-declaration under the provisions of Clause 11.5.5. The Parties further agree that the liability of the Utility hereunder shall at all times be reckoned with reference to the Contracted Capacity.

ARTICLE 15

INSURANCE

15.1 Insurance during Contract Period

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

15.2 Insurance Cover

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

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

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

(c) theSupplier's general liability arising out of theProcurementContract;

(d) liability to thirdparties for goods or property damage;

(e) workmen's compensation insurance; and

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

15.3 Evidence of Insurance Cover

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

15.4 Remedy for failure to insure

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

15.5 Waiver of subrogation

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

15.6 Supplier's waiver

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

15.7 Application of insurance proceeds

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

ARTICLE 16

ACCOUNTS AND AUDIT

16.1 Audited accounts

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

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

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

16.2 Appointment of auditors

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

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

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

16.3 Certification of claims by Statutory Auditors

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

16.4 Set-off

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

16.5 Dispute resolution

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

Part V

Force Majeure and Termination

ARTICLE 17

FORCE MAJEURE

17.1 Force Majeure

As used in this Agreement, the expression "**Force Majeure**" or "**Force Majeure Event**" shall, mean occurrence in India of any or all of the events defined in Clauses 17.2 and17.3, if it affects the performance by the Utility(s) or the [Supplier *if Supplier is NOT a Trading Licensee, or* and/or the Developer *if Supplier is a Trading Licensee*] claiming the benefit of Force Majeure (the "**Affected Party**") of its obligations under this Agreement and which act or event (a) is beyond the reasonable control of the Affected Party, and (b) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice, and (c) has Material Adverse Effect on the Affected Party.

17.2 Force Majeure Events

Force Majeure Events shall mean one or more of the following acts or events:

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

(b) strikes or boycotts (other than those involving the Supplier, [Developer, *if Supplier is a Trading Licensee*] Contractors or their respective employees/representatives, or attributable to any act or omission of any of them) interrupting supplies and services to the Power Station for a continuous period of 24 (twenty four) hours and an aggregate period exceeding 7 (seven) days in an Accounting Year;

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

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

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

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

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

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

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

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

17.3 Other Events

One or more of the following acts or events by or on account of any Government Instrumentality:

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

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

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

(d) any failure or delay of a Contractor but only to the extent caused by another Event mentioned in 17.3 and which does not result in any offsetting compensation being payable to the [Supplier *if Supplier is NOT a Trading Licensee, or* Supplier and/or Developer *if Supplier is a Trading L©nsee*] by or on behalf of such Contractor; or

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

17.4 Duty to report Force Majeure Event

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

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

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

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

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

17.4.2 The Affected Party shall not be entitled to any relief for or in respect of a Force Majeure Event unless it shall have notified the other Party of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event no later than 7 (seven) days after the Affected Party knew, or ought reasonably to have known, of its occurrence, and shall have given particulars of the probable material effect that the Force Majeure Event is likely to have on the performance of its obligations under this Agreement.

17.4.3 For so long as the Affected Party continues to claim to be materially affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) reports containing information as required by Clause 17.4.1, and such other information as the other Party may reasonably request the Affected Party to provide.

17.5 Effect of Force Majeure Event on the Procurement Contract

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

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

17.6 Allocation of costs arising out of Force Majeure

Upon occurrence of a Force Majeure Event after the Appointed Date, the Parties shall bear their respective Force Majeure Costs and neither Party shall be required to pay to the other Party any costs thereof.

17.7 Termination Notice for Force Majeure Event

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

17.8 Excuse from performance of obligations

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

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

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

(c) when the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party notice to that effect and shall promptly resume performance of its obligations hereunder.

ARTICLE 18

COMPENSATION FOR BREACH OF AGREEMENT

18.1 Compensation for default by the Supplier

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

18.2 Compensation for default by the Utility

In the event of the Utility being in material breach or default of this Agreement at any time after the Appointed Date, then the recovery by the Supplier shall be made in accordance with the procedure provided in the applicable rules issued by the Ministry of Power, as amended from time to time.

18.3 Extension of Contract Period

In the event that a material breach or default of this Agreement causes delay in achieving the Appointed Date or leads to reduction in Availability, as the case may be, the Utility shall, in addition to payment of compensation under Clause 18.2, extend the Contract Period, such extension being equal in duration to the period by which the Appointed Date was delayed or Availability was reduced on account thereof, as the case may be; and in the event of reduction in Availability below80% (eighty per cent) of the Normative Availability, the Utility shall, in addition to payment of compensation hereunder, extend the Contract Period in proportion to the loss of Availability. For the avoidance of doubt, loss of 25% (twenty five per cent) of Availability for 4(four) days shall entitle the Supplier to extension of 1 (one)day in the Contract Period.

ARTICLE 19

TERMINATION

19.1 Termination for Supplier Default

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

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

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

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

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

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

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

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

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

(i) a Change in Ownership has occurred in breach of the provisions ofClause5.2;

(j) the [Supplier *if Supplier is NOT a Trading Licensee, or* Developer *if Supplier is a Trading Licensee*] fails to achieve a monthly Availability of 70% (seventy per cent) for a period of 4 (four) consecutive months or for a cumulative period of 4

(four) months within any continuous period of 12 (twelve) months, save and except to the extent ofNon-Availability caused by(i) a Force Majeure Event, (ii) an act or omission of the Utility, not occurring due to any default of the [Supplier *if Supplier is NOT a Trading Licensee, or* Developer *if Supplier is a Trading Licensee*]or (iii) shortage of Fuel occurring for reasons not attributable to the [Supplier *if Supplier is NOT a Trading Licensee, or* Developer *if Supplier is a Trading Licensee*];

Provided that duration of outage due to approved planned outage shall not be considered as Non Availability for the purpose of this clause.

(k) there is a transfer, pursuant to law either of (i) the rights and/or obligations of the [Supplier *if Supplier is NOT a Trading Licensee, or* Developer *if Supplier is a Trading Licensee*]under any of the Project Agreements, or of (ii) all or part of the assets or undertaking of the [Supplier *if Supplier is NOT a Trading Licensee, or* Supplier and/or the Developer *if Supplier is a Trading Licensee*], without prior intimation to the Utility, and such transfer causes a Material Adverse Effect;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19.2 Termination for Utility Default

19.2.1 In the event that any of the defaults specified below shall have occurred, and the Utility fails to cure such default within a Cure Period of 90 (ninety) days or such

longer period as has been expressly provided in this Agreement, the Utility shall be deemed to be in default of this Agreement (the "**Utility Default**") unless the default has occurred as a result of any breach of this Agreement by the Supplier or due to Force Majeure. The defaults referred to herein shall include the following:

(a) Omitted.

(b) Omitted.

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

(d) the Utility has failed to make any payment to the Supplier, and the Supplier is unable to recover any unpaid amounts in accordance with the provisions of the applicable rules issued by the Ministry of Power; or

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

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

19.3 Termination Payment

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

19.3.2 Apart from the other payments to be made by the Utility on Utility Default, upon Termination on account of a Utility Default, the Utility shall pay to the Supplier, by way of Termination Payment, an amount equal to the Fixed Charge that would have been due and payable for Normative Availability for a period of 6(six) months as if the Contracted Capacity was Available for such 6(six) months from the date of Termination.

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

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

19.4 Instructions to RLDC and SLDC

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

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

19.5 Survival of rights

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

Part VI

Other Provisions

ARTICLE 20

ASSIGNMENT AND CHARGES

20.1 Restrictions on assignment and charges

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

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

20.2 Permitted assignment and charges

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

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

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

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

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

20.3 Assignment by the Utility

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

20.4 Approvals for assignment

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

ARTICLE 21

CHANGE IN LAW

Considering the Lumpsum Tariff option and Medium Term Bid is not Source or Fuel Specific hence Not withstanding to anything contained in APP, Utility shall not accept any change in law claim.

ARTICLE 22

LIABILITY AND INDEMNITY

22.1 General indemnity

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

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

22.2 Indemnity by the Supplier

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

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

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

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

22.2.2 Without limiting the generality of the provisions of this Article 22, the Supplier shall fully indemnify, hold harmless and defend the Utility Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which the Utility Indemnified Persons may hereafter suffer, or pay by reason

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

22.3 Notice and contest of claims

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

22.4 Defence of claims

22.4.1 The Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and reasonable costs and expenses thereof shall be indemnified by the Indemnifying Party. If the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party in respect of loss to the full extent provided by this Article 22, the Indemnifying Party shall be entitled, at its option, to assume and control the defence of such claim, action, suit or proceeding, liabilities, payments and obligations at its expense and through the counsel of its choice; provided it gives prompt notice of its intention to do so to the Indemnified Party and reimburses the Indemnified Party for the reasonable cost and expenses incurred by the Indemnified Party prior to the assumption by the Indemnifying Party of such defence. The Indemnifying Party shall not be entitled to settle or compromise any claim, demand, action, suit or proceeding without the prior written consent of the Indemnified Party, unless the Indemnifying Party provides such

security to the Indemnified Party as shall be reasonably required by the Indemnified Party to secure the loss to be indemnified hereunder to the extent so compromised or settled.

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

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

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

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

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

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

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

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

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

22.5 No consequential claims

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

ARTICLE 23

DISPUTE RESOLUTION

23.1 Dispute resolution

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

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

23.1.3 If in spite of their best efforts, the parties fail to resolve the dispute, the same shall be referred for resolution under the Conciliation Committee of Independent Experts (CCIE) constituted by the Appropriate Government.

23.2 Adjudication by the Commission

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

23.3 Adjudication by a tribunal

In the event of constitution of a statutory tribunal with powers to adjudicate upon disputes between the Supplier and the Utility, all Disputes arising after such constitution shall, be adjudicated upon by such tribunal in accordance with Applicable Laws and all references to Dispute Resolution Procedure shall be construed accordingly.

ARTICLE 24

DISCLOSURE

24.1 Disclosure of Specified Documents

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

24.2 Disclosure of Documents relating to safety

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

24.3 Withholding disclosure of Protected Documents

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

Explanation:

The expression Protected Documents shall mean such of the Specified Documents or documents referred to in Clauses24.1 and 24.2, or portions thereof, the disclosure of which the Utility is entitled to withhold under the provisions of the Right to Information Act, 2005.

ARTICLE 25

MISCELLANEOUS

25.1 Governing law and jurisdiction

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

25.2 Waiver of immunity

Each Party unconditionally and irrevocably:

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

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

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

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

25.3 Interest

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

25.4 Delayed payments

The Parties hereto agree that payments due from one Party to the other Party under the provisions of this Agreement shall be made within the period set forth therein, and in the event of delay beyond such period the recovery thereof shall be in accordance with the applicable rules issued by the Ministry of Power, as amended from time to time.

25.5 Waiver

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

(a) shall not operate or be construed as a waiver of any other or subsequent

default hereof or of other provisions of or obligations under this Agreement;

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

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

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

25.6 Exclusion of implied warranties etc.

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

25.7 Survival

25.7.1 Termination shall:

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

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

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

25.8 Entire Agreement

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

25.9 Severability

If for any reason whatsoever, any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the

Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to the Dispute Resolution Procedure set forth under this Agreement or otherwise.

25.10 No partnership

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

25.11 Third parties

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

25.12 Successors and assigns

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

25.13 Notices

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

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

{Attention:
Designation:
Address:

Fax No:
Email:}

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

{Name:
Designation: Chief Engineer, Power Purchase
Address: 5th Floor, Prakashgad, MSEDCL,
Anant Kanekar Marg, Bandra
East, Mumbai 400051.
Fax No:
Email: ceppmsedcl@gmail.com }; and

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

25.14 Language

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

25.15 Counterparts

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

ARTICLE 26

DEFINITIONS

26.1 Definitions

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

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

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

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

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

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

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

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

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

"**Availability**" shall have the meaning as set forth in Clause 5.1.2 and the term "**Available**" shall be construed accordingly;

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

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

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

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

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

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

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

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

"**Capacity Certificate**" means the certificate issued by the duly authorised representative of the Supplier certifying the installed capacity, plant configuration, station Heat Rate and other principal parameters of the Power Station;

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

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

(a) the enactment, bringing into effect, adoption, promulgation, amendment, modification or repeal of any Applicable Law;

(b) the commencement of any Applicable Law which has not entered into effect until the Bid Date;

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

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

(e) change in any Applicable Permits, available or obtained for the Project, otherwise than for default of the Supplier;

"**Change in Ownership**" means a transfer of the direct and/or indirect legal or beneficial ownership of any shares, or securities convertible into shares, that causes the aggregate holding of the promoters, together with their Associates in the total Equity to decline, at any time prior to the 1st (first) anniversary of the Appointed Date, below 51% (fifty one per cent) thereof, or such lower proportion as may be permitted by the Utility upon substitution of the promoters of the Supplier by an entity having sufficient financial and technical capacity to discharge the obligations of the Supplier under this Agreement;

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

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

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

"**Contract Period**" means the period starting on and from date of commencement of supply as per clause 4.6 of this agreement and ending on the earlier of the 5th anniversary of the date of commencement of supply and the date of termination of the Agreement;

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

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

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

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

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

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

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

"**Delivery Point**"

1. For the Power Station Situated outside Maharashtra State: 'Delivery Point' means any point in the Inter-State Transmission System where the Power Station of the Supplier is delivering power either through ISTS connectivity, or through a dedicated transmission line or through the Intra state transmission system of the state in which it is located
2. For the Power Station Situated in the Maharashtra State: 'Delivery Point' shall mean any point in the Intra-State grid i.e Maharashtra STU/ InSTS where the electricity is delivered by the Supplier;

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

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

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

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

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

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

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

"**DSM Regulations**" means the CERC Deviation Settlement Mechanism and Related Matters Regulations, 2022 or MERC Deviation Settlement Mechanism and Related Matters Regulations, 2019 and ammendments from time to time as applicable;

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

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

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

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

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

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

"**Good Industry Practice**" means the practices, methods, techniques, designs, standards, skills, diligence, efficiency, reliability and prudence which are generally and reasonably expected from a reasonably skilled and experienced operator engaged in the same type of undertaking as envisaged under this Agreement and which would be expected to result in the performance of its obligations by the Supplier in accordance with this Agreement, Applicable Laws and Applicable Permits in reliable, safe, economical and efficient manner, and includes prudent utility practices generally accepted by electricity generating stations for ensuring safe, economic and efficient construction, operation and maintenance of the Power Station and for providing safe, economic, reliable and efficient supply of electricity;

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

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

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

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

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

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

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

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

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

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

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

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

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

"**Non-Availability**" means any partial or total lack of Availability for any other reason;

"**Normative Availability**" shall have the meaning as set forth in Clause 5.1.2;

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

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

"**Performance Security**" shall mean the performance security to be provided by the Supplier in terms of Clause 9.1.1;

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

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

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

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

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

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

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

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

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

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

(f) insurance proceeds; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SIGNED, SEALED AND DELIVERED For and on behalf of THE UTILITY by:	THE COMMON SEAL OF SUPPLIER has been affixed pursuant to the resolution passed by the Board of Directors of the Supplierat its meeting held on the day of 20... hereunto affixed in the presence of .....Director, who has signed these presents in token thereof and.....Company Secretary / Authorised Officer who has countersigned the same in token thereof[£]:
(Signature) (Name) (Designation) (Address) (Fax No.) (e-mail address)	(Signature) (Name) (Designation) (Address) (Fax No.) (e-mail address)
In the presence of:	
1.	2.

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

Schedules

SCHEDULE – A

(See Clause 2.1)

SITE OF THE POWER STATION[38]

1 The Site

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

2 Power Station

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

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

Annex –I[39]
(Schedule-A)

Annex-I: Description of Coal-based Power Station$

1 The site

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

{Provide a brief description here.}

2 Capacity of the Power Station

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

2.2 The configuration of Units is given below:

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

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

3 Dedicated communication

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

3 Specifications and Standards

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

4 Station Heat Rate

The Station Heat Rate of the Power station is[][40]kCal per kWh at 100% (hundred per cent) maximum continuous rating (MCR) or such lower Station Heat Rate as may be specified in the Capacity Certificate.

5 Ramp Rates

All Units of the Power Station shall be capable of increasing or decreasing their output (generation level) as per the applicable technical standards/regulation notified by CEA.

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

7 Description of the Power Station

[39]Three formats have been provided for this Annex-I. Depending on project-specific requirements, the appropriate format of Annex-I may be retained and the remaining two formats may be omitted. In case of non-conventional sources of energy, a suitable format may be evolved.
[$]Particulars in respect of the blanks in this Annex-I shall be provided by the selected bidder after issue of Letter of Award and the same shall be included in the Agreement to be executed between Parties.
[40]This figure to be provided by Supplier.

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

The Power Station is briefly described below:

A. **Boiler**

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

B. **Steam Turbine**

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

C. **Condenser**

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

D. **Generator**

(i)	Number		---
(ii)	Capacity		---MVA
(iii)	Power factor		---
(iv)	Cooling		
	(a)	Rotor	---
	(b)	Stator	---

Annex - I

(Schedule-A)

Description of Gas-based Power Station[$]

1 The site

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

{Provide a brief description here.}

2 Capacity of the Power Station

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

2.2 The configuration of Units is given below:

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

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

3 Dedicated communication

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

4 Station Heat Rate

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

5 Ramp Rates

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

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

7 Description of the Power Station

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

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

A. **Engine**

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

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

B. **Generator**

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

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

One exhaust gas boiler shall be considered per Engine set.

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

Boiler

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

Steam Turbine

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

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

SCHEDULE –B

(See Clause 9.1)

PERFORMANCE SECURITY BY THE SUPPLIER

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

WHEREAS:

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

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

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

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

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

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

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

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

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

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

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

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

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

10. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred Branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith,

and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the Utility that the envelope was so posted shall be conclusive.

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

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

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

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

NOTES:

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

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

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

SCHEDULE –E

(See Clause 13.2.1)

LETTER OF CREDIT

DATE:....

TO: Limited (the "**Supplier**")

FROM: (Specify the name and address of the bank issuing the Letter of Credit)[$]**(**the "**Bank**"**)**

The Bank hereby issues this unconditional, irrevocable and revolving monthly letter of credit (the "**Letter of Credit**") No.... in favour of the Supplier named above, subject to the following terms and conditions:

1. On the instructions of the Utility, we hereby establish this Letter of Credit in favour of the Supplier in the maximum aggregate amount of Rs. ....Rupees)[$$](the "**Monthly Payment**"), payable not more than once in a month upon notice received from the Supplier to this effect.

2. The Letter of Credit shall come into force with effect from...., 20 and shall be valid and effective upto the 31st (thirty first) day of March, 20 (indicate the year) falling after the year in which the Letter of Credit is issued (the "**Expiry Date**"), and shall be automatically and compulsorily renewed every year by the Bank, 2 (two) months prior to the date of expiry, for the period of the financial year that commences immediately after the Expiry Date, and shall continue to be so renewed until the end of the Contract Period. The date of expiry for the renewed period hereunder shall be deemed to be the Expiry Date for the purposes hereof.

3. This Letter of Credit provides security to the Supplier for the payment obligations of the Utility under an Agreement for Procurement of Power dated....entered into between the Utility and the Supplier (the "**Agreement for Procurement of Power**") for supply of .....MW of electricity from the Power Station owned and operated by the Supplier in the State of ....

4. Any reference to the Agreement for Procurement of Power or other agreement is for information only and does not in any way incorporate the terms and conditions of such Agreement for Procurement of Power or agreement into the terms and conditions of this Letter of Credit.

5. The Supplier may draw upon this Letter of Credit by presenting a written demand for payment (by way of mail, courier or by hand) to the Bank along with the following documents:

[$$] The Letter of Credit shall be modified and renewed once every year to reflect the revision in Monthly Payment in accordance with the provisions of the Agreement

(i) a copy of the Monthly Invoice (as defined in the Agreement for Procurement of Power) issued by the Supplier to the Utility, any amounts whereof have remained unpaid; and

(ii) a certificate from the Supplier, under the hand of an Officer not below the rank of a Director of the Supplier, to the effect that the Monthly Invoice (as defined in the Agreement for Procurement of Power) is in accordance with the Agreement for Procurement of Power and that the amount due has remained unpaid and has not been disputed by the Utility.

6. The Bank shall honour such demand for payment, subject to it being compliant with the terms hereof, without inquiring whether the Supplier has a right as between itself and the Utility to make such demand. Payment hereunder shall be made within 2 (two) business days after receipt of the demand for payment.

7. If a demand for payment or the aforesaid accompanying documents do not conform to the provisions of this Letter of Credit, we shall give immediate notice to the Supplier that the demand for payment or the aforesaid documents, as the case may be, were not effected in accordance with the Letter of Credit, stating the reasons thereof and also specifying what the Supplier is required to do for making effective its demand for payment in accordance with the Letter of Credit.

8. The Expiry Date of this Letter of Credit shall be deemed to be automatically extended, 2 (two) months prior to its Expiry Date, without any act or deed, for an additional period of 1 (one) financial year from the respective Expiry Date, unless at least 180 (one hundred and eighty) days prior to any Expiry Date, the Bank gives notice in writing to the Supplier and the Utility that the Bank elects not to renew this Letter of Credit for any such additional period, in which case immediately after the Expiry Date of this Letter of Credit, the Bank shall cease to be the Default Escrow Bank under and in accordance with the provisions of the Default Escrow Agreement dated , entered into between the Bank, the Utility and the Supplier.

9. Partial drawal shall be permitted hereunder, provided that the maximum drawdown in any month shall not exceed the Monthly Payment.

10. The Utility shall cause the Letter of Credit to be replenished to the equivalent of Monthly Payment within 7 (seven) days of a drawdown.

11. All payments made under this Letter of Credit will be free and clear of, and without deduction for, any present or future fees, taxes, restrictions or conditions of any nature, and without setoff or counterclaim for any reason, except as required by law.

12. All costs and expenses in connection with this Letter of Credit are to be on account of the Utility.

13. Save and except as otherwise expressly stated, this Letter of Credit is subject to the International Standby Practice, ISP 98, International Chamber of Commerce Publication No. 590.

14. This Letter of Credit is governed by the Laws of India.

15. All notices, demand for payments and communications in regard to this Letter of Credit are to be given in writing at the addresses below:

To: ….. (Name of Utility representative)
….. (Designation)
….. (Address, telephone and fax numbers)

To: ….. (Name of the Bank representative)
….. (Designation)
….. (Address, telephone and fax numbers)

To: ….. (Name of the Supplier representative)
….. (Designation)
….. (Address, telephone and fax numbers)

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

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

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

NOTES:

(i) The Letter of Credit should contain the name, designation and code number of the officer(s) signing the Letter of Credit.
(ii) The address, telephone number and other details of the Head Office of the Bank as well as of issuing Branch should be mentioned on the covering letter of issuing Branch.

Schedule F

F. METHODOLOGY FOR CALCULATION OF ECR FOR BLENDING WITH ALTERNATE SOURCES

Methodology for calculation of compensation due to blending of Imported coal or coal arranged by Supplier from alternate sources due to shortfall in linkage coal The SHR and Auxiliary Consumption for calculations shall be as considered by CERC for similar projects whose tariff is being determined under section 62 of the Act for relevant unit capacity and configuration.

Methodology for calculating compensation

Step-1:ECR linkage $Coal_{(Deliverypoint)}$= ECR Quoted

Step -2:ECRimported Coal/arranged from other sources $_{(Deliverypoint)}$= {[GSHR/GCV of imported /other Coal]x[Price of Imported/other Coal]x[1/(1-AuxConsumption)]x[1/(1-Applicable Transmission losses]}

Step-3:$ECRChargeable_{(Deliverypoint)}$={(GXECRatStep-1)+[ECRcomputedatStep-2x(1-G)]}

Step-4:Compensation={(ECRascomputedatStep-3*minus*ECR at Step-1)x Scheduled Generation at Delivery Point}.

Where,

G= %Generation achieved based on Actual linkage Coal received;

GSHR = Normative Gross Station Heat Rate for similar generating units as per applicable CERC Regulations under Section 62 of the Act;

Aux Consumption=Normative auxiliary consumption for similar generating units as per applicable CERC Regulations under Section 62 of the Act;

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Note:

a) If the actual generation at delivery point is less than scheduled generation at delivery point, it will be restricted to actual generation at delivery point in step 4above.

b) All facts, figures and computations in this regard should be duly certified by the auditor.

c) The coal consumed from all the sources on month to month shall be duly certified by the auditor and the same shall be reconciled annually with the Opening Stock, coal received during the year, coal consumed during the year and the closing stock.

d) Total Generation Ex-bus and Scheduled Generation Ex-bus on month to month basis as per the meters at the station switchyard bus shall be reconciled with there levant/SCADA data of SLDC/RLDC and/or Regional Energy Accounting of RPC/RLDC for the month.

2. There are some plants which are supplying electricity under Section 62 as well as 63 of the Act. In such cases the percentage of blending will be assumed to be same for PPAs under Section 62 and 63 of the Act.

3. The recovery of fixed charge shall continue to remain on the same basis as provided in the PPA.

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SCHEDULE –G

G. METHODOLOGY FOR CALCULATION OF RAMP RATE PENALTY

Penalty calculation methodology for Ramp rates < 1%/minute

Td - The number of blocks in which both declared ramp up rate and declared ramp down rate are 1%/minute or greater (i.e. 15% of ex-bus generation corresponding to MCR per time block) shall be counted as "Td"

Tm - The total number of time blocks in the period of computation shall be counted as "Tm". The blocks in which no units are on-bar (i.e zero DC on-bar) and the blocks in which the schedule is less than technical minimum (i.e. start-up or shutdown) shall not form part of "Td" and "Tm".

D - Number of time blocks during the computation period when the scheduled ramp rate is greater than or equal to 1%/min in the net injection schedule.

F - Number of blocks in which the station has achieved ramp rate greater than or equal to 1%/min, out of the blocks in which the scheduled ramp rate is greater than or equal to 1%/min in the net injection schedule. F is a subset of D.

R= minimum of (Td/Tm, F/D)

For R>= 0.9, P=0

For 0.75<R<0.9, P = 6.003- 6.67R

& for R<= 0.75, P=1

Where P is the fraction to be multiplied to annual fixed charges to get penalty for ramp rate as specified in 11.6.1

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Appendices

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APPENDIX-I

I LIST OF BID-SPECIFIC CLAUSES£

A. Provisions with currency-based footnotes

Footnotes with "£" sign

1. Agreement for Procurement of Power: Signature Page
2. Schedule-C: Default Escrow Agreement: Signature page.
3. Schedule-D: Deed of Hypothecation: signature Page.
4. Appendix-I: List of Bid-Specific Clauses.

Note: The above footnotes marked "£"shall be removed prior to execution of the Agreement for Procurement of Power.

Footnotes with "$" or "$$"signs

1. Clause 5.4: Obligation relating to Transmission.
2. Clause 11.2: Base Fixed Charge
3. Clause 12.2: Base Variable Charge.
4. Schedule-A (Annex-I): Site of the Power Station.
5. Schedule –E: Letter of Credit: Form; and Paragraph 1.

Note: Non-numerical footnotes marked "$" or "$$" shall not be deleted. They shall remain in the Agreement for Procurement of Power to be executed between the Parties.

B. Provisions where curly brackets are used

1. Clause 7.1 (m): Representations and warranties of the Supplier
2. Clause 25.13 (a) and (b): Notices
3. Schedule-A (Annex-I): Site of the Power Station: Paragraph 1.

C. Provisions with blank spaces

1. Recitals: First line, Recitals 2 and D.
2. Clause 5.3: Obligations relating to transmission charges.
3. Clause 11.2: Base Fixed Charge.
4. Clause 12.3: Base Variable Charge.
5. Clause 12.3: Variable Charge.
6. Agreement for Procurement of Power: Signature page.

D. Schedules with blank spaces

All blank spaces in Schedules shall be retained in the Agreement for Procurement of Powerto be executed between the Parties. These shall be filled up as and when the format of the respective Schedule is used.

Note: The Table of Contents may also be suitably modified to reflect omission(s) and/or re-numbering of Bid-specific provisions.

£ This Appendix-I contains a list of provisions that would need to be suitably modified for reflecting bid-specific provisions after the Supplier has been selected. This Appendix-I may be included in the draft Agreement for Procurement of Powerforming part of the bid documents. It may however, be deleted when the Agreement for Procurement of Poweris to be executed.