

“DRAFT”

**“STANDARD BID DOCUMENTS”
(SINGLE STAGE)
FOR**

TARIFF BASED COMPETITIVE BIDDING

FOR

TRANSMISSION SERVICE

FOR

SELECTION OF

TRANSMISSION SERVICE PROVIDER

"DRAFT"

BIDDING DOCUMENTS

INVOLVING

SINGLE STAGE

(i.e. REQUEST FOR SELECTION)

STANDARD REQUEST FOR SELECTION DOCUMENTS

**FOR
SELECTION
OF**

**TRANSMISSION SERVICE PROVIDER
TO
ESTABLISH TRANSMISSION SYSTEM ELEMENTS
ASSOCIATED WITH**

.....[NAME OF PROJECT]

Specification No. :

.....(Name of Bid Process Co-ordinator)

Office Address:

Document code No.:

.....200...

CONTENTS OF REQUEST FOR SELECTION DOCUMENTS

- (a) Disclaimer**
- (b) Selection Document -Volume-I**
- (c) Implementation Agreement(IA) - Volume-II**
- (d) Transmission Service Agreement - Volume-III**

DISCLAIMER

1. These Request for Selection (RfS) Documents are not agreements or offer by Bid Process Co-ordinator (BPC) to the prospective Bidders or any other party. The purpose of these RfS Documents is to provide interested parties with information to assist the formulation of their proposal. The information is based on material and information available in public domain.

2. These RfS Documents include statements, which reflect various assumptions, these assumptions have been arrived at by BPC in order to give a reflection of current status in the RfS. These assumptions should not be entirely relied upon by Bidder in making their own assessments. These RfS Documents do not purport to contain all the information each Bidder may require. These RfS Documents may not be appropriate for all persons, and it is not possible for BPC to consider the investment objectives, financial situation and particular needs of each party who reads or uses these RfS Documents. Certain Bidders may have a better knowledge of the Project than the others. Each Bidder should conduct its own investigations and analysis and should check the accuracy, reliability and completeness of the information in these RfS Documents and obtain independent advice from appropriate sources.

3. Neither BPC nor their employees or consultants make any representation or warranty as to the accuracy, reliability or completeness of the information in these RfS Documents.

4. Neither BPC, their employees nor their consultants will have any liability to any Bidder or any other person under the law of contract, tort, the principles of restitution or unjust enrichment or otherwise for any loss, expense or damage which may arise from or be incurred or suffered in connection with anything contained in these RfS Documents, any matter deemed to form part of these RfS Documents, the award of the Project, the information and any other information supplied by or on behalf of BPC or their employees, any consultants or otherwise arising in any way from the selection process for the said Transmission Project.

5. Intimation of any discrepancy in the RfS documents shall be given at the address mentioned below immediately. If no intimation is received by the below mentioned office within 7 days from the date of issue of these RfS Documents, then this office shall consider that these RfS Documents received by the Bidder are complete in all aspects and that the Bidder is satisfied that these RfS Documents are complete.

Office Address:

.....
.....
.....

Fax:

6. The RfS Documents and the information contained therein is for the use only by the person to whom it is issued. It may not be copied or distributed by the recipient to third parties (other than in confidence to the recipient’s professional advisors). In the event that the recipient does not continue with its involvement in the Project in accordance with these RfS Documents, these RfS Documents must be kept confidential.

7. BPC may in its absolute discretion, but without being under any obligation to do so, update, amend or supplement these RfS Documents. Such updations, amendments or supplements, if any, will however be circulated to all the shortlisted bidders not later than 7 (seven) days prior to the last date for submission of bids.

8. BPC reserves the right to reject any or all of the Proposals without assigning any reason whatsoever. BPC further reserves the right, at its complete discretion, and without assigning any reasons to discontinue the proposal to execute the Projects through Tariff Based bidding.

SELECTION DOCUMENT (Volume - I)

For Selection of

Transmission Service Provider

to

Establish Transmission System Associated

With

.....[Name of Project]

.....[Name of Bid Process Co-ordinator]

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STANDARD REQUEST FOR SELECTION DOCUMENT

**INVITATION FOR SELECTION AS
TRANSMISSION SERVICE PROVIDER**

TO

**ESTABLISH TRANSMISSION SYSTEM ELEMENTS ASSOCIATED
WITH**

.....[NAME OF PROJECT]

(INTERNATIONAL COMPETITIVE BIDDING)

Date:, 200....

Specification No.:

1.1 INTRODUCTION

.....[Name of Bid Process Co-ordinator (BPC)] hereby invites applications from all interested Parties for issue of Request for Selection (RfS) document to Bid in the process of selection of prospective Transmission Service Provider (TSP). The main object of the TSP would be to establish the following Transmission System elements in totality [viz. transmission lines (from gantry to gantry) and/or sub-stations and/or switching stations and/or HVDC links including terminal stations and HVDC transmission line] under the Project (hereinafter referred to as 'Project') on build, own, maintain & operate basis:

S.No.	Transmission System elements under[Name of Project]
I.	Transmission Lines :
II.	Sub-stations :
III.	Switching-stations:
IV.	HVDC links including terminal stations:
V.	HVDC transmission line:

Central Electricity Regulatory Commission shall grant a Transmission License on an application made by TSP for a period of 25 years on such

conditions as specified by them in CERC("Procedure, Terms & Conditions for Grant of Transmission License and other related matters") Regulations, as applicable from time to time. Bidders to ensure that they comply to all the requirements given in the said Regulations, in order to be eligible to obtain a Transmission License. It is intended that the Project be implemented so that commercial operation is achieved during[schedule of commissioning of Project].

1.2 BRIEF SCOPE OF WORK

The above Project is proposed to be established by the TSP in totality on build, own, maintain & operate basis under an Implementation Agreement (IA) to be signed between the Beneficiary(s) and TSP. After commissioning, the operation & maintenance of the Project shall be the responsibility of the TSP, under a Transmission Service Agreement (TSA), to be signed between the TSP and Beneficiary(s). The Transmission Charges quoted by Bidder shall be paid to the TSP by Beneficiary(s), as per the TSA. The initial Project approval to facilitate commencement of implementation of the Project shall be obtained by BPC. The activities related to survey, detailed project report formulation, arranging finance, project management, obtaining transmission license, necessary statutory clearances and approvals (Viz. Way Leave, Environment & Forest, PTCC, Civil Aviation, Railway/Road/River/Canal/Power crossing), site identification, land compensation, design, engineering, equipment, material, construction, erection, testing & commissioning including operation & maintenance for the Project shall be the responsibility of TSP. However, to expedite timely completion of the Project, BPC may initiate actions for Environment and Forest clearance and other preliminary activities. The TSP shall obtain the transmission license from Central Electricity Regulatory Commission (CERC) as per the provisions of the Electricity Act, 2003 for construction, operation and maintenance of the said Project.

1.3 QUALIFICATION REQUIREMENTS

1.3.1 Qualification of Bidder will be based on meeting the minimum Pass/Fail criteria specified below, as demonstrated by the Bidders' responses in the corresponding schedules of qualification statement:

1.3.1.1 The Bidder shall be a Firm who has established / developed Project in power sector or other infrastructure sectors. The project(s) should have been commissioned by the time of submission of the bids.

1.3.1.1.1 Cumulative capital cost of such Project(s) completed by the Bidder should be at least Rs. Million (50% of estimated Project cost) or equivalent during last 10 (ten) years. Cost of Project(s) considered shall be in proportion to the equity owned by the Company in the Project(s) developed.

OR

1.3.1.2 The Bidder shall be a firm who is a Transmission Line Contractor and/or a Sub-station Contractor and has constructed/executed transmission system project(s) of 220 kV or above, including arranging supply of materials & erection thereof. The project(s) should have been commissioned by the time of submission of the bids.

1.3.1.2.1 Cumulative capital cost of such Project(s) completed by the Bidder should be at least Rs. Million (50% of estimated Project cost) or equivalent during last 10 (ten) years. Cost of Project(s) considered shall be as per the works awarded to the Bidder.

1.3.1.3 The Bidder shall have:

(a) minimum positive net worth of at least Rs.....million (25% of estimated Project cost) or equivalent averaged over last five (5) financial years as per the audited accounts of the Bidder.

(b) turn-over of at least Rs..... (50% of estimated Project cost) or equivalent averaged over the last five (5) financial years as per the audited accounts of the Bidder.

OR

1.3.1.4 The Bidder shall be a Consortium of Firm(s) (meeting the requirements at 1.3.1.1 and/or 1.3.1.2 above) and/or Financial Organization. Maximum three members in a Consortium would be allowed, who shall have equity participation in the Consortium. In such case, the Lead Member, meeting the requirements at 1.3.1.1 or 1.3.1.2 above, shall contribute at least 51% of the Project equity.

In case of bid by a Consortium, all members of the Consortium shall collectively meet the requirement of para 1.3.1.1.1 and/or 1.3.1.2.1 (as the case may be) & 1.3.1.3 above. The cumulative capital cost of Project completed, minimum positive net worth and turnover of each member of the Consortium shall be added together to determine Consortium's compliance with the minimum qualifying criteria set out in para 1.3.1.1.1 and/or 1.3.1.2.1 (as the case may be) & 1.3.1.3 above.

1.3.2 In case the Bidder wishes that the experience of either its Parent company(s) or one of its Affiliate companies be considered for technical and/or financial evaluation, the Parent Company should own at least 51% equity in such Bidder's Company as well as in such Affiliate Companies for a period of at least five (5) years from the date of issue of Transmission License by CERC. Further, the Parent Company or such Affiliate Company whose experience is proposed to be considered will also be required to furnish back up guarantees to fulfill the commitments and obligations in case of any default by such Bidder.

1.3.3 The above stated requirements are a minimum and BPC reserves the right to request for any additional information and also reserves the right to reject the proposal of any Bidder, if in the opinion of BPC, the Qualifying Data is incomplete or the Bidder is found not qualified to satisfactorily perform the works.

1.3.4 Notwithstanding anything stated above, BPC reserves the right to review the Bidder's capability and capacity to perform its obligations as TSP for the Project. Further, BPC reserves the right to waive minor deviations, if they do not materially affect the capability of the Bidder.

1.4 ISSUE OF RfS DOCUMENT

The detailed terms and conditions for selection of the Bidder, data sheet formats for their Proposals, Agreements etc. are indicated in the RfS Documents. All those interested in getting the RfS Documents may respond to this advertisement by writing to[Designation of concerned official of BPC] at the address given below with a non-refundable fee of Rs.....(Indian Rupees.....Only) or US\$.....(US Dollars.....only), in the form of a demand draft in favour of[Name of BPC] payable at New Delhi, latest by last date of sale of RfS document. The RfS document shall be issued to the Parties on any working day from200..... to last date of sale of RfQ document between 1030 hours (IST) to 1600 hours (IST).

BPC shall promptly dispatch the RfS document by Registered Mail/ Air Mail, but under no circumstances will it be held responsible for late delivery or loss of documents so mailed.

1.5 PROPOSAL SECURITY

All Bid proposals shall be accompanied by Proposal Security of Rs.million or US\$... million in form of Pay Order or Demand Draft or Banker's Cheque or a Bank Guarantee issued by Nationalised Bank/Scheduled / Foreign Bank with Branch in New Delhi in favour of[Name of BPC] valid for a period of twelve (12) months from the date of submission of Bid Proposal.

1.6 PROPOSAL RECEIPT AND OPENING

Bid Proposals under Envelope-1 & Envelope-2, duly filled in, one (1) original and

two (2) copies must be delivered to the address hereunder on or before 1100 hours (IST) on the Bid submission date. Envelope-1 will be opened on the same day at 1130 hours (IST), in the presence of Parties' representatives who wish to attend. If it is a public holiday on the date of receipt of the Bid Proposals as specified, the Bid Proposals shall be received and opened on the next working day at the same time and venue.

1.7 BPC'S RIGHT TO CANCEL QUALIFICATION PROCESS

BPC reserves the right to accept or reject any or all Bid Proposals and/or annul the selection process without assigning any reason. BPC shall not bear any liability, whatsoever, in this regard.

1.8 NODAL PERSON FOR ENQUIRIES AND CLARIFICATIONS

All correspondence, clarification and submission of Bid Proposals in respect of RfS Documents shall be addressed to:

.....
.....
.....

Tel.:Fax:Email.....

1.8.1 Any clarification shall be valid only if issued in writing by the above mentioned official.

SECTION-2

INFORMATION FOR BIDDERS

2.1 DEFINITIONS

The following terms are used in the Request for Selection (RfS) documents and will have the meanings defined here. Note that all other capitalized terms used herein have the meanings set forth in the Implementation Agreement (IA) or Transmission Service Agreement (TSA) :

"Affiliate" means as to any person (a) who directly controls or is controlled by the Bidder, as a single entity/a Member in a consortium; or, (b) whose control is with the same person as that of the Bidder/ a Member in a consortium; or (c) who directly or indirectly beneficially owns or holds more than fifty percent (50%) of the voting shares of the Bidder, as a single entity/ a Member in a consortium; or (d) more than fifty percent (50%) of the voting shares of whom is directly or indirectly beneficially owned or held by the Bidder as a single entity/a Member in a consortium. The term "Control" shall mean the possession by a person, directly or indirectly, of the power to direct or cause the direction of the management and policies of the Bidder/member in a consortium, whether through the ownership of voting securities or Board of Directors of such other person, by contract.

"Alloted Transmission Capacity" means the power transfer in MW between the specified point(s) of injection and point(s) of drawl allowed to a long term customer on the inter-state transmission system under the normal circumstances and the expression "allotment of transmission capacity" shall be construed accordingly; Allotted transmission capacity to a long term transmission customer shall be the sum of the generating capacities allocated to the long term transmission customer from the ISGS and the contracted power, if any.

"Availability" in relation to a transmission system for a given period means the time in hours during that period the transmission system is capable to transmit electricity at its rated voltage and shall be expressed in percentage of total hours in the given period and shall be calculated as per "Central Electricity Regulatory Commission (Terms & Conditions of Tariff) Regulations, 2004," as amended from time to time.

"Bid Date" means the date and time when Bids of Bidders are due in response to the RfS, which is 1030 Hours, at.....[Place of Bid submission] on the date indicated in Table-1, Clause 2.9, Section -2 or as may separately be intimated by BPC.

"Bidder" means either a single entity or a consortium of entities submitting a Bid with the intent to become TSP for execution of the Project.

"Beneficiary(s)" means[Name of Beneficiaries] receiving electric energy from the 'Projects' and engaged in generation, transmission, sale, distribution or supply, as the case may be, of energy including traders & bulk consumers.

"Bid" means a Bidder's written offer in response to the RfS.

"Bid Security" means the unconditional and irrevocable bank guarantee for an amount as specified at Clause-3.4.4, Section-3, submitted by each Bidder with its Bid on the Bid Date, in the form set forth in Section 4, Annexure-4.....

"Bid Process Co-ordinator or BPC" means Agency responsible for co-ordinating the Bid Process for procurement of required transmission services.

"CEA" means the Central Electricity Authority constituted under Section -70 of The Electricity Act, 2003.

"CERC" means the Central Electricity Regulatory Commission of India constituted under Section-76 of The Electricity Act, 2003 and any successors and assigns which fulfill the same role.

"Commercial Operation Date (COD)" means first day of the month, following the month in which the Project is declared commissioned, pursuant to the IA.

"Commission" means the act of performing the Commissioning Tests to demonstrate successful completion of Transmission System elements.

"Commissioning Tests" means such tests that are required pursuant to Section -6 of the IA to demonstrate the successful and safe operation of Transmission System elements.

"Competent Authority" means any agency, authority, department, inspectorate, ministry or board of the GOI or of any state or local government or the regulator, that has authority under the Laws of India over the Project.

"Consents" means all authorizations, consents, licenses, approvals, registrations, clearances, permits, waivers, privileges, acknowledgements, agreements, or concessions required to be obtained from or provided by any Competent Authority for the execution, delivery and performance of the IA and the TSA, including without limitation the construction, ownership and maintenance of the Transmission System elements.

"Consortium" means an entity formed for becoming TSP for execution of Project, having maximum of three members meeting the Qualification Requirements with at least 51% equity participation of the Lead Member.

"Contract Year" means the period beginning from actual Commercial Operation

Date and ending on expiry of 12 months, thereafter.

“Contractor” means those organizations with whom the TSP proposes to enter into contractual relationship for procurement of goods and services for Projects and shall include the legal and permitted successors and assigns of any of the foregoing.

“CTU/Central Transmission Utility” means the utility notified by the Central Government under Section-38 of The Electricity Act, 2003.

“Day” means a 24-hour period that ends at midnight Indian Standard Time. Unless otherwise stated, Day is a calendar day.

“Development Expenses” means all the expenditure incurred by BPC for and in favor of the Project, during the process of selection of the developer who is finally identified and assigned the task of developing the Project.

“Development Security” means the security of a specified amount furnished to BPC by the Bidder in the form of a Bank Guarantee to secure performance and obligation of the TSP under the Agreements.

“EPC Contract” means the agreement between the TSP and the EPC Contractor for the engineering, procurement and construction of the Project.

“EPC Contractor” means an entity (including their legal and permitted successors and assigns) with whom the TSP has executed a contract for engineering, procurement, construction and commissioning of the Project.

“Financial Organisation” means Financial Institutions as defined in Section-4A of Companies Act, 1956, scheduled commercial banks as defined by Reserve Bank of India and any Insurance Company registered with IRDA and Foreign internationally recognized sources such as International Banks, Bilateral/ Multilateral Financial Institutions and Foreign Institutional Investors.

“Financial Close” means the first business day on which funds are made available to the TSP pursuant to the Financing Documents.

“Financing Documents” means the agreements pursuant to which the TSP to finance the Projects, including without limitation the security documents, inter creditor agreements, coordination agreements and any other ancillary agreements which are a condition to the availability of funds under any such agreements.

“Financial Year” means (i) the period beginning from the Actual Commercial Operation Date and ending on following March 31, (ii) each succeeding twelve (12) months period beginning on April 01, during the term of the TSA, and (iii) if the last day of the term of the TSA is not March 31, the period beginning on the immediately preceding April 01, and ending on the last day of the term of the TSA.

"Forest Clearance" means an approval accorded by the GOI (MOEF) for diversion of forest areas for non-forest purposes under the Forest (Conservation) Act, 1980.

"Functional Specifications" means Clause 2.4, Section-2 of this selection document (Volume-I) which provides the technical requirements of Transmission System elements.

"Forced Outage" means an interruption of the transmission capability of a Line and/or Sub-station that is not the result of:

- (i) A request by Beneficiary(s) in accordance with the TSA;
- (ii) A Scheduled Outage;
- (iii) An event or occurrence of a Force Majeure; or
- (iv) A condition caused solely by the CTU or Beneficiary(s) or the Grid System.

"GoI" means the Government of India.

"Grid System" means the transmission and distribution facilities other than those comprised in the Project through which energy is transmitted from the generation facilities to the end users of energy.

"Indian Electricity Grid Code/IEGC/Grid Code" means a document describing the philosophy and the responsibilities for planning and operation of Indian Power System approved by CERC.

"Implementation Agreement or IA" - means the agreement to be entered into between TSP and Beneficiary(s) pursuant to which the Project shall be established and connected to the inter-state transmission system.

"Implementation Period" means the time between the effective date of the Implementation Agreement and the Commercial Operation Date.

"India" means the Republic of India.

"Inter-State Transmission System" means any system for the conveyance of energy by means of a main transmission line from the territory of one State to another State and includes;

- (i) the conveyance of energy across the territory of an intervening State as well as conveyance within the State which is incidental to such inter-State transmission of energy;
- (ii) the transmission of energy within the territory of a State on a system built, owned, operated, maintained or controlled by a Central Transmission Utility or by any person under the supervision and control of a Central Transmission Utility.

"TSP" means the Transmission Service Provider which will execute the Project Agreements necessary to build, own, maintain and operate the Project.

"kV" means kilo Volts.

"Laws of India" means all laws, treaties, ordinances, judgments', decrees, injunctions, writs and orders of any court, arbitrator or authority, a statute, rules, regulations, orders and interpretations thereof of India and any central, state, municipal, regional, environmental or other governmental body, instrumentality, agency, authority, court or other body having jurisdiction over the relevant parties in India.

"Lead Member" means the party who holds the highest number of shares (which will be at least 51% of the paid up and subscribed project equity) and is so designated by the Bidder (that is a consortium or strategic partnership) as its responsible authority in connection with the bidding process and execution of Project.

"Lenders" means the entities providing the long-term debt financing for construction of the Project pursuant to the Financing Documents and their successors and assigns.

"Ministry or MOP" means the Ministry of Power, Government of India.

"MOEF" means the Ministry of the Environment and Forests, Government of India.

"Month" means a calendar month according to the Gregorian calendar.

"Networth" means paid up capital plus free reserves less accumulated losses (deficit) and deferred revenue expenditure remaining unamortized.

"O&M Contract" means the agreement between the TSP and the O&M Contractor for the operation and maintenance of the Project to keep it available for use by Beneficiaries.

"O&M Contractor" means an operating and maintenance Company or an entity and any successor thereto appointed by the TSP for provision of Operation & Maintenance Services under the O&M contracts.

"Party or Parties" means BPC or TSP or Beneficiary(s) or all of them together.

"Parent Company" means a Company that holds more than 50% in the nominal value of the paid - up and subscribed equity capital of another Company and also have management control of that other Company".

"Project" means[Name of Project] consisting of Transmission System elements.

“Project Agreements” means, collectively, the Implementation Agreement, the Transmission Service Agreement, the Financing Documents, insurance contracts and all other agreements entered into directly by the TSP in connection with the Project.

“Prospective TSP” means those Bidders whose Bids have been ranked by BPC after evaluation of transmission charge bids.

“Prudent Utility Practices or PUP” means those practices, methods and standards that are generally accepted internationally from time to time by electric utilities for the purpose of ensuring the safe, efficient and economic design, construction, commissioning, operation, repair and maintenance of Project equipment of the type specified by BPC and which practices, methods and standards shall be adjusted as necessary, to take account of;

- (i) operation, repair and maintenance guidelines recommended by the manufacturers of plant and equipment to be incorporated in the Project,
- (ii) the requirements of the Laws of India, and
- (iii) the physical conditions at the Site.

“Regional Load Dispatch Centre or RLDC” means the centre so designated for a specified region where the operation of the power system in that region and the integration of the power system with other regions and areas (within the territory of India or outside) are coordinated.

“Regional Power Committee or RPC” means a Committee established by resolution of the Central Government for a specified region for facilitating the integrated operation of the power systems in that region.

“Required Commercial Operation Date or RCOD” means 1st day of the month following the month in which the Project is required to be commissioned.

“RfS” means this Request for Selection document including all attachments hereto and amendments (if any) issued by BPC.

“Rupees or Rs.” means Indian Rupees, the lawful currency of India.

“Scheduled Outage” means a planned interruption of the transmission capability of transmission system element that has been scheduled and allowed by RLDC/CTU/Beneficiary(s).

“Site” means the lands and other places upon which the Project is to be established and such other land or places as may be required to set up the Project and as may be specified in the IA as forming part of the Site.

"Sub-contractor" means those organizations with whom the TSP's Contractor proposes to enter into contractual relationship for the procurement of goods and services for Project.

"Technical bid" means the Bidder's Bid in Formats of Section-4 with respect to the technical and commercial aspects of the Project, that conforms to all the terms, conditions, and specifications set forth in this RfS.

"Term" has the meaning set forth in Section 2 of the IA.

"Transmission License or License" means the license granted by the CERC which entitles the TSP to undertake the Project upon certain terms and conditions specified therein.

"Transmission Service Agreement or TSA" means the agreement entered into between Beneficiary(s) and the TSP pursuant to which TSP shall maintain and repair the Project as well as make available the entire asset of the Project to Beneficiary(s) on a commercial basis.

"Transmission Charge" means the amounts payable to TSP by Beneficiary(s) pursuant to the TSA, as approved by Central Electricity Regulatory Commission (CERC).

"Week" means a period of seven consecutive days starting at midnight Indian Standard Time between Sunday and Monday and ending at the same time at midnight of the following Sunday.

"Year" means a calendar year according to the Gregorian calendar.

2.2 BACKGROUND

2.2.1[Brief Write-up giving background about requirement of Transmission System Project].

2.2.2 Description of the Transmission system

Scope of TSP comprises of the following transmission system elements:

S.No.	Transmission System elements under[Name of Project]
I.	Transmission Lines :
II.	Sub-stations :
III.	Switching-stations:
IV.	HVDC links including terminal stations:
V.	HVDC transmission line:

- 2.2.3 BPC proposes to select Bidder having the requisite technical, financial and managerial capability for creating project specific TSP. The TSP shall be a Company registered under the Companies Act, 1956 and be responsible for establishment of Transmission System elements of.....[Name of Project] (the "Project") in the states of[Name of States]. The Project shall be established on build, own, maintain and Operate basis by the TSP. The TSP shall provide the entire capacity of the Project, for supplying power to Beneficiary(s) by entering into Implementation Agreement and Transmission Service Agreement with Beneficiary(s).
- 2.2.4 The initial approval to facilitate implementation of the Project shall be arranged by BPC. Statutory clearances and approvals like Way Leave, Environment and Forest clearance etc. shall be taken by the TSP. Once, the TSP is selected, the details and documents shall be handed over to the TSP on as is where is basis, so that it may take further actions to obtain such statutory approvals and clearances. The TSP shall be responsible to obtain Transmission License from CERC.
- 2.2.5 BPC intends to select Companies/ Firm(s) as TSP who would develop the Project on build, own, maintain & operate basis. Under such arrangement the TSP would undertake to develop, finance, design, construct, own, maintain, operate and repair the transmission system elements. The TSP will make transmission capacity available for use by the Beneficiary(s) for a Transmission Charge linked to availability, as approved by CERC, payable to TSP by Beneficiaries, pursuant to a Transmission Service Agreement (TSA) to be signed between the TSP and the Beneficiary(s).
- 2.2.6 BPC hereby invites Bidders to submit qualification data, complete technical details proposed for the Project, their financing plan, Project schedule etc. apart from quoting transmission charge including taxes and duties etc., as considered by them for each of the transmission system elements. Bidders would be required to submit the Qualification Statements and Technical bid in Envelope-1 and Transmission Charge Proposal in Envelope-2 as per formats in the RfS.
- 2.2.7 Firstly, Envelope-1 consisting of Bidders Qualification Statements & Technical bid would be opened on the Bid date. BPC would examine the Qualification Statements of various bidders. Thereafter, the Technical bids of Qualified Bidders would be evaluated and technical & commercial deviations examined. BPC will open, evaluate and rank Envelope-2 bid consisting of transmission charge of those bidders only whose Qualification Statements & Technical bids have been found responsive to the requirements of RfS. Bidders would be invited for opening of their Envelope-2 Bids. Transmission charge bids would be evaluated as per the pre-prescribed evaluation criteria and would be ranked. The party having lowest evaluated transmission charge would be invited for discussion and finalization of draft agreements. In case of dis-agreement with the first ranked bidder, the next ranked bidder would be invited.

2.2.8 The draft of Implementation Agreement (IA) and Transmission Service Agreement (TSA) would be appended with the RfS documents for agreement & signing by TSP directly with the Beneficiary(s). Within thirty (30) days of signing of draft agreements, the prospective TSP shall furnish Development Security to BPC & execute final IA & TSA. Thereafter, TSP shall apply for Grant of Transmission License to CERC alongwith the quoted transmission charge and applicable taxes and duties and would proceed for financial close. Further, TSP will take up the Project for a license period of 25 years, based on license issued by CERC. Further, TSP shall be responsible for getting the transmission charge approval from CERC payable by the beneficiaries.

2.3 PROJECT DESCRIPTION AND REQUIREMENTS

2.3.1 Project Description

.....[Brief write-up about Project].

2.3.2 Implementation of the Project

TSP will have the sole responsibility for implementing the Project. The transmission system elements must be designed, engineered, procured, constructed and maintained pursuant to the "Functional Specifications" set forth in Clause 2.4, Section-2. All approvals, consents, permits and licenses required to own, construct and maintain the transmission system elements shall be obtained by the TSP. A detailed list of anticipated statutory clearances is enclosed at Schedule-3 of Draft IA (Volume-II). The list enclosed is based on statutory clearances applicable as of now. Any approval, consent, permit and license to be obtained in line with the various statutory provisions during implementation and operation phase shall be obtained by TSP. TSP shall also perform any environmental or social mitigation measures that may be required by the Lenders, besides those required statutorily.

2.3.3 Financing

2.3.3.1 Arrangement for financing shall be the sole responsibility of the Bidders. Neither BPC nor the GOI will provide any financing for the Project. It is expected that the Bidders shall finalise all the financing arrangements within six (6) months from the date of execution of the Agreements with Beneficiary(s).

2.3.3.2 Financing will be in the form of equity and debt. At least 51% of the project equity shall be provided by the Lead Member. Bidders can suitably decide their own debt equity ratio.

2.3.3.3 Bidders may arrange financing for the Projects in any currency. However, Foreign Exchange risks, if any, shall be borne by the Transmission Service Provider. Bidders shall quote transmission charge in Indian Rupees only.

2.3.4 Development Expenses

BPC has been working on the development of the Project and related expenses are being incurred by BPC for and in favor of the Project. Further, CEA would be exercising Supervision over the projects during Construction period. Therefore, at the time of signing of the draft agreements, prospective TSP shall pay to BPC charges for these Development & Supervision related expenses as estimated by BPC. The estimated amount in this regard shall be informed to the Bidders, thirty (30) days prior to the date of bid submission.

2.4 TECHNICAL SPECIFICATIONS

The General Technical Particulars and "Functional Specifications" of the Project is as per Schedule-5 of IA. The "Functional Specifications" to include only the brief technical requirements for the Project. The Bidders are required to suitably select the detailed technical specifications for equipment/material/works for the Project to ensure reliability, economy & security so that the Project on completion meets the requirements of the "Functional Specifications", the applicable National/International codes, provisions of IEGC, statutory requirements/ clearances as per Law of the land and Prudent Utility Practices. The responsibility for correctness of such selection of technical specifications, equipment, material etc. rests with the Bidders.

2.5 ESTIMATED PROJECT COST

The.....[Name of the Project] is estimated to Cost about Rsmillion (tentative) on ----- Quarter of ----- 200—price levels as per the Detailed Project Report (DPR) prepared .

2.6 PROJECT TIME SCHEDULE

All elements of the Project are required to be completed progressively by, 200.... (tentative).

2.7 SCOPE OF WORK

2.7.1 Scope of Transmission Service Provider

The TSP's Scope of work for the Project shall comprise, but not necessarily be limited to the following:

- 2.7.1.1 Establishment and maintenance of the Project on build, own, maintain & operate basis.
- 2.7.1.2 Financing for the Project including Import Duties, other Taxes and Duties, Levies and Cess, Insurances etc. by way of mobilizing necessary equity capital & total debt.
- 2.7.1.3 TSP shall finalise the award and appoint the Contractors in line with the provisions of Implementation Agreement.
- 2.7.1.4 The work also includes all the activities associated with establishment and maintenance of the Project other than those specifically covered in the scope of work of BPC as elaborated at clause 2.7.2 below.
- 2.7.1.5 The TSP shall ensure timely completion of entire scope of Project in all respects and its operation to ensure highest level of reliability, availability and maintainability as per prudent utility practices.
- 2.7.1.6 TSP shall sign Implementation Agreement (IA) and Transmission Service Agreement (TSA) with the Beneficiary(s) for receiving payment of Transmission Charge (in Indian Rupees only), linked to the Availability of the system.

2.7.2 Scope of Bid Process Co-ordinator

BPC's Scope of work is briefly outlined hereunder:

- 2.7.2.1 To obtain initial approval to facilitate commencement of implementation of the Project.
- 2.7.2.2 BPC or it's authorized representative may arrange to carry out certain activities to expedite the Project. These are:
 - a) To facilitate the transfer of the Project site to the successful bidder for location specific substations, switching stations or HVDC terminal or inverter stations.
 - b) To facilitate the successful bidder in acquisition of Right of Way.
 - c) To initiate actions for forest and environment clearances, wherever applicable.
- 2.7.2.3 The relevant details (viz. reports/documents/designs/drawings etc.) in respect of the above activities, which may have been undertaken/completed, if any, to expedite the Project, shall be given to the selected TSP for use in the Project on as is where is basis.

2.7.2.4 The cost (including direct and indirect overheads) of carrying out the activities indicated at Clause 2.7.2.1 to 2.7.2.3 shall be recovered from the TSP under Development Expenses. For this purpose, BPC shall intimate the amount to the TSP for making payments to BPC. This amount may be reimbursed to BPC with interest within 30 days after Financial Close.

2.8 LOGISTICS AND OTHER INFORMATION

2.8.1 Logistics

2.8.1.1 The TSP shall be responsible for meeting the requirements for arranging such material and equipment as required for the Project. Bidders must identify and verify the requirements, including various taxes & duties and other fees, as necessary to implement the Project subject to the terms and conditions of the IA.

2.8.1.2 Many local companies are qualified to supply material or perform the work for the Project. Bidders may consider sub contracting such procurement and construction work to local companies.

2.8.1.3 Labor for construction and maintenance of the transmission system elements is available locally. The Bidder may wish to subcontract to, or partner with, one of several well-established Indian firms with significant experience in the construction of transmission system elements within India. Bidders must identify and comply with all immigration laws, labor laws and visa requirements.

2.8.1.4 Notwithstanding the information outlined above, it is the Bidder's responsibility to identify all logistical requirements necessary to implement the Project and to include the costs of such in its proposed transmission charge. Failure to do so will be the sole responsibility of the Bidder and no adjustments in the transmission charge will be permitted later.

2.8.2 Consents, Approvals, Permits and Licenses

2.8.2.1 BPC has identified at least three of the clearances or license necessary to begin with the Project:

- (i) Project Approval under Section-68 of Electricity Act, 2003 from Govt. of India;
- (ii) the Transmission License and
- (iii) the clearance from the Ministry of the Environment and Forests ("Forest Clearance").

BPC shall facilitate project approval under Section-68 of Electricity Act, 2003 from the Government of India. Successful Bidder after selection as TSP shall apply for Transmission License to CERC as per "Procedure, Terms & Conditions for Transmission License & other related matters, Regulations," as applicable from time to time. The TSP shall pursue and obtain various approvals/clearances including the Forest Clearance.

Bidders are responsible to identify all other consents, approvals, permits and licenses necessary to own, construct and maintain the Project.

2.8.2.2 Each Bidder shall familiarize itself with the procedures and time frames required to obtain all permits and licenses, including the time and procedures for completing the process of obtaining the Forest Clearance. The draft IA identifies the role of the BPC with respect to the consents, approvals permits and licenses, including the Transmission License. Bidder's proposed Project Schedule (as per Section-4, Annexure 4.15) shall take these aspects into consideration. Bidders shall obtain all the necessary consents, approvals, permits and licenses.

2.8.3 Legal Matters

The applicable Indian electricity, foreign investment, Company, work, tax and customs duties laws referenced below are representative and do not necessarily represent a complete or exhaustive listing. Bidders shall conduct their own investigation to verify the requirements for the Project and the latest amendments to the requirements.

2.8.3.1 Electricity Laws of India

- (i) The Electricity Act, 2003
- (ii) Electricity Rules, 1956

2.8.3.2 Foreign Exchange and Foreign Investment Laws of India

2.8.3.3 Company Laws of India

2.8.3.4 Labor and Employment Laws of India

2.8.3.5 Tax and Customs Laws of India

- (i) Income Tax Act, 1961

2.8.3.6 Environmental Protection Act, 1986 and Forest (Conservation) Act, 1980.

2.8.4 Labor Information

Within the laws and practices prevailing in India, the TSP shall be required to use reasonable efforts to employ Indian nationals during the construction and maintenance of the transmission system elements. However, should the TSP need to employ non-Indian personnel, it may do so in accordance with the labor and immigration laws in effect in India (concerning residency permits, work permits, visas, etc.).

2.9 SITE UTILITIES

The Project is spread across a vast geographical area, being a Transmission System Project. The TSP shall, at its own expense, arrange, develop and maintain utilities to execute the Project, including, but not limited to, the following:

- Potable and Construction Water-TSP will arrange for its potable and construction water needs.
- Construction Power and Back-up Power–TSP shall provide all construction power at the Site.
- Other – TSP shall provide any other utility and/or facility that may be required, statutorily or otherwise for implementing the Project.

2.10 ENVIRONMENTAL REQUIREMENTS

The Bidders are expected to prepare Environmental Studies, if any, that may be required by Lenders based on the actual site/transmission line route selected.

2.11 TIME TABLE FOR BID PROCESS

The Anticipated Time Table of various activities for bid process through Signing of Agreements are provided in Table-1 as below.

Table – 1

SNo	Event	Elapsed Time from Zero date
1.	Publication of RfS.	Zero Date
2.	Bid clarification, conferences etc. & revision of RfS	60 days
3.	P Technical and price bid submission	120 days
4.	Shortlisting of bidder and issue of LOI	150 days
5.	Signing of Agreements	180 days

2.12 CONTENTS OF RfS DOCUMENT

The RfS Document consists of the following:

- (a) Selection Document - Volume-I
- (b) Implementation Agreement (IA) - Volume-II
- (c) Transmission Service Agreement (TSA) - Volume-III

IA and TSA shall be signed between TSP and Beneficiary(s). IA & TSA contain rights and obligations of the respective parties, in detail. In case of any discrepancies between the provisions of Selection Document and that of any other Agreements such as IA, TSA etc., the provisions contained in those other Agreements shall prevail over Selection Document.

SECTION – 3

INSTRUCTIONS FOR BIDDERS

3.1 IMPORTANT NOTICE AND CONDITIONS

- 3.1.1 The RfS Documents are meant for use only by Bidders, who have been issued this RfS Documents by BPC and submitted an acknowledgement of receipt to BPC. The RfS Documents are not to be used by any other person.
- 3.1.2 BPC reserves the right to reject all or any of the Bids, if it considers it necessary to do so, and/or to withdraw from the selection process or any part of this process or to vary any of its terms at any time without giving any reason there for and/or to require Bidders to submit revised Bids on such basis as it may determine at that time in its absolute discretion.
- 3.1.3 BPC also reserves the right to change the timing and any other aspect of the selection process (including whether to proceed with the selection process at all) at any time without giving any reason therefore.
- 3.1.4 Each Bidder has the responsibility for bearing all costs, expenses and liabilities incurred by it in connection with the selection process, including (without limitation) in connection with the preparation and/or submission of the Bids.
- 3.1.5 Requesting and/or receiving the Bids will not constitute a commitment by BPC to enter into any agreement, undertaking or covenant with a Bidder/Bidding entity.
- 3.1.6 Neither this Document nor any of the other RfS Documents are a prospectus or offer or invitation to the public in relation to the sale of shares, debentures or securities, nor shall the RfS Document or any part of them form the basis of, or be relied upon in any way in connection with any contract relating to any shares, debentures or securities.
- 3.1.7 In considering an investment in the Project, each of the Bidders/Bidding entities should make its own independent assessment and seek its own professional, financial and legal advice.
- 3.1.8 Whilst the information in the RfS Documents has been prepared in good faith, it is not and does not purport to be comprehensive or to have been independently verified. Neither the BPC nor any of its officers or employees, nor any of its advisers or consultants, accept any liability or responsibility for the accuracy, reasonableness or, completeness of, or for any errors, omissions or misstatements, negligent or otherwise, relating to, or make any representation or warranty, express or implied, with respect to, the information contained in the RfS Documents or on which such documents are based or with respect to any

written or oral information made or to be made available to any of the Bidding entities or its professional advisers and any liability therefore is hereby expressly disclaimed.

3.1.9 By participating in the bid, each of the Bidders and bidding entities shall be taken to have acknowledged and accepted that he has not been induced to enter into such agreement by any representation or warranty, express or implied, or relied upon any such representation or warranty by or on behalf of BPC. The Bidders should conduct their own investigation and analysis of the Project and all matters connected with Project the information contained in the RfS Documents and any other information provided to or obtained by the Bidders.

3.1.10 The information contained in the RfS Documents is selective and is subject to updating, expansion, revision and amendment. It does not purport to contain all the information that a Bidder may require. Neither BPC nor any of its advisers undertakes to provide any Bidder with access to any additional information or to update the information in the RfS Documents or to correct any inaccuracies therein which may become apparent. Each Bidder must conduct its own analysis of the information contained in the RfS Documents and is advised to carry out its own investigation in relation to the electricity business in general, the Transmission Business, the legislative and regulatory regime which applies in India and any and all matters pertinent to the selection process and to seek its own professional advice on the legal, financial, regulatory and taxation consequences of entering into any agreement or arrangement relating to the selection process.

3.1.11 The RfS Documents include certain statements, estimates, projections, targets and forecasts with respect to the Projects. Such statements, estimates, projections, targets and forecasts reflect various assumptions made by the management, officers and employees of BPC, which assumptions (and the base information on which they have been made) may or may not prove to be correct. No representation or warranty is given as to the reasonableness of, and no reliance should be placed on, any statements, estimates, projections, targets or forecasts or the assumptions on which they may be based and nothing in the RfS Documents is, or should be relied on as, a promise, representation or warranty.

3.1.12 The RfS Documents has been prepared by and is issued by BPC. Information and references relating to Government of India, CEA and CERC are considered to be correct at the time of issue of the RfS Documents but they have not been

approved by said authorities for inclusion in the relevant RfS Documents in the form and context in which they appear. Government of India, CEA and CERC consequently make no representation as to the accuracy of such information and references and it cannot be inferred from the RfS Document or any part thereof that such authorities accept responsibility for, or agree, with them or any part of them.

3.2 GENERAL INFORMATION

3.2.1 Description of the Solicitation Process

The solicitation process by BPC will be as follows: BPC had issued Request for Selection (RfS) documents inviting prospective Bidders to submit their Bids for the project. Bidders intending to submit bids shall return the Acknowledgement of RfS and intent to Bid in accordance with Section-3, Clause 3.2.2.

BPC may hold a Pre Bid Conference for which the time, date and venue would be intimated to all the bidders who have been issued the RfS document. Bids for the Project would be submitted by the Bidders in two separate Envelopes on the date indicated in Table 1, Clause 2.11, Section-2 at 1030 Hrs. Envelope-1 consisting of Technical Bids would be opened on the Bid date. Technical Bids would be examined & evaluated in accordance with Clause 3.6.4. Bidders found to be Non- responsive will be so notified and their Bid Securities will be returned. Technical Bids found responsive would be further evaluated and technical and commercial deviations examined.

Bidders whose Technical Bids are found conforming to the requirements of the RfS documents would be requested to further participate in the opening of their Envelope-2 i.e. Transmission Charge Bids.

Based on the evaluation criteria contained in Clause 3.6.5, BPC will evaluate Transmission Charge Bids. Bidders submitting the offer that results in the lowest sum of NPV of Transmission Charge for the License period of 25 years would be issued "Letter of Intent" & invited for signing of Agreements. TSP would sign IA and TSA with the Beneficiary(s) and pay Development Expenses to BPC. Within thirty (30) days thereafter TSP shall furnish Development Security to BPC & shall apply for grant of Transmission License to CERC alongwith the transmission charge as well as applicable taxes and duties (variable). TSP then would proceed for financial close of Project. Further, TSP will take up the projects on build, own, maintain & operate basis for a license period of 25 years based on the license issued by the CERC. For payment purpose the quoted transmission charge shall be subjected to change in rates of Taxes & Duties (if any).

3.2.2 Acknowledgement of the RfS

All Bidders must fill in, sign and return the "Acknowledgement of RfS and Notice of Intent to Bid" in the form set forth in Annexure-4.1, Section-4 so as to reach BPC within 7 days of issue of RfS documents.

3.2.3 Cost of Preparing Bids

Bidders shall bear all costs associated with the preparation and submission of their Bids and the finalization and execution of the Project Agreements. BPC will in no case be responsible or liable for these costs, regardless of the conduct or outcome of the evaluation process.

3.2.4 Site Visit

3.2.4.1 Bidders may visit substation site/transmission line route and the surrounding areas and obtain or verify all information which they deem fit and necessary for the preparation of their Bids.

3.2.4.2 BPC has arranged to carry out detailed survey of Transmission Lines and may provide each Bidder with its survey documentation of various proposed transmission line routes for such purpose as it may deem necessary (for information only and without any legal liability whatsoever, whosoever desires). Bidders would have to carryout their own surveys and field investigation for submission of their Bids.

3.2.4.3 Failure to investigate route of various transmission lines and to examine & inspect Sub-station sites or subsurface conditions fully shall not be grounds for a Bidder to alter its Bid after the Bid Date nor shall it relieve a Bidder from any responsibility for appropriately estimating the difficulty or costs of successfully completing the Project.

3.2.5 Clarifications and Amendments to RfS

3.2.5.1 Clarifications

a. Clarifications on this RfS may be requested in writing directed to the address below, atleast ten (10) days before the date of Pre-Bid conference. BPC will respond in writing with its reply to clarifications.

.....
.....
.....

Tel.: FAX:

b. Written copies of the requested clarifications and BPC's responses will be issued to all Bidders that have returned the "Acknowledgement of RfS and Notice of Intent to Bid".

3.2.5.2 Amendments

At any time prior to the Bid Date, BPC may, for any reason, whether at its own initiative or in response to clarifications requested by Bidders, modify this RfS by issuance of an addendum. Addenda will be sent in writing to all those Bidders who have returned the "Acknowledgement of RfS and Notice of Intent to Bid". The receipt of an addendum by the Bidder shall be acknowledged promptly in writing by facsimile or e-mail and so noted in the Bid. The Bidder's late receipt of any addendum or failure to acknowledge the receipt of any addendum shall not relieve the Bidder of being bound by such addendum.

All addenda shall become part of the terms and conditions of this RfS. No interpretation, revision or communication regarding this RfS is valid unless made in writing and issued to all Bidders that have returned the "Acknowledgement of RfS and Notice of Intent to Bid". The Bidders are cautioned that no employee of GOI or BPC or its consultants is authorized to explain or interpret this RfS, and that any interpretation or explanation, if not given in the manner described in Clause 3.2.5.1 or the preceding paragraph, should not be relied upon.

In order to afford the Bidders reasonable time in which to take a clarification or amendment into account in preparing their Bids, BPC may, at its discretion, extend the deadline for the submission of Bids.

3.3 PRE-BID CONFERENCE

3.3.1 A Pre-Bid Conference may be held for which the time, date and venue would be intimated to all the bidders who have been issued the RfS document.

3.3.2 Attendance at the Pre-Bid Conference is not mandatory. A maximum of two duly accredited & authorized representatives per Bidder may attend the Pre-Bid Conference. BPC will not respond to questions or enquiries from any Bidder, after the Pre-Bid Conference.

3.3.3 Bidders must intimate BPC atleast 7 days prior to the scheduled date of the Pre-Bid Conference, whether or not they intend to attend the same.

3.3.4 Any queries/clarifications may be submitted by the Bidders in writing to BPC atleast 10 days before the date of the Pre-Bid Conference.

3.3.5 All relevant issues raised by the Bidders would be discussed at the Pre-Bid Conference. The queries raised by the Bidders and their clarifications furnished by BPC at the Pre-Bid Conference will be documented and issued to all the Bidders subsequently after the Pre-Bid Conference. BPC reserves the right to defer answering any such question or to decline to answer any such question, which it considers inappropriate.

3.3.6 BPC may issue clarifications/amendments/modifications/errata and/or revised version of Selection Document(Volume-I) after Pre-Bid conference.

3.4 PREPARATION OF BID

3.4.1 Language of Bid

The Bid and all related correspondence and documents shall be written in the English language. Supporting documents and printed literature furnished by the Bidder with the Bid may be in any other language provided they are accompanied by an appropriate translation of pertinent passages in the English language. Supporting materials that are not translated will not be considered. For the purpose of interpretation and evaluation of the Bid, the English language translation shall prevail over the original meaning printed in any language other than English.

3.4.2 Bid Structure and Content

3.4.2.1 Overview

The Bid to be prepared by the Bidders shall be submitted in two separate Envelopes. Envelope-1 shall contain the Bidder's Qualification Statements and Technical Bid. Envelope-2 shall contain the Bidder's Transmission Charge Bid. Qualification Statements and Technical Bids will be evaluated as per details given in Clause 3.6.4. The Bidders who are found qualified & whose Technical Bids are responsive to this RfS would be requested to attend the opening of their Envelope-2 Bids. BPC will open and evaluate Envelope-2, i.e. the Transmission Charge Bids as per details given in clause 3.6.5. The formats to be used for submission of Bids are provided in Section-4, entitled "Annexures & Formats for Assessment of Qualifying & Evaluation Criteria."

3.4.2.2 Envelope-1, Qualification Statements & Technical Bid

Envelope-1 Bid of the Bidders shall contain the following Annexures:

- (i) Proposal letter (Section 4, Annexure- 4.2)
- (ii) Declaration by the Bidder (Section 4, Annexure 4.3)
- (iii) Format for Evidence of signatory Authority (Section 4, Annexure 4.4)
- (iv) Format for Power of Attorney from Consortium Members (Section 4, Annexure-4.5).
- (v) Proforma of Joint Undertaking for back up guarantee by the Parent/Affiliate Company along with the Bidder Company (Section 4, Annexure-4.6)
- (vi) Format for Consortium Agreement (Section 4, Annexure-4.7)
- (vii) Format for Project Organisation (Section-4, Annexure-4.8)
- (viii) Format for Bidders Financial & Technical Capabilities (Section-4, Annexure-4.9)
- (ix) Format for checklist for Qualification Statement Submission Requirements

(Section-4, Annexure-4.10)

(x) Format for assessment of Qualification Requirements (Section-4, Annexure-4.11)

(xi) Proforma of Bank Guarantee for Proposal Security (Section-4, Annexure 4.12)

(xii) Format of Technical Bid Data (Section- 4, Annexure- 4.13)

(I) Technical Data for Transmission System Project as proposed by Bidder

(II) Transmission System Maintenance Data

(xiii) Format for Exceptions to RfS documents (Section-4, Annexure-4.14)

(xiv) Format for Bidders proposed Project Execution Schedule (Section-4, Annexure -4.15)

3.4.2.3 Envelope-2, Transmission Charge Bid

Envelope -2 Bid shall contain the following Annexures :

(i) Format for Proposed Transmission Charge (Section-4, Annexure 4.16)

(ii) Proforma of Bank Guarantee for Development Security (Section-4, Annexure 4.17)

3.4.2.4 Additional Instructions

a. Bid proposal Letter and Bid Security- The Bidder shall complete the Bid proposal Letter as required in Section 4, Annexure 4.2. The Bidder shall also provide the Bid proposal Security in the "Proforma of Bank Guarantee for Bid proposal Security" in Section-4, Annexure- 4.12.

b. Technical Bid Data-The Bidder shall submit its "Technical Data" in response to meet the requirements set forth in Section-2,Clause 2.4, "Technical Specifications".

The Bidder's technical data must meet the codes and standards for design, workmanship, materials and equipment as stated in the Section-2, Clause2.4,"Technical Specifications". The Bidder may propose codes and standards from other standard international organizations provided it demonstrates to the satisfaction of BPC that these codes and standards meet or exceed the requirements of the designated codes and standards in the Technical Performance Requirements. Bidder shall submit all the technical details as requested in Section 4, Annexure 4.13, entitled "Technical Bid Data".

Bidder shall also furnish details, experience records, performance certificate

etc. to provide evidence that the offered transmission System components are well proven equipment. Further, experience details (including past supply data, performance certificate etc.) of the proposed manufacturers of Transmission System components shall also be submitted.

- c. Exceptions to RfS- The Bidder must prepare the Bid by filling in all blank spaces and submitting documents required by Section 3. No changes shall be made in phraseology, and items shall not be added, unless specifically requested. Opportunity to present exceptions to the RfS is provided in Section 4, Annexure-4.14.
- d. Bidder's Project Execution Schedule - The Bid shall contain the Bidder's detailed schedule for the development phase and construction phase upto Commercial Operation of the Project as requested in Section 4, Annexure-4.15 entitled "Bidders Proposed Project Execution Schedule."
- e. Bidder's Proposed Transmission Charge - The Bidder shall submit its Proposed Transmission Charge in accordance with Section 4, Annexure-4.16, entitled "Proposed Transmission Charge in support of Project." Additional back-up sheets and calculations may be submitted, if necessary to explain the Bidder's proposal.
- f. Development Security-The Bidder is required to provide Development Security in "Proforma of Bank Guarantee for Development Security" in Section-4, Annexure 4.17.

3.4.2.5 Bid Irregularities

A Bid that is illegible or that contains omissions, erasures, alterations, additions, items not called for, or irregularities may be rejected, except for those necessary to correct errors made by the Bidder, in which case such corrections shall be initiated by the person or persons signing the Bid.

3.4.3 Bid Validity

3.4.3.1 Bids shall remain valid and open for acceptance by BPC for a period of twelve (12) months from the date of submission of Bids. Any Bid offering less than the stipulated Bid validity of twelve (12) months shall be rejected.

3.4.3.2 Prior to expiration of the original Bid validity period, BPC may request one or more of the Bidders for a specified extension in the period of validity. The request and the responses for any extensions to the original validity date shall be made in writing. A Bidder may refuse the request for extending the validity of the Bid. A Bidder agreeing to the request will not be permitted to modify its Bid, but will be required to extend the validity of its Bid Security accordingly. The provisions of Clause 2.4.4 below, regarding release and forfeiture of Bid Security shall continue to apply during the extended period of Bid validity.

3.4.4 Bid Security

3.4.4.1 Each Bidder shall furnish, alongwith its Envelope-1 Bid, a Bid Security for an amount of Rs.... million, as applicable. The Bid Security shall be submitted in form of an unconditional and irrevocable bank guarantee from reputable bank (with an "A" rating or better). The bank guarantee shall be in the form, contained in Section 4, Annexure-4.12, entitled "Proforma of Bank Guarantee for Bid Proposal

Security”, or any other form as acceptable to BPC. The Bid Security shall be valid for twelve (12) months after the Bid Date.

3.4.4.2 The Bid Security shall be forfeited without any notice, demand, demur or other legal process upon the occurrence or discovery of any of the following:

- a. a Bidder withdraws its Bid during the period of Bid validity; or
- b. any attempt to influence the RfS process in violation of Clause 3.6.2.2; or
- c. a Bidder’s Bid contains any false statement or material misrepresentation; or
- d. in the case of a successful Bidder, if it fails within the specified time limits to:
 - (i) execute the IA
 - (ii) execute the TSA, for reasons attributable to the Bidder, and
 - (iii) furnish the required Development Security

3.4.4.3 The Bid Security shall be returned to the Bidder who has submitted the Bid but withdraws its Bid before the Bid Date. Further, if any Bidder’s Qualification Statements & Technical Bid is determined to be non-responsive to this RfS, the Bid Security of such Bidders will also be returned. All the Bidders who are qualified & whose Technical Bids are found responsive, their Transmission Charge Bids will be evaluated and ranked and the validity of their Bids and their Bid Securities will be extended, if necessary, and if the relevant Bidder agrees. Bidders who do not qualify or qualify but whose Technical Bids are found to be non-responsive may not be required, however, to extend validity of their Bids beyond the validity period. The Bid Security of all ranked Bidders will remain in effect until the execution of IA and TSA and the delivery of the Development Security by the Successful Bidder. The Bid Security of all the remaining ranked Bidders will be returned upon the expiration date of their Bids or the execution of IA and TSA by the successful Bidder and furnishing of the Development Security, whichever is earlier, but not later than 15 days after the expiry of their Bids. The Bid Security of the successful Bidder will be returned only when the entity has executed IA and TSA and has furnished the required Development Security.

3.4.5 Format and Signing of Bids

3.4.5.1 Bidders shall prepare in English language one (1) original plus two (2) copies of the documents comprising the Bid. One original of the completed Bid is to be clearly marked “ORIGINAL OF BID,” and all other completed copies are to be clearly marked “COPY OF BID.” In the event of any discrepancy between the original and the accompanying copies, only the original shall prevail.

3.4.5.2 If the Bid consists of more than one volume, the Bidder must clearly number the volumes constituting the Bid and provide an indexed table of contents individually for each volume.

3.4.5.3 The Bid shall be typed or written in indelible ink, each page shall be initialed by a person or persons duly authorized to sign for the Bidder and the Bid Letter shall be signed by a person or persons duly authorized to bind the Bidder to the Bid.

3.4.5.4 The complete Bid as outlined in Clause 2.4.2, shall be without alterations, interlineations, or erasures, except inevitable errors made by the Bidder. All such errors after necessary correction shall be initialed by the person or persons already authorized to sign the Bid.

3.5 SUBMISSION OF BIDS

3.5.1 Sealing and Marking of Bid

3.5.1.1 Bids consisting of one (1) original plus two (2) copies must be submitted to BPC in sealed Envelopes or boxes by 1030 hours on the Bid Date as indicated in Table - 1, Clause 2.11, Section-2.

3.5.1.2 The Envelopes or boxes containing the Bids must be addressed to BPC as follows:

.....
.....
.....

Tel.: FAX:

- a. The Envelope or box must indicate the name and address of the Bidder to enable the Bid to be returned unopened in case it is declared as received after the due date and time or otherwise unacceptable.
- b. The inside Envelope or box must bear the same label as on the cover Envelope or box. Each Envelope or box shall be sealed.

3.5.1.3 Below the address given in Clause 3.5.1.2 above, the following must be written in bold letters:

Bid (Envelope-1 or Envelope-2, as applicable) for[Name of Project]

(SPECIFICATION NO:)

DO NOT OPEN UNTIL 1100 HOURS, BID DATE..... 200.....

3.5.1.4 If the cover Envelope or box is not sealed and not marked as instructed above, BPC will assume no responsibility for the misplacement or premature opening of the submitted Bid.

3.5.2 Deadline for Submission of Bid

3.5.2.1 Bids (Envelope-1 & Envelope-2) must be received at the address set forth in Clause 3.5.1.2 prior to 1030 Hours local time at[Address of Place of Bid

submission] on the Bid Date indicated in Table-1, Clause 2.11, Section-2, the date of Bids submission and opening. Bids may be delivered by hand, by prepaid/registered or certified mail or by express courier. Bids submitted by facsimile, electronic mail, telex, or telegram will not be accepted.

3.5.2.2 BPC may, at its discretion, extend the Bid Date by issuing an addendum in accordance with these Instructions to Bidders, Clause 3.2.5.2.

3.5.3 Late Bids

Any Bid received after 1030 hours on the Bid Date will be rejected no matter whatever may be the reason of delay and will be returned unopened. It is the sole responsibility of Bidder to comply with Clause 3.5.2.1 above.

3.5.4 Modifications and Withdrawal of Bid

3.5.4.1 A Bidder may modify or withdraw its Bid after Bid submission, provided that the modification or notice of withdrawal is received in writing by BPC prior to Bid Submission Time on the Bid Date.

3.5.4.2 Bidder's modification or notice of withdrawal shall be prepared, sealed, marked and delivered in accordance with the provisions of these Instructions for Bidders, Clause 3.5.4 for the submission of Bids, with Envelopes additionally marked "MODIFICATION" or "WITHDRAWAL" as appropriate.

3.5.4.3 Withdrawal of a Bid after 1030 hours on the Bid Date will result in the forfeiture of the Bid Security pursuant to these Instructions for Bidders, Clause 3.4.4.2.

3.5.5 Non- Negotiable Conditions

Prior to commencement of detailed Technical evaluation, Bids would be examined and a Bid may be deemed non-responsive if any of the following NON NEGOTIABLE CONDITIONS is violated:

- (a) Bid is received by the due date.
- (b) Bid is accompanied by the required Bid Security.
- (c) Deviations with regard to the provisions of
 - (i) Scope of Work
 - (ii) Liquidated damages
 - (iii) Development Security

3.6 BID OPENING AND EVALUATION

3.6.1 Bid Opening

3.6.1.1 BPC will open Envelope-1 Bids, in open session at 1100 Hours on the date as indicated in Table -1, Clause 2.11, Section-2. The Bidders' representatives who are present shall sign a register as evidence of their attendance.

- 3.6.1.2 At the Envelope-1 Bid opening on the Bid Date, BPC will examine Bids to determine whether the requisite Bid Securities have been furnished and whether the documents have been properly signed.
- 3.6.1.3 BPC will open Envelope-2 (i.e. Transmission Charge) Bids in open session at 1100 hours on the date as indicated in Table -1, Clause 2.11, Section-2. The Bidders' representatives who are present shall sign a register as evidence of their attendance.
- 3.6.1.4 Bids for which a notice of withdrawal has been submitted pursuant to these Instructions for Bidders, Clause 3.5.4, will not be opened.
- 3.6.2 Confidentiality
- 3.6.2.1 After opening of Bids, information relating to the examination, clarification, evaluation, and comparison of Bids and recommendations concerning the award of the Project shall not be disclosed to Bidders or other persons not officially concerned with such process.
- 3.6.2.2 Any effort by a Bidder to influence BPC or the Consultant in the process of examination, clarification, evaluation and comparison of Bids, and in decisions concerning award of the Project, may result in the rejection of Bidder's Bid and forfeiture of the Bid Security.
- 3.6.2.3 Bidders may request BPC to treat specific data or information contained in its Bid as confidential. BPC and its representatives will take reasonable precautions to protect the confidentiality of such data or information, provided it is clearly identified as confidential on the page(s) on which it appears. However, any or all data/ information provided as a part of the Bid may be made available to any competent authority as may be required by such authority. BPC will, however, try to limit the amount of confidential data /information that it discloses. In any event, neither BPC nor any of its representatives will be responsible or liable for any disclosure of data/ information before, during or after the RfS process. BPC reserves the right to release any information contained in a Bid including information of a proprietary or confidential nature to all those who are concerned with the Project.
- 3.6.2.4 Bidders shall not request, nor shall BPC grant, access to any privileged, and proprietary data/information supplied by, or pertaining to other Bidders responding to this RfS.
- 3.6.2.5 BPC will return neither the original nor the copies of any Bid submitted by a Bidder once it has been opened.
- 3.6.3 Clarification of Bids: During the examination, evaluation, and comparison of Bids, BPC may, at its discretion, ask the Bidders for clarification of their Bids. BPC may

verify Bidders' financial data by checking with Bidders' lenders or other financing institutions and parent or affiliate companies. Requests for clarifications and responses shall be in writing. No change in the substance of the Transmission Charge shall be sought, offered, or permitted.

3.6.4 Evaluation of Qualification Statements & Technical Bids

3.6.4.1 BPC will first determine if the Bidders have met the Qualification Statement submission requirements. Format at Section-4, Annexure 4.10 shall be used to check whether each Bidder meets the requirements at Clause 3.4.2.2. If any Bidder does not meet the submission requirements, then his Qualification Statements and Techno-Commercial Proposal are liable to be rejected.

3.6.4.2 BPC will then determine whether Bidder meets the Qualification Requirements set forth in clause 1.3 of Section-1 of this RfS. For this purpose, the Pass/Fail criteria based on stipulated Qualification Requirements as per Annexure-4.11 entitled "Format for assessment of Qualification Requirements" shall be used. The two right columns at Annexure-4.11, Section-4 shall be completed by the Bidder and supported by necessary and complete details in order to check Bidders compliance with these requirements. BPC would examine the Techno-Commercial Proposals of only those Bidders who meet the Qualification Requirements. Technical Bids would be examined in line with the requirements of this RfS based on a detailed review and evaluation of the information provided in accordance with the Attachment-1 of this Section entitled "Detailed Evaluation of Technical Bids".

3.6.4.2 A substantially responsive Technical Bid is one which conforms to all the terms, conditions, and "Technical Specifications" in this RfS document without material deviation or reservation and which meets the requirements set forth in Attachment-1. A material deviation or reservation is one which affects in any substantial way the scope or completion schedule of the Project, or which limits in a substantial way, inconsistent with this RfS document, BPC's rights, or the Bidder's obligations under IA and the TSA, and the rectification of which deviation or reservation would affect unfairly the competitive position of other Bidders presenting substantially responsive Bids.

3.6.4.3 If a Technical Bid is not substantially responsive to the requirements of this RfS, the Bid will be rejected and his Bid Security shall be returned to him. Such determination is solely at BPC's discretion.

3.6.5 Evaluation of Transmission Charge Proposal

3.6.5.1 BPC will open, evaluate, and rank Envelope-2 (i.e. Transmission Charge) Bids of only those Bidders whose Technical Bids have been found responsive to the requirements of the RfS in accordance with Clause 3.6.4.

3.6.5.2 Based on the year wise Transmission Charge for 25 years presented by Bidders in Section 4, Annexure 4.16, the Net Present Value (NPV) of Transmission Charge in first year of commercial operation shall be calculated by BPC in accordance with

the Evaluation Criteria detailed in subsequent paras. The evaluation shall be carried out in following steps:

- a) The year wise Transmission Charge for 25 years presented by Bidders will be discounted @.....% per annum to determine the Net Present Value (NPV) of Transmission Charge in first year of commercial operation.
- b) The sum of NPV of Transmission Charge for various years shall be calculated.
- c) The bidder with the lowest sum of NPV of Transmission Charge for various years shall be ranked first and called for discussions as per Clause 3.7.

3.6.6 Reasonableness of Transmission Charges

BPC will assess the reasonableness of Transmission Charges quoted by the Bidders, based on the tariff calculation as per the DPR estimated cost and the CERC (Terms & Conditions of Tariff) Regulations, as applicable.

3.7 SELECTION PROCESS FOR TSP

3.7.1 Post Bid Discussions

3.7.1.1 Detailed Meeting(s):

- a. BPC will notify the successful first-ranked Bidder that his Bid has been accepted for detailed meeting for further finalization of draft Agreements. BPC may request other ranked Bidder to extend the validity of their Bids and Bid Securities in accordance with Clause 3.4.3 & 3.4.4 respectively. The second, third and other ranked Bidders will remain on standby, ready to begin discussions should the first ranked Bidder not meet the RfS obligations, sign the IA and TSA .
- b. At the first meeting, BPC may seek clarification of any terms which remained unclear, and additional meetings may be held, if necessary. BPC may proceed to the second-ranked Bidder if :
 - (i) it decides that the discussions on the IA and TSA will not be completed within the required time frame,
 - (ii) it discovers that the first-ranked Bidder has made a material misrepresentation,
 - (iii) the first-ranked Bidder deviates from the terms of its Bid, or
 - (iv) the First-Ranked Bidder fails to provide or maintain either the Bid Security or the Development Security, as required.

3.7.1.2 Finalization:

Within thirty (30) days of issue of "Letter of Intent" by BPC, TSP would sign IA and TSA with the Beneficiary(s) , pay Development Expenses & Development Security to BPC and shall apply for grant of Transmission License to CERC alongwith the transmission charge as well as rates of applicable taxes and duties (variable) considered by it in the transmission charge bid. TSP then would proceed for financial close of Project. Further, TSP will take up the projects on build, own, maintain & operate basis for a license period of 25 years based on the license issued by the CERC. For payment purpose the quoted transmission charge shall be subjected to change in rates of Taxes & Duties (if any).

3.7.2 Development Security Requirements

3.7.2.1 Within thirty (30) days of issue of LOI, the TSP shall furnish to BPC the Development Security for an amount of Rs..... million in accordance with Section 4 of the IA, valid upto 3 months beyond Required Commercial Operation Date. All costs of obtaining and maintaining the Development Security shall be borne by the TSP.

3.7.2.2 If BPC determines that the successful Bidder has made any false representation, has failed to comply with the requirements of these 'Instructions for Bidders', has failed to achieve Financial Closing as per agreed schedule, or has breached the provisions of the IA, BPC shall be entitled to retain or draw upon the Development Security.

3.8 PROPOSED TRANSMISSION CHARGE

3.8.1 Evaluation of the Proposed Transmission Charge: Evaluation of the Bidder's proposed Transmission Charge is discussed in Clause 3.6.5 "Evaluation of Transmission Charge Proposal" and explained in detail in Section-4, Annexure 4.16.

3.8.2 Overview of Transmission Charge Structure

3.8.2.1 The Transmission Charge for providing transmission service and it's operation & maintenance during license period for various transmission elements covered in the Bid Document shall form the basis for bidding & evaluation. Transmission Charge shall have two(2) components as follows:

- (i) Capital Recovery Charge consisting of Non-Scaleable component which would comprise all charges that are essential for each of the elements of transmission system Project.
- (ii) O & M Charge consisting of Scaleable component which would comprise of all charges essential for operation and maintenance of each of elements of transmission system Project.

The Scaleable component for first Contract year shall not be more than 15% of the non-Scaleable component.

3.8.2.2 Beneficiary(s) of the transmission services will pay the Transmission Charge to Transmission Service Provider in Indian Rupees only as follows:

- Upon achieving the Commercial Operation Date, Beneficiary(s) will pay the Transmission Charge as defined in 3.8.3.
- All payments shall be made in accordance with the TSA in Rupees only.

3.8.2.3 The following parameters shall apply to the Transmission Charge:

- The Transmission Charge must include procurement of all activities related to development of project including survey, detailed project report formulation, arranging finance, project management, obtaining transmission license, obtaining right of way, necessary clearances, site identification, land compensation, design, engineering, equipment, material, construction, erection, testing and commissioning, maintenance and operation of transmission system elements (Viz. transmission lines and/ or substations and/or switching stations and/or HVDC links including terminal stations and HVDC transmission lines) including without limitation the Development Expenses to be paid to the BPC as discussed in Section-1, Clause 1.4.4 and the costs of all insurance.
- No adjustment shall be made to the Bidder's proposed Transmission Charge for incorrect evaluation of soil or subsurface conditions, environmental mitigation measures, or any oversight in considering the risks associated with the construction & maintenance of the Transmission System elements.
- Bidders are free to quote different annual Transmission Charge for various years within a variation band of maximum ten percent (plus or minus) between two successive years.
- Bidder shall quote annual Transmission Charge, payable after commissioning till expiry of License Period, and the monthly Charge payable shall be annual Charge divided by 12.
- Transmission Charge shall be designated in Indian Rupees only. Foreign Exchange risks, if any, shall be borne by the Transmission Service Provider. Bidders shall quote transmission charge in Indian Rupees only.
- The Transmission Charge must comply with the terms and conditions of the TSA.
- The Transmission Charge will be based on a Contract Year.

3.8.3 Transmission Charge Components

3.8.3.1 Non-Scaleable Capital Recovery Charge

The Non-Scaleable Capital Recovery Charge, not adjustable by any index, should cover all fixed costs incurred by the TSP related to the development of project, survey, detailed project report formulation, arranging finance, project management, obtaining transmission license, obtaining right of way, necessary

clearances, site identification, land compensation, design, engineering, equipment, material, construction, erection, testing and commissioning of transmission system elements (Viz. transmission lines and/ or substations and/or switching stations and/or HVDC links including terminal stations and HVDC transmission lines) of the Project, including without limitation:

- costs, taxes and duties associated with construction
- debt service, including appropriate financial costs, such as interest and fees if any for arranging finance during construction
- depreciation
- insurance costs during construction
- administrative costs
- investor return on equity
- Interest on debt

Each Bidder shall indicate a Non-Scaleable Capital Recovery charge for each Transmission System element and for each Contract Year.

3.8.3.2 Scaleable Operations and Maintenance Charge

The Scaleable component of Transmission Charge shall be Operations and Maintenance Charge which shall include fixed charges related to transmission system operation and maintenance. Such costs include, without limitation:

- Costs of salaries and labor including directors' incentives (if any), rent or lease of home office and site, office supplies and equipment, etc.
- Costs of O&M Contract and/or costs of salaries of personnel to operate and maintain the transmission system elements, tools, etc.
- Insurance costs
- All operating taxes
- Financial costs of operations (other than debt servicing) such as interest on working capital.

Each Bidder shall indicate a Scaleable component of Transmission Charge for each Transmission System element and for first Contract Year which shall not be more than 15 % of Non Scaleable Component Quoted by the bidders for the first year .

The Scaleable O & M component of Transmission Charge for each Transmission System element and for first Contract Year will be quoted in Rupees and shall be escalated for subsequent years @% per year for evaluation purpose. However, actual payment shall be by adjusting this component as per the methodology covered in the TSA.

3.8.4 Payment of TSC

Beneficiary(s) of the transmission services shall pay the TSC, linked to availability of the system to TSP, as approved by CERC, apportioned based on Allotted Transmission Capacity, as follows:

- Upon achieving the Commercial Operation Date, Beneficiary(s) will pay the TSC as defined in Clause 3.8.3.
- All payments shall be made in accordance with the TSPA in Indian Rupees only.

3.8.5 Incentive/Disincentive

At the end of each Contract Year, the TSP will be entitled to an Incentive from Beneficiary(s) or be required to pay Disincentive to Beneficiary(s) based on the Availability Factor for that Contract Year. These shall be calculated in line with CERC Regulations, as applicable from time to time.

3.8.6 Stability of Transmission Charge

Change (plus or minus) in the Transmission Charge from Contract Year to Contract Year in excess of 10% is not permitted. Also, Scaleable component of Transmission Charge should not be in excess of 15 % of Non Scaleable Component (for each Transmission System element for first contract year). Transmission Charge Proposal that does not satisfy this requirement shall be out rightly rejected. Bidder's may please note that the evaluation methodology is structured to discourage front-loading of the Transmission Charge.

3.9 ACTIVITIES AFTER SELECTION OF TSP:

3.9.1 Furnishing of Development Security : Within thirty (30) days of issue of LOI, the selected TSP shall be required to furnish Development Security to BPC.

3.9.2 Finalisation of Project Plan : Within thirty (30) days of signing of agreements the TSP shall, with the approval of BPC, finalise detailed plan including PERT network/Bar Chart for timely execution of the Project and submit the same to BPC.

3.9.3 Financial Close: A full financial close shall be achieved within 180 days of Execution of Agreements.

3.9.4 Liquidated Damages: The TSP shall be expected to commission the Project within the stipulated period. Any delay will attract Liquidated Damages, as specified in the IA. The TSP shall operate and maintain the Project pursuant to TSA.

ATTACHMENT -1

DETAILED EVALUATION OF TECHNICAL BID

	Yes	No	Remarks
1. Is the Bidder qualified?	_____	_____	_____
2. Bid Security			
2.1 Is the Bid Security acceptable? (No material change to the format provided in RfS, conforms to validity date and the amount specified)	_____	_____	_____
2.2 Has it been issued by an acceptable bank?	_____	_____	_____
3. Project Bid			
3.1 Is the scope complete?	_____	_____	_____
3.2 Has Bidder provided an O&M Plan for Trans. System Elements?	_____	_____	_____
3.3 Has Bidder submitted a complete and acceptable project schedule that includes meeting the Required Commercial Operation Date?	_____	_____	_____
3.4 Has Bidder taken any exceptions to Sections 1, 2 or 3(Volume-I) which constitute a material modification?	_____	_____	_____
3.5. Has Bidder taken any exceptions to IA (Volume-II) which constitute a material modification?	_____	_____	_____
3.6 Has Bidder taken any exceptions to TSA (Volume-III) which constitute a material modification?	_____	_____	_____

SECTION – 4

**ANNEXURES AND FORMATS
FOR
ASSESSING OF QUALIFYING AND EVALUATION CRITERIA**

Annexure 4.1 Proforma for Acknowledgement of Receipt of Request for Selection (RfS) documents and Notice of Intent to Bid.

To,

.....
.....
.....

Sub: Bid for Selection as TSP for establishment of Transmission System elements
.....[Name of Project] against Specification No. :.....

Dear Sir,

The undersigned, in his capacity as the representative of -----, hereby acknowledges the receipt of Request for Selection (RfS) Documents for the captioned Project from BPC. The undersigned confirms that we are in possession of the entire RfS Documents. We have reviewed the RfS and intend to submit Bid.

Thanking you,

Yours sincerely,

(Authorised Signatory)

Date -----

Place -----

(here enter the name and address of the Bidder)

Annexure 4.2 Format for Bid Proposal Letter

(Bids not accompanied with the covering letter strictly as per the format mentioned below shall be declared non-responsive. The covering letter should be on Letter Head of the Bidder)

Date: _____
From : _____

Tel.#:
Fax#:

To
.....
.....
.....

Sub : Bid for selection as TSP for establishing Transmission System elements under
.....[Name of Project] against Specification No. :

Sir,

1. Being duly authorised to present and act on behalf of the Bidder
M/s _____(hereinafter called "The Bidder")
and having read and examined in detail the Request for Selection (RfS) Documents, the undersigned hereby apply to be selected by BPC as TSP for establishing Transmission System elements as stipulated in RfS Documents issued by BPC vide its letter no. -----
-- dtd. -----.
2. It is confirmed that our Bid is consistent with all the requirements of submission as stated in the RfS Documents and subsequent communications from BPC.
3. The information submitted in our Bid is complete, strictly as per the requirements stipulated in the RfS Documents and is correct to the best of our knowledge and understanding. We would be solely responsible for any errors or omissions in our Bid.
4. We confirm that there are no litigation or other disputes against us which materially affect our ability to fulfill our obligations with regard to the Project as per the terms of RfS Documents.
5. We confirm that all the terms and conditions of the Bid are valid for acceptance for a period of twelve (12) months from the last date of submission of the Bid.

6. We confirm that we have not taken any deviation so as to be deemed non-responsive with respect to the provisions stipulated at clause 3.5.5, Section-3 (Non-negotiable) of this selection document, Volume-I.
7. We hereby confirm that we shall adhere to the time frame for completion of the Project, as specified in the RfS Documents.
8. We have enclosed herewith a Pay Order/Demand Draft/ Banker Cheque/Bank Guarantee of Rs.million towards Bid security from Nationalised /Scheduled /Foreign Bank with branch in New Delhi.
9. We confirm that we have studied the provisions of relevant Indian laws and regulations required to enable us to prepare this Bid and as required to build, own, maintain & operate the said Project, in the event that we are finally selected.

Thanking you,

Yours sincerely,

(Authorised Signatory)

Date -----

Place -----

(here enter the name and address of the Bidder with TSP Seal)

Encl.: Bid Proposal

Annexure 4.3 Format for Declaration by the Bidder

Being duly authorised to present and act on behalf of Bidder M/s..... the undersigned agree that the decision of the BPC in the process of selection as TSP resulting from our Bid Proposal No.----- dated --- shall be full and final and we further agree to abide unreservedly with BPC’s decision. Furthermore, we warrant that under no circumstances shall we challenge either the BPC’s decision or right to make this decision at any time in the future.

(Authorised Signatory)

Date -----

Place -----

(here enter the name & address of the Bidder)

Annexure 4.4 Format for Evidence of Signatory’s Authority (Affidavit)

I _____, aged _____ years,
(Name of official) (present age)
S/D/W of _____ and presently
(Name)
resident of _____
(address)
and _____ of _____ after having
(Designation) (Name of firm)
been duly sworn certify the following:

1. That I am the [Insert official capacity and attach as Attachment 1 evidence of Signatory authority as per Bidder’s own format] of the [Insert name of firm], [Insert type of entity, i.e., corporation, limited liability company, etc.] duly organized under the laws of _____. (Name of State (if applicable) and Country)

[If a consortium, insert the following:

2. That [Insert name of firm] is duly authorized as the Lead Member for a consortium that includes the following members: [Insert names of other members of consortium;]

The Power of Attorney executed by the above referred members of the consortium authorising the Lead Member to represent them and act on their behalf are annexed hereto in line with format for Power of Attorney for Consortium as at Clause 4.5 of Section-4.

3. That as (Insert official capacity) for and on behalf of the [Insert name of firm] [if a consortium, include the following: “and for and on behalf of the following companies: Insert names of other members of consortium].

I hereby solemnly affirm and certify:

- a. That the information submitted in this Proposal is complete and in accordance with the RfS.
- b. That all statements made in this Proposal and in the required attachments are true and correct;
- c. That this Proposal is made for the express purpose of selection _____ (Insert name of firm and if a consortium, the names of all members) under[Name of Project] consisting of Transmission System elements in the States of

- d. That the Bidder will make available to the BPC any information it may find necessary to verify any item in this statement or regarding his competence and general reputation;
- e. That the undersigned is duly authorized by the Firm(s)/ individual/consortium to make these representations and to sign this Proposal.

Authorized Officer

WITNESSES:

1. _____ 2. _____

Subscribed and sworn to before me this _____ day of _____ 2004
at _____.

Notary Public

Annexure 4.5 Format for Power of Attorney from Consortium Members

(On Non-judicial Stamp Paper of Appropriate value to be Purchased in the Name of Member of Consortium or as required by the jurisdiction in which executed).

KNOW ALL MEN BY THESE PRESENTS THAT M/s.....having its registered office at, M/s having its registered office at.....and M/s having its registered office at, the Members of Consortium in forming consortium vide the Consortium Agreement dated.....for.....(hereinafter called the 'Consortium') and having agreed to appoint M/s.....as the lead member of the said Consortium do hereby constitute, nominate and appoint M/s.....a company incorporated under the laws ofand having its Registered /Head Office atas our duly constituted lawful Attorney (hereinafter called as lead Member) to exercise all or any of the powers for and on behalf of the Consortium in regard to submission of the Proposal and on further shortlisting, proposal against RfS as part of the process of selection of Transmission Service Provider for.....[Name of Project], for which bids will be invited by Bid Process Co-ordinator having its office at (hereinafter called the "BPC"). We also authorize the said Lead member to undertake the following acts :

- i) To submit on behalf of consortium members a Proposal to participate in the aforesaid solicitation process initiated by BPC.
- ii) In the event, the consortium being selected as the Transmission Service Provider, to negotiate with the BPC, the terms and conditions of all the Agreements including Implementation Agreement and Transmission Service Agreement with Beneficiary(s), required for creation and operation of the Transmission Service Provider as a Company.
- iii) To do any other act or submit any document related to the above.
- iv) To receive, accept and execute above agreements for and on behalf of the Consortium.

It is expressly understood that in the event of the Consortium being selected as Transmission Service Provider, this Power of Attorney shall remain valid binding and irrevocable until the Company achieves Financial Closure for the Project.

We the member of the Consortium hereby jointly and severally agree and undertake to ratify and confirm all whatsoever the said Attorney/Authorised Representative /Lead member has done on behalf of the Consortium Member pursuant to this Power of Attorney and the same shall bind the member of Consortium as if done by each of us.

IN WITNESS THEREOF M/s.....,
M/s..... and M/s.....as the Members of the
Consortium have executed these presents on this..... day ofunder the
Common Seal (s) of their Companies.

Common Seal of
has been affixed in my/our
presence pursuant to the
Board of Director's
resolution dated

For and on behalf of
Consortium Member
M/s.....
(Signature of authorized
representative)

WITNESS

1.
(Signature)

Name
Designation.....

2.
(Signature)

Name
Designation.....

Common Seal of
has been affixed in my/our
presence pursuant to the
Board of Director's
resolution dated

For and on behalf of
Consortium Member
M/s.....
(Signature of authorized
representative)

WITNESS

1.
(Signature)

Name
Designation.....

2.
(Signature)

Name
Designation.....

Common Seal of
has been affixed in my/our
presence pursuant to the
Board of Director's
resolution dated

For and on behalf of
Consortium Member
M/s.....
(Signature of authorized
representative)

WITNESS

1.
(Signature)

Name
Designation.....

2.
(Signature)

Name
Designation.....

Annexure 4.6 Format for Proforma of Joint Undertaking for back-up guarantee by the Parent/ Affiliate Company alongwith the Bidder Company

(Separate Joint Undertaking required for each company)

On Non-Judicial Stamp Paper of Appropriate Value

THIS DEED OF JOINT UNDERTAKING executed this day of Two Thousand and by, a Company incorporated under the laws of and having its Registered Office at (hereinafter called the "Parent/ Affiliate Company", as the case may be, which expression shall include its successors, executors and permitted assigns), and M/s....., Bidder, a Company incorporated under the laws of having its Registered Office at (hereinafter called the "Bidder" which expression shall include its successors, executors and permitted assigns) in favour of[Name of BPC], having its Registered Office at[hereinafter called the "BPC"] which expression shall include its successors, executors and permitted assigns).

WHEREAS the[Name of BPC] invited Proposals of Bidders through "Request for Selection" (RfS) as per its Specification No. for selection as Transmission Service Provider for execution ofProject inRegion of India.

AND WHEREAS Clause No., Section, of RfS Document inter-alia stipulates that in case the Bidder wishes that the experience of either its Parent Company(s) or one of its Affiliate Companies be considered for technical and/or financial evaluation, the Parent Company should continue to own atleast 51% equity in such Bidders' Company as well as in such Affiliate Companies for a period of atleast five (5) years from the date of issue of Transmission License to TSP. Further, the Parent Company or such Affiliate Company whose experience is proposed to be considered will also be required to furnish Performance Guarantees (hereinafter called Back Up Guarantee) to fulfill the commitments and obligations in case of any default by such Bidder.

AND WHEREAS the Bidder has submitted its Proposal to BPC vide Proposal No. dated based on the technical/financial experience of its Parent/ Affiliate Company.

NOW THEREFORE THIS UNDERTAKING WITNESSETH AS UNDER:

- 1.0 In consideration of award to be issued by BPC to the successful Bidder as Transmission Service Provider we, the Parent Company do hereby declare that we shall be bound to own atleast 51% equity in such Bidders' Company as well as in such Affiliate Companies for a period of atleast five (5) years from the date of issue of Transmission License to TSP.
- 2.0 To fulfill the commitments and obligations in case of any default by such Bidder Company to BPC as a security, the Parent/ Affiliate Company hereby undertakes that, apart from the Development Security (performance guarantee to be furnished by the Bidder Company), we shall also furnish a Back Up Guarantee from our Bank in favour of BPC in a form acceptable to BPC. The value of such guarantee shall be equivalent to 5% of estimated Project cost as indicated in RfS document and it shall be part of guarantee towards the faithful performance/compliance of this Deed of Undertaking in terms of Implementation Agreement to be executed between TSP and BPC. The Back Up guarantee shall be unconditional, irrevocable and shall remain valid till the first anniversary of the occurrence of Commercial Operation Date and payable to BPC on its demand without any reservation or demur.
- 3.0 Further, if the BPC suffers any loss and/or damage on account of non performance by the Bidder Company then we, the Parent/ Affiliate Company hereby undertake to pay such loss or damages to the BPC on its demand without any demur or contest excluding any special, indirect, consequential damages or loss not related to the Project.
- 4.0 This Deed of Undertaking and the Back Up Guarantee to be furnished pursuant to this deed of undertaking shall be construed and interpreted in accordance with the laws of India and the Courts in Delhi shall have exclusive jurisdiction in all matters arising under this Deed of Undertaking and the Back Up Guarantee.
- 5.0 We, the Parent/ Affiliate Company (as the case may be) agree that this undertaking and the aforesaid undertaking for Back Up Guarantee shall be irrevocable and further agree that this undertaking and Back Up Guarantee shall continue to be enforceable till BPC discharges it, but not later than one year from COD. It shall become operative from the date of signing of Agreements, signed and accepted by Bidder Company.

IN WITNESS WHEREOF the parties herein have executed these presents on thisday of2006, through their authorized representatives and under the Common Seal(s).

Common Seal of the above parties, the Common Seal has been affixed thereunto in the presence of :

Common Seal of
has been affixed in my/our presence
pursuant to the Board of Director's
resolution dated

For and on behalf of Parent/
Affiliate Company
M/s.....
(Signature of authorized
representative)

WITNESS

1.
(Signature)

Name
Designation.....

2.
(Signature)

Name
Designation.....

Common Seal of
has been affixed in my/our
presence pursuant to the
Board of Director's
resolution dated

For and on behalf of
Consortium Member
M/s.....
(Signature of authorized
representative)

WITNESS

1.
(Signature)

Name
Designation.....

2.
(Signature)

Name
Designation.....

Annexure 4.7 Format for Consortium Agreement

FORMAT OF CONSORTIUM AGREEMENT BY
AND FOR RfS Document vide Specification
No.:,Dtd.....issued by[Name of BPC] for selection as
prospective Transmission Service Provider for “.....[Name of Project]”.

(On non-judicial stamp paper of appropriate value to be purchased in the name of
executants companies or as required by the jurisdiction in which executed)

THIS Consortium Agreement executed on this day of Two
Thousand by

M/s. a company incorporated under the laws of
..... and having its registered office at
..... (hereinafter called the “Lead Member” which expression shall include
its successors and assigns); and

M/s. a company incorporated under the laws of
..... and having its registered office at
..... (hereinafter called the “First Member” which expression shall include
its successors and assigns) and M/s. a company
incorporated under the laws
of and having its registered office at
..... (hereinafter called the “Second Member” which expression shall
include its successors and assign, the lead Member, the First Member and the Second
Member collectively hereinafter called as the “Consortium Members”) for the purpose of
submitting a Proposal (hereinafter called as “Proposal”) to[Name of BPC]
having its registered office at (hereinafter called the “BPC”.) and in response
to BPC’s Request for Selection Document (hereinafter called as “RfS” Document)
Dtd.....for “.....[Name of Project]” hereinafter called as “the Project”.

AND WHEREAS Clause _____ of RfS document stipulates that a Consortium of
maximumcompanies, meeting the requirements stipulated in the RfS document
may submit a Proposal signed by all the Consortium Members so as to legally bind all the
Members of the Consortium who will be jointly and severally liable for the performance and
all obligations thereunder to BPC. The consortium agreement shall be attached to the
Proposal.

NOW THIS INDENTURE WITNESSETH AS UNDER :

In consideration of the above premises all the parties to this Consortium Agreement do
hereby agree as follows:

1. M/s. shall act as Lead Member for and on behalf of Consortium Members. The said Consortium Members further declare and confirm that we shall jointly and severally be bound and shall be fully responsible unto the BPC for the successful performance of the obligations under the Request for Selection (RfS) and resulting Agreement(s) submitted / executed by the Lead Member in the event of the selection as the Transmission Service Provider.

2. In case of any breach of the stipulations of the RfS Document by the Lead Firm, Consortium Members alongwith the lead Member do hereby agree to be fully responsible to carry out all the obligations and responsibilities under the RfS and resulting Agreement(s).

3. If BPC suffer any loss or damage on account of any breach in the stipulation of the Agreements to be entered into by the Consortium Members, upon its selection as TSP pursuant to RfS (The "Agreements") or any shortfall in the performance of the Project in meeting the performances guaranteed as per the specification, the Consortium Member hereby jointly and severally undertake to promptly make good such loss or damages caused to BPC on its demand without any demur or contest. It shall not be necessary or obligatory for BPC to proceed against Lead Member before proceeding against or dealing with the other Member(s).

4. The financial liability of the Consortium Members to the BPC, with respect to any of the claims arising out of the performance or non-performance of obligations under the RfS and the resulting Agreement(s) shall not be limited so as to restrict or limit the liabilities of any of the Members and the Members shall be jointly and severally liable to BPC.

5. It is expressly understood and agreed between the Members that the responsibilities and obligations of each of the Members shall be as delineated and annexed hereto as Annexure-I forming integral part of this Agreement. It is further agreed by the Members that the above sharing of responsibilities and obligations shall not in any way be a limitation of joint and several responsibilities and liabilities of the Members to the BPC.

It is clearly understood that the Lead member shall ensure performance under the agreements and if one or more Consortium Members fail to perform its /their respective obligations under the agreement(s), the same shall be deemed to be a default by all the Consortium Members.

6. It is also understood by all Consortium Members that the RfS Document stipulates various obligations as well as terms and conditions related to this Project during Proposal stage or thereafter during execution and operation.

7. This Consortium agreement shall be construed and interpreted in accordance with the laws of India and the Courts of Delhi shall have the exclusive jurisdiction in all matters arising there under.

8. If an invitation is issued by BPC for becoming TSP, we the Consortium Members do hereby agree that we shall be jointly and severally responsible for furnishing a Development Security. It is also hereby agreed that Parent/ Affiliate Company shall submit an unconditional, irrevocable Bank Guarantee* in the format acceptable to BPC valid till first anniversary of the occurrence of Commercial Operation Date (hereinafter called as "Backup Guarantee") from a bank in favour of the BPC for the value and in the currency as specified by BPC.

* To be submitted only if experience of parent/affiliate company used for qualification purpose by any of the members of consortium.

9. It is further agreed that the Consortium agreement shall be irrevocable and shall continue to be enforceable till the same is discharged by BPC. It shall be effective from the date first mentioned above for all purposes and intents.

IN WITNESS WHEREOF, the Members to the Consortium agreement have through their authorised representatives executed these presents and affixed common seal of their companies, on the day, month and year first mentioned above.

1.	Common Seal of	For and on behalf of
	has been affixed in my/our	Lead Member
	presence pursuant to the	M/s.....
	Board of Director's	(Signature of authorized
	resolution dated	representative)

WITNESS

1.
	(Signature)
	Name
	Designation.....

2.
	(Signature)
	Name
	Designation.....

3.	Common Seal of	For and on behalf of
	has been affixed in my/our	1 st Member
	presence pursuant to the	M/s.....
	Board of Director's	(Signature of authorized
	resolution dated	representative)

WITNESS

1.
(Signature)

Name
Designation.....

2.
(Signature)

Name
Designation.....

Common Seal of
has been affixed in my/our
presence pursuant to the
Board of Director's
resolution dated

For and on behalf of
2nd Member
M/s.....
(Signature of authorized
representative)

WITNESS

1.
(Signature)

Name
Designation.....

2.
(Signature)

Name
Designation.....

Annexure 4.8 Format for Project Organisation

4.8.1 Proposed Project Organisation

If the Bidder is a single company and will hold 100% equity in the TSP please so state in this Section.

If the Bidder is a consortium of firms, please list the Lead Member and each company/organization that is being proposed to be included in the TSP proposed by the Bidder forProject and outline the respective ownership of shares and the functions and responsibilities of each proposed company in the TSP. The signed Consortium Agreement in the format as at Clause 4.7 of Section-4 must be attached.

Company/Organization Name	Type and Percentage of Shares Owned	Functions and Responsibilities
Lead Member:		
Other Partners / Members		

4.8.2 Corporate Details

Please provide the following information. If the Bidder is a consortium, please provide this information for each member including the Lead Member, that are to be included in the proposed TSP:

a) Company's Name, Address, and Nationality:

Name: _____

Address: _____

Country of Origin: _____

b) Year Organized: _____

c) Type of Organization: _____

d) Company's Local Address in India (if applicable):

- e) Telephone Number: _____
- f) Email Address: _____
- g) Website Address: _____
- h) Telefax Number: _____
- i) Telex No.: _____

j) Corporate/Legal Documents: Please provide the following corporate organizational documents:

Copy of the Memorandum and Articles of Association and certificate of incorporation or other organizational document (as applicable), including their amendments, certified by the company secretary as **Attachment 1** and

Original copy of Certificate of Good Standing certified (not more than 30 days prior to the Bid Submission Date) by the jurisdiction of incorporation/organization as **Attachment 2.**

k) Scope of Company's Business Activities:

l) Authority letter in favour of BPC from the Bidder/every member of the consortium authorising BPC to seek reference from their respective bankers & others as **Attachment 3.**

4.8.3 Proposed Relationships

If the Bidder proposes relationships with any entity (s), the Bidder should identify the following for each of such entity:

- a) Name, address and contact numbers (Tel./Fax/E-Mail Add.)
- b) Nature of proposed relationship

For and on behalf of Bidder Company
M/s.....
(Signature of Authorised Representative)

**Annexure 4.9 Format for Bidders Financial & Technical Capabilities for
..... (Indicate Name of Project)**

Name of Bidder

A. Financial Capability:

1. Bidders shall attach audited financial statements for the past five (5) years as **Attachment 1**. Such audited financial statements shall include a consolidated balance sheet and income statement. Such financial statements shall be certified by a chartered accountant (or equivalent), and supported by copies of tax returns, if audits are not required by the laws of their countries of origin.

2. In addition to providing attached copies of financial statements, please complete the following table in Indian Rupees (for conversion of Indian Rupees use exchange rate based on the bills selling card rate of State Bank of India prevailing on the date of closing of the Accounts for each respective year):

Financial Information	Actual: Previous Five Years				
	1.	2.	3.	4.	5.
1. Total assets					
2. Current assets					
3. Total liabilities					
4. Current liabilities					
5. Net worth					
6. Turnover					
7. Profits before tax					
8. Profits after tax					

The information in the above table must be certified by a Chartered Accountant (or equivalent) and dated not more than 30 days before the Proposal Submission Date. In case an Bidder is a Consortium, the details in table above need to be submitted for the Bidder as a Consortium as well as for each member of the Consortium.

B. Project Development and Technical Capability:

Attachment 2: Attachment 2 shall demonstrate through a detailed list of experience the Bidder's Project Development and Technical Capability.

This attachment should include the following:

A summary table as below which includes names, locations, size, type, voltage level etc. of infrastructure/power Project which the Bidder has promoted/executed during last ten (10) years which may be similar or larger in size and type to the proposed Project. The table must also identify the country in which the Project was implemented.

Last ten (10) years	Name(s) of Project(s)	Location(s) including country(s)	Size	Type	Voltage level (if any)	Capital Cost of Project(s) Rs. in Million	% of equity owned in the Project(s)	% of Project cost to be considered for working out Cumulative Capital Cost
Year 1								
Year 2								
Year 3								
Year 4								
Year 5								
Year 6								
Year 7								
Year 8								
Year 9								
Year 10								
Cumulative Capital Cost of Project completed during last 10 years (Rs. in Million).....								

For each Project listed in the table, the Bidder shall furnish a narrative description that includes the following information:

- Project model, i.e., BOO, BOOT, BOOM;
- Debt financing and equity raised and provided by Bidder for the Project, including names of lenders and investors;
- Size and type of installation;
- Technical data/information on major equipment installed
- Description of role performed by the Bidder on the Project
- Clearances taken by the Bidder including but limited to Right of Way (RoW), Forest Clearance and other statutory / Govt. clearances.
- Cost data (Breakdown of major components)
- Name of EPC and/or other major contractor
- Construction time for the Project
- Names, addresses and contact numbers of owners
- Operating reliability over the past ten (10) years or since date of commercial operation
- Operating environmental compliance history
- Names of Supervisory entities or consultant, if any
- Date of Commercial Operation
- Total duration of operation

Attachment-3 : For each infrastructure/power Project, Certificates of Final Acceptance and/or Certificates of Good Operating Performance duly issued by owners or clients for the Project described in Attachment 2 above.

Attachment-4 : If the Bidder has failed to complete a Project, please indicate which contract, when and why and give a detailed explanation of all aspects relating to its non-completion.

For and on behalf of Bidder Company

M/s.....
(Signature of Authorised Representative)

Annexure 4.10 Format of Checklist for Qualification Statement Submission Requirements for..... (Indicate Name of Project)

QS Submission Requirements	Response (Yes/No)
1. Proposal Letter (Format at Annexure-4.2)	
2. Declaration by Bidder (Format at Annexure- 4.3)	
3. Evidence of Signatory Authority (Format at Annexure- 4.4)	
4. Power of Attorney from Consortium Members (Format at Annexure- 4.5)	
5. Joint Undertaking by Parent/ Affiliate Company alongwith the Bidder IPTC (Format at Annexure -4.6)	
6. Consortium Agreement (Format at Annexure -4.7)	
7. Project Organisation (Format at Annexure-4.8)	
8. Bidder's Financial and Technical Capabilities (Format at Annexure-4.9)	
9. Organizational Document (Format at Annexure-4.8, Attachment-1)	
10. Certificate of Good Standing (Format at Annexure-4.8, Attachment 2)	
11. Authority Letter (Format at Annexure-4.8, Attachment 3)	
12. Audited Financials (5 years) (Format at Annexure-4.9 Attachment 1)	
13. Bidder's Technical Capability (Format at Annexure-4.9, Attachment 2)	
14. Certificates of Final Acceptance or Good Operating Performance of the Project (Format at Annexure 4.9, Attachment 3)	
15. Statement regarding Project Completion, if applicable (Format at Annexure 4.9, Attachment 4)	
16. Bidder's Compliance with Qualification Requirements (Format at Annexure-4.11)	

For and on behalf of Bidder M/s.....
(Signature of Authorised Representative)

**Annexure 4.11 Format for Assessment of Qualification Requirements
for (Indicate Name of Project).**

Qualification Requirements (Pass/Fail Criteria)

Sl.No.	As specified by BPC	Bidder's Proposal	
		Response <u>Yes/No</u>	Documentary Evidence Enclosed (Para No., Page No. etc. of the QS)
1.0	<u>Qualification Requirements</u>		
1.1	<u>Bidders' Category</u>		
1.1.1	<u>Project in Power Sector</u>		
(a)	Established / developed Project in Power sector OR <u>Project in Infrastructure Sectors</u>	Yes/No	
	Established / developed Project in other infrastructure sectors	Yes/No	
(b)	Such Project(s) should have been commissioned by the time of submission of Bid.	Yes/No	
(c)	Cumulative Capital Cost of Project(s) completed, not less than Rs.million (50% of estimated Project cost) or equivalent during last ten (10) years. Cost of Project considered shall be in proportion to the equity owned by the Company in the Project(s) developed.	Yes/No	
	OR		
1.1.2			
(a)	Bidder is a Transmission Line Contractor and has constructed/executed transmission system project(s) of 220 kV or above, including arranging supply of materials & erection thereof.	Yes/No	
		Yes/No	
(b)	Bidder is a Sub-station Contractor and has constructed/executed transmission system project(s) of 220 kV or above, including arranging supply of materials & erection thereof.	Yes/No	
	Such projects should have been commissioned	Yes/No	

(c)	by the time of submission of Bid.	Yes/No	
(d)	Cumulative Capital Cost of Project(s) completed not less than Rs.----- million (50% of estimated Project cost) or equivalent during last ten (10) years. Cost of Project(s) considered shall be as per the work awarded to Bidder.		
1.1.3	<u>Other Requirements of Bidders</u>		
(a)	Minimum positive networth of at least Rs. Million (25% of estimated Project Cost) or equivalent averaged over last five (5) financial years as per audited accounts of the Bidder.	Yes/No	
(b)	Turnover of at least Rs..... million(50% of estimated Project cost) or equivalent averaged over the last five (5) financial years as per audited accounts of the Bidder.	Yes/No	
	Requirements of S.No.1.1.1, 1.1.2 &1.1.3 above met	Yes/No	
OR			
1.1.4			
(a)	Bidder is Consortium of Firm(s) (i)Includes firm namely..... ii)Includes Transmission Line Contractor namely iii)Includes Sub-station Contractor namely iv)Includes Financial Organisation namely..... v)Includes anybody else namely.....	Yes/No	
(b)	Number of members in the Consortium i) Two members ii) Three Members	Yes/No Yes/No	
(c)	Consortium of Firm(s) meeting the following requirements j) Project in Power Sector Established / developed Project in Power sector	Yes/No	

	OR	Yes/No	
	Project in Infrastructure Sectors	Yes/No	
(d)	Established / developed Project in other infrastructure sectors	Yes/No	
	ii) Such Projects should have been commissioned by the time of submission of Bid.		
(e)	Lead Member meeting qualification requirement of Cl. No.1.3.1.1 or 1.3.1.2 & contributing atleast 51%of the Project equity.	Yes/No	
(f)	Consortium members collectively meeting the qualification requirements as in Cl. No.1.3.1.1.1	Yes/No	
(g)	Consortium members collectively meeting the qualification requirements as in Cl. No.1.3.1.2.1	Yes/No	
	Consortium members collectively meeting the qualification requirements as in Cl. No.1.3.1.3.		
	Requirements of S. No.1.1.4 above met	Yes/No	
1.2	Parent/Affiliate Company requirements :		
	a) If parent company(s) experience is to be considered, do parent company (s) own atleast 51% equity in such Bidders Company and will hold such equity for a period of atleast five (5) years from the date of issue of Transmission License by CERC.	Yes/No	
	b) If one of the Affiliate companies experience is to be considered, do parent company own atleast 51% equity in such Affiliate Company and will hold such equity for a period of atleast five (5) years from the date of issue of Transmission License by CERC.	Yes/No	
	c) The parent company(s) or Affiliate companies will furnish back-up guarantees.	Yes/No	
	Requirements of S.No. 1.2 above met.	Yes/No	
1.3	Qualification Requirements Met	Yes/No	

For and on behalf of Bidder Company
M/s.....
(Signature of Authorised Representative)

Annexure 4.12 Proforma for Bank Guarantee for Bid Proposal Security

(TO BE STAMPED IN ACCORDANCE WITH THE INDIAN STAMP ACT¹)

REF

Bank Guarantee No.....

Date

To

.....
.....
.....

Dear Sir,

In consideration of BPC having agreed, inter alia, to consider the bid of Messrs²..... (hereinafter referred to as the "Bidder" which expression shall include their respective successors and assigns) which will be furnished in accordance with the terms of the Request for Bid issued on.....(hereinafter called the "RfS") in lieu of the Bidder being required to make cash deposit, we the³..... Bank having our Head Office at⁴ (hereinafter called as the "Bank", which expression shall include our successors and assigns) so as to bind ourselves, our successors and assigns do at the instance of the Bidder hereby unconditionally and irrevocably undertake to pay as primary obligor and not as surety only to BPC forthwith at New Delhi on first demand in writing by BPC without protest or demand and without any proof or condition the sum of Rs/US\$⁵ _____ .

We, the Bank, do hereby unconditionally and irrevocably undertake to pay forthwith (and in any event within three days) the amounts due and payable under this Guarantee without any demur merely on a written demand from BPC stating that the amount claimed has become due. Any such demand made on the Bank by BPC shall be conclusive as regards the occurrence of the relevant event under the RfS Documents and also as regards the amount due and payable by the Bank under this Guarantee. However, the Bank's liability under this Guarantee shall be restricted to an amount not exceeding Rs/US\$⁵_____.

We, the Bank unconditionally undertake to pay to BPC any money to the extent of what is the subject matter of this Guarantee, so demanded under this Guarantee notwithstanding any dispute or disputes raised by the Bidder or any of them including in any suit or proceeding pending before any court or tribunal relating thereto or any Instructions or purported instructions by the Bidder or any of them to the Bank not to pay or for any cause to withhold or defer payment to BPC under this Guarantee, the Bank's liability under this Guarantee being absolute and unequivocal. The payment so made by the Bank under this Guarantee shall be a valid discharge of the Bank's liability for payment hereunder and the Bidder(s) shall have no claim against the Bank for making such payment.

This Guarantee shall be irrevocable and shall remain valid upto⁶.....(hereinafter called 'the End Date'). If any further extension of this Guarantee is required, the same shall be extended to such required period. Unless a demand or claim under this Guarantee is made on the Bank by BPC in writing on or before the End Date the Bank shall be discharged from all liability under this Guarantee thereafter.

We, the Bank further agree with BPC that BPC shall have the fullest liberty without the Bank's consent and without affecting in any manner the Banks obligations hereunder to vary any of the terms and conditions of the RfS Documents or to extend or postpone the time of performance by the Bidder or any of them from time to time or postpone for any time or from time to time any of the powers exercisable by BPC against the Bidder or any of them and to enforce or to forebear from enforcing any of the terms and conditions relating to the RfS Documents and the Bank shall not be relieved from its liability by reason of any such variation or extension being granted to the Bidder or any of them or any forbearance, act or omission on the part of BPC or any indulgence given by BPC to the Bidder or any of them or by any such matter or thing whatsoever which under the law relating to securities would, but for this provision, have the effect of so relieving the Bank.

To give full effect to the obligations herein contained, BPC shall be entitled to act against the Bank as primary obligor in respect of all claims arising out of this Guarantee and it shall not be necessary for BPC to proceed against the Bidder or any of them before proceeding against the Bank under this Guarantee and the Guarantee herein contained shall be enforceable against the Bank as principal obligor.

This Guarantee will not be discharged or affected in any way by the liquidation or winding up or dissolution or change of constitution or insolvency of the Bidder or any of them or any change in the legal constitution of the Bank or BPC.

We, the Bank lastly undertake not to revoke this Guarantee during its currency except with the previous consent of BPC in writing.

Notwithstanding anything contained herein:

Our liability under this Bank Guarantee shall not exceed Rs/US\$⁵ _____.

This Bank Guarantee shall be valid upto⁶

We are liable to pay the guaranteed amount or any part thereof under this Bank Guarantee only and only if you serve upon us written claim or demand on or before (date of expiry of Guarantee).

This Bank Guarantee is confirmed for payment of _____; and the Bank hereby authorize _____(corresponding bank in India, in case Guarantee is issued by Foreign bank) to make payment and debit the account of the Bank. Any claims under this guarantee may please be addressed to _____(corresponding bank in India) and BPC is authorised to receive payment from the said branch.

(Note: The above clause is applicable in case Bank Guarantee is issued by a Foreign Bank.)

In witness whereof the Bank, through its authorised officer, has set it's hand and stamp on this day of at

Witness

- | | |
|----|----------------------------------|
| 1. | Signature |
| 2. | Name |
| 3. | Designation with Bank Stamp Date |

Attorney as per Power of Attorney No. _____

Notes :

1. The Stamp Paper should be in the name of Executing Bank.
2. Name of Bidder alongwith complete address
3. Name and complete mailing address of the Bank to be given.
4. Name and complete mailing address of the Head Office of the Bank to be given.
5. The amount shall be as specified in the RfS Documents Clause 2.4.4, Volume-1.
6. This date shall be twelve (12) months after the due Date of submission of Bid.

Annexure 4.13 Technical Bid Data

(I) Technical Data*

(A) For Transmission Lines as Proposed by Bidder

.....
.....

(B) For Sub-stations and/or Switching stations as Proposed by Bidder

.....
.....

(C) For HVDC links including terminal stations as Proposed by Bidder

.....
.....

(D) For HVDC Transmission Lines as Proposed by Bidder

.....
.....

***[Based on Functional Specifications finalized by CEA; as per the requirements of the "Scope of Work" covered in the Project.]**

(II) Transmission System Element Maintenance Data

- 1.0 Maintenance
- 1.1 Annual Maintenance Outage Schedule

Duration (number of days)	:	_____
Time of Year	:	_____
Number of operating hours	:	_____

- 1.2 Maintenance Staff and Services

Attach the following data clearly labeled. Individual data should be numbered to correspond to the question they are addressing; e.g., data submitted in response to Question 1.2 should be labeled "Annexure 4.13, "Maintenance Data", Clause 1.2".

- 1.3 Maintenance Staff experience - provide number of years of experience with transmission facilities
- 1.4 Provide plan of maintenance staffing including, but not limited to, the number of permanent on-site maintenance personnel and their responsibilities; the personnel available for emergency maintenance and their response times; and the personnel that will be utilized for minor and major scheduled maintenance. If contracted,

specify name of contractor, location and experience with these type of transmission System Elements.

- 1.5 Describe briefly procedure that will be followed for yearly maintenance programs.
- 1.6 Provide brief description of plans for the purchasing and warehousing of tools and spare parts.
- 1.7 Provide a maintenance schedule.

Annexure 4.14 Exceptions to the RfS Documents

The following are the only deviations in our Bid from RfS Documents (Selection Document, Implementation Agreement & Transmission Service Agreement) issued by BPC, for Selection of TSP for.....(Indicate Name of Project). We confirm that, except the following, we agree to all the terms and conditions of the above RfS Documents.

RfS Documents	Section/Clause No.	Deviations Proposed
Selection Document (Volume-I)		
Implementation Agreement (Volume-II)		
Transmission Service Agreement (Volume-III)		

(Authorised Signatory)

Date -----

Place -----

(here enter the name & address of the Bidder with Company Seal)

- Note: 1) Even in case of no deviations, please submit this schedule duly filled in.
- 2) BPC would not take cognizance to any deviation, other than mentioned in the above table.
- 3) Bidders may use separate sheet for detailed response.

Annexure 4.15 Bidders Proposed Project Execution Schedule

- 1.0 The Bidder shall provide its detailed Project Schedule which supports and confirms to BPC's Time Schedule for various activities of the Project as contained in Section 2, Clause 2.11, Table-1 starting from furnishing of Development Security to BPC.
- 1.1 The Bidder's Project Execution Schedule shall bring out clearly the organization format, structure and time plan methodology for executing the Project(s), time period for financial close, award of major contracts, engineering, procurement, shipping, construction, testing, commissioning to commercial operation, necessary to demonstrate a complete and accurate understanding of the Project, as well as his knowledge of procedures and prevailing conditions in India. A detailed bar (GANTT) chart of the Project outlining each activity (taking longer than one month), linkages as well durations shall be attached. The submission shall also include roles and responsibilities envisaged for the Bidder as well as BPC.

Annexure 4.16 Proposed Transmission Charge

A. Proposed Transmission Charge

The proposed Transmission Charge to be inserted in the table below, is based on the requirements of the RfS and includes the following specific items:

- All costs, without exception, required to make available the Transmission System Assets to Beneficiary(s) for transmission of power.
- All of the components of Transmission Charge provided in Rupees in line with Clause 3.8, Section- 3 of the RfS.
- The terms and conditions of the Transmission Service Agreement.
- The change (plus or minus) in Transmission Charge is within 10% from any one Contract Year to the next Contract Year.
- The Scaleable component for first Contract year shall not be more than 15% of the non-Scaleable component.

Each Bidder shall complete the chart below for each of the Transmission System elements by providing the required data. Bidders shall not make any changes to the format of the chart. The Chart shall not contain any inflation/deflation adjustments.

Bidders are free to propose a different Transmission Charge for each period in the charts below, but in no event shall the total Transmission Charge in Rs /yr. vary by more than 10% (+ or -) from one Contract Year commencing from Commercial Operation Date. With respect to the change between the Initial Partial Year and the first full Contract Year, the change may not exceed (+ or -) the product of [the number of months in the Initial Partial Year divided by twelve months] times 10%. With respect to the change between the last full Contract Year and the Last Partial Year, the change may not exceed (+ or -) the product of [the number of months in the Last Partial Year divided by twelve months] times 10%.

Chart No. --- : ----- kV ----- (Name of Transmission System Element)

Contract Year	Non-Scaleable Component (Rs.)	Scaleable Component (Rs.)	Total Transmission Charge (Rs.)	Scaleable Component = % Non-Scaleable Component	%Variation Band
(A)	(B)	(C)	(D)=(B)+(C)	(E) = (C) / (B) x 100	(F)=(D ₃ -D ₂)/D ₂ x 100
Initial*Partial Year from					

Contract Year	Non-Scaleable Component (Rs.)	Scaleable Component (Rs.)	Total Transmission Charge (Rs.)	Scaleable Component = % Non-Scaleable Component	%Variation Band
(A)	(B)	(C)	(D)=(B)+(C)	(E) = (C) / (B) x 100	(F)=(D ₃ -D ₂)/D ₂ x 100
COD					
2					
3					
4					
5					
6					
7					
8					
9					
10					
11					
12					
13					
14					
15					
16					
17					
18					
19					
20					
21					

Contract Year	Non-Scaleable Component (Rs.)	Scaleable Component (Rs.)	Total Transmission Charge (Rs.)	Scaleable Component = % Non-Scaleable Component	%Variation Band
(A)	(B)	(C)	(D)=(B)+(C)	(E) = (C) / (B) x 100	(F)=(D ₃ -D ₂)/D ₂ x 100
22					
23					
24					
Last Partial Year					

Note: 1. Bidder shall quote the Non-Scaleable and Scaleable Component of Transmission Charge in Indian Rupees only.

2.*The Scaleable Component shall not be more than 15% of Non-Scaleable Component of Transmission Charge for initial Partial year from COD. Scaleable component for 2nd contract year shall be calculated based on the Scaleable Component of Transmission Charge for initial Partial year from COD quoted by the Bidder & shall be escalated for subsequent years @ % per year. The sum of Scaleable Component & Non-Scaleable Component shall be added and indicated in column (D) as Total Transmission Charge.

3. The Annual Transmission Charge between two successive Contract years shall be within a maximum variation band of 10%.

B. NPV of Transmission Charge

B-1 Assumptions for Evaluation

Scaleable Component — For purposes of evaluation, it will be assumed that the Scaleable Component will remain constant (no adjustments) for the duration of the TSA Term.

Discount Rate - For purposes of evaluation, the discount rate used to calculate the Net Present Value(NPV) of Transmission Charge will be@% per annum.

B-2 NPV Calculations of Transmission Charge (For Evaluation Purpose only)

Based upon the year wise Total Transmission Charge provided by Bidder in the chart in Para-A above, the NPV of Transmission Charge will be calculated by the following methodology:

The Year wise Total Transmission Charge (Combined Non-Scaleable and Scaleable Components) for 25 years will be discounted @% per annum to determine the Net Present Value (NPV) of the Transmission Charge in first-year of Commercial Operation. Thereafter sum of NPV of Transmission Charge for various years shall be calculated. The sum of NPV of Total Transmission Charge of Non-Scaleable and Scaleable Component shall be used for Ranking of Bidders.

B-3 Ranking of the Transmission Charges

The Bidders' Transmission Charge will be ranked from the lowest to the highest and the lowest "Sum of NPV of Transmission Charge for various years" will be deemed the best for each of the Transmission elements. The bidder with the lowest sum of NPV of Transmission Charge for various years shall be called for discussions as per Clause 3.7.

Annexure 4.17 Proforma for Bank Guarantee for Development Security

(TO BE STAMPED IN ACCORDANCE WITH THE INDIAN STAMP ACT¹)

REF Bank Guarantee No.....

Date

To

.....
.....
.....

Dear Sir,

In consideration of Messrs² (hereinafter referred to as the "Bidder" which expression shall include their respective successors and assigns) having been selected as the successful bidder by BPC and required to make a cash deposit, we the³..... Bank having our Head Office at⁴ (hereinafter called as the "Bank", which expression shall include our successors and assigns) so as to bind ourselves, our successors and assigns do at the instance of the Bidder hereby unconditionally and irrevocably undertake to pay as primary obligor and not as surety only to BPC forthwith at New Delhi on first demand in writing by BPC without protest or demand and without any proof or condition the sum of Rs/US\$⁵ _____ .

We, the Bank, do hereby unconditionally and irrevocably undertake to pay forthwith (and in any event within three days) the amounts due and payable under this Guarantee without any demur merely on a written demand from BPC stating that the amount claimed has become due. Any such demand made on the Bank by BPC shall be conclusive as regards the occurrence of the relevant event under the Request for Selection (RfS) Documents issued on _____ and also as regards the amount due and payable by the Bank under this Guarantee. However, the Bank's liability under this Guarantee shall be restricted to an amount not exceeding Rs/US\$⁵_____.

We, the Bank unconditionally undertake to pay to BPC any money so demanded under this Guarantee notwithstanding any dispute or disputes raised by the Bidder or any of them including in any suit or proceeding pending before any court or tribunal relating thereto or any Instructions or purported instructions by the Bidder or any of them to the Bank not to pay or for any cause to withhold or defer payment to BPC under this Guarantee, the Bank's liability under this Guarantee being absolute and unequivocal. The payment so made by the Bank under this Guarantee shall be a valid discharge of the Bank's liability for payment hereunder and the Bidder(s) shall have no claim against the Bank for making such payment.

This Guarantee shall be irrevocable and shall remain valid upto⁶.....(hereinafter called 'the End Date') If any further extension of this Guarantee is required, the same shall be extended to such required period. Unless a demand or claim under this Guarantee is made on the Bank by BPC in writing on or before the End Date the Bank shall be discharged from all liability under this Guarantee thereafter.

We, the Bank further agree with BPC that BPC shall have the fullest liberty without the Bank's consent and without affecting in any manner the Banks obligations hereunder to vary any of the terms and conditions of the RfS Documents or to extend or postpone the time of performance by the Bidder or any of them from time to time or postpone for any time or from time to time any of the powers exercisable by BPC against the Bidder or any of them and to enforce or to forebear from enforcing any of the terms and conditions relating to the RfS Documents and the Bank shall not be relieved from its liability by reason of any such variation or extension being granted to the Bidder or any of them or any forbearance, act or omission on the part of BPC or any indulgence given by BPC to the Bidder or any of them or by any such matter or thing whatsoever which under the law relating to securities would, but for this provision, have the effect of so relieving the Bank.

To give full effect to the obligations herein contained, BPC shall be entitled to act against the Bank as primary obligor in respect of all claims arising out of this Guarantee and it shall not be necessary for BPC to proceed against the Bidder or any of them before proceeding against the Bank under this Guarantee and the Guarantee herein contained shall be enforceable against the Bank as principal obligor.

This Guarantee will not be discharged or affected in any way by the liquidation or winding up or dissolution or change of constitution or insolvency of the Bidder or any of them or any change in the legal constitution of the Bank or BPC.

We, the Bank lastly undertake not to revoke this Guarantee during its currency except with the previous consent of BPC in writing.

Notwithstanding anything contained herein:

Our liability under this Bank Guarantee shall not exceed Rs/US\$⁵ _____.

This Bank Guarantee shall be valid upto⁶

We are liable to pay the guaranteed amount or any part thereof under this Bank Guarantee only and only if you serve upon us written claim or demand on or before (date of expiry of Guarantee).

This Bank Guarantee is confirmed for payment of _____; and the Bank hereby authorize _____(corresponding bank in India, in case Guarantee is issued by Foreign bank) to make payment and debit the account of the Bank. Any claims under this guarantee may please be addressed to _____(corresponding bank in India) and BPC is authorised to receive payment from the said branch.

(Note: The above clause is applicable in case Bank Guarantee is issued by a Foreign Bank.)

In witness whereof the Bank, through its authorised officer, has set it's hand and stamp on this day of at

Witness

Signature

Name

Designation with Bank Stamp

Attorney as per Power of Attorney No. _____

Date

Notes :

1. The Stamp Paper should be in the name of Executing Bank.
2. Name of Bidder alongwith complete address
3. Name and complete mailing address of the Bank to be given.
4. Name and complete mailing address of the Head Office of the Bank to be given.
5. The amount shall be as specified in the RfS Documents Clause 2.7.2, Volume -I.
6. This date shall be ninety (90) days after the Commercial Operation Date of the Project as specified in RfS Documents.

'DRAFT'

IMPLEMENTATION AGREEMENT (Volume-II)

FOR TRANSMISSION SYSTEM ELEMENTS

ASSOCIATED WITH

.....NAME OF PROJECT

BETWEEN

**.....(NAME OF TRANSMISSION
SERVICE PROVIDER)**

AND

.....NAME OF BENEFICIARY(S)

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THIS IMPLEMENTATION AGREEMENT (hereinafter referred to as "IA" or "Agreement" or "the Agreement" or "this Agreement") is made on the [day] of [month] Two Thousand [Year] between M/s.....(Name of the TSP)", incorporated under the Companies Act, 1956, having its registered office at -----
--- (hereinafter referred to as Transmission Service Provider or "TSP" which expression shall unless repugnant to the context or meaning thereof include its successors and permitted assigns) as party of the First Part; and[Name of Beneficiary(s)] (collectively referred to as "the Beneficiaries" and Individually referred to as respectively)" which expression shall unless repugnant to the context or meaning thereof include their successors and assigns as parties of the Other Part respectively.

WHEREAS:

- a) The TSP proposes to set up the Project on build, own, maintain and operate basis for the purpose of selling all the Project's available transmission capacity to Beneficiary(s) [.....Name of Beneficiary(s)] (herein referred to as "Beneficiary" in individual capacity and collectively as "Beneficiaries") on the terms and conditions contained in this Agreement and the 'Transmission Service Agreement' (hereinafter referred to as TSA);
- b) The TSP shall apply (alongwith the quoted transmission charge) for a Transmission License to CERC for setting up the Project and for selling its entire available capacity for use exclusively by the Beneficiaries ;
- c) Beneficiaries are bodies constituted by statute under "Electricity Act, 2003" and are State Transmission Utility(s) (STUs) or successor companies of (erstwhile Electricity Boards) incorporated under Companies Act,1956. They are responsible for receiving electric energy from the 'Projects' and are engaged in generation, transmission, sale, distribution or supply, as the case may be, of energy;
- d) Bid Process Co-ordinator (BPC) is facilitating the execution of transmission system elements associated withProject through TSP for the exclusive use of Beneficiaries;
- d) Beneficiary(s) agree, on the terms and subject to the conditions of this Agreement, (i) for arranging to provide assistance to the TSP for obtaining necessary Consents and way leaves for the establishment of this Project, (ii) to suitably arrange connection of the Project to the inter-state transmission system;
- e) Beneficiaries agree to take, through a separate "Transmission Service Agreement", the entire transmission capacity of the Project on a commercial basis for transmitting/wheeling of power within and/or across region(s) of India with suitable interconnection with the existing transmission network or new transmission network/lines as may be established during or after the term of this Agreement for a Transmission Charge as approved by CERC, linked to availability, pursuant to Transmission Service Agreement (TSA); The terms and

conditions stipulated in the Transmission License issued by CERC to TSP shall also apply to this Agreement.

NOW, THEREFORE, IN CONSIDERATION OF THE PREMISES AND MUTUAL AGREEMENT, COVENANTS AND CONDITIONS SET FORTH HEREIN, IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:

SECTION-1

1.0 DEFINITIONS & INTERPRETATIONS

1.1 Definitions

Terms shall bear those meanings when used in this Agreement as defined in Schedule-1 (Definitions) unless the context requires otherwise.

1.2 Interpretations

This Agreement shall be interpreted in accordance with Schedule-2 (Interpretation) unless the context requires otherwise.

1.3 Agreement Documents

All documents forming part of the Agreement (and all parts thereof) are intended to be correlative, complementary and mutually explanatory. The Agreement shall be read as a whole.

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

- i) words importing the singular shall include the plural and vice versa;
- ii) a person shall be construed as including a reference to its successors, permitted transferees and permitted assigns in accordance with their respective interests. Words importing persons or parties shall include firms, corporations and government entities;
- iii) this Agreement or any other agreement or document shall be construed as a reference to that agreement or document as it may have been, or may from time to time be, amended, varied, novated, replaced or supplemented;
- iv) a statute or enactment shall be construed as a reference to such statute as it may have been or may from time to time be modified, amended or re-enacted;
- v) a time of day shall be construed as a reference to Indian Standard Time;
- vi) references to Clauses and Sections shall be to Clauses and Sections of this Agreement.

1.5 Table of Contents and Headings

The table of contents and any headings in this Agreement are for ease of reference only and shall not affect the interpretation of this Agreement.

1.6 Interest

All interest payable under the Agreement shall accrue from day to day and be calculated on the basis of a year of three hundred and sixty five days.

1.7 General Clauses Act

Any word or expression used in this Agreement unless otherwise defined or construed in this Agreement shall bear the meaning in General Clauses Act failing which it shall bear its ordinary English meaning.

1.8 Language

All agreements, correspondences and communications to be given and all other documentation to be prepared and supplied under the Agreement shall be written in English, and the Agreement shall be construed and interpreted in accordance with that language.

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

1.9 Discretion

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

1.10 Discrepancy

In case of discrepancy between terms and conditions stipulated in Transmission License issued by CERC to TSP and the agreement(s) executed between TSP and Beneficiary(s), the terms and conditions of Transmission License shall prevail.

1.11 Independent Entity

The TSP shall be an independent entity performing pursuant to the Agreement.

Subject to the provisions of the Agreement, the TSP shall be solely responsible for the manner in which its obligations under this Agreement are performed.

All employees, representatives of TSP or Contractors engaged by the TSP in connection with the performance of the Agreement shall be under the complete control of the TSP and shall not be deemed to be employee, representatives, contractors of Beneficiary(s) and nothing contained in the Agreement or in any agreement or contract awarded by the TSP shall be construed to create any contractual relationship between any such employees, representatives or Contractors and Beneficiary(s).

SECTION-2

2.0 EFFECTIVENESS AND TERM

2.1 Effective Date

This Agreement is effective when it is executed and delivered by the parties.

2.2 Term and Termination

2.2.1 Subject to Clause 2.2.2, this Agreement shall continue to be effective, in relation to each element of the Project under construction, until the Expiry Date (subject to Clause 2.3), when it shall automatically terminate.

2.2.2 This Agreement shall terminate before the Expiry Date:

- i) If the Conditions Precedent referred to in Section 3 are neither satisfied nor waived and either party serves a notice to terminate in accordance with Clause 3.3;
- ii) If a Termination Notice is served in accordance with Section 12
 - a) by Beneficiary(s) following a TSP Event of Default; or
 - b) by the TSP following a Beneficiary(s) Event of Default;
- iii) If Beneficiary(s) or the TSP serves a notice to terminate in accordance with Clause 12.1.5.

2.3 Survival

The expiry or termination of this Agreement shall not affect any accrued rights, obligations and liabilities of the parties under this Agreement including but not limited to those specifically provided in this Agreement nor shall it affect any continuing obligations which this Agreement provides either expressly or by necessary implication, which are to survive its expiry or termination.

SECTION-3

3.0 CONDITIONS PRECEDENT

3.1 The respective obligations of parties under this Agreement in connection with the Project are subject to the satisfaction in full of the following conditions precedent unless any such condition has been waived in writing by the party for whose protection such condition has been incorporated into the Agreement.

3.1.1 Conditions Precedent to obligations of Beneficiary(s)

The following are the Conditions Precedent to the obligations of Beneficiary(s), (other than those set out in Clause 4.2 (v) and Clause 4.2 (vi)) under this Agreement, unless such conditions precedent are waived in writing by Beneficiary(s).

i) Project Approvals

Necessary initial approval for the Project by Competent Authority to facilitate commencement of the implementation of the Project shall have been granted in writing;

ii) Legal Opinion

Beneficiary(s) shall have received an opinion of legal counsel in the Agreed Form, with respect to the TSP's authority to enter into this Agreement and the enforceability of the provisions;

iii) Board Resolution

Beneficiary(s) shall have received copies (certified as true copies by a duly authorised officer of TSP) of resolutions adopted by TSP's Board of Directors authorising the execution, delivery and performance by the TSP of each Project Document to which it is a party;

3.1.2 Conditions Precedent to obligations of TSP

The following are the Conditions Precedent to the obligations of the TSP under this Agreement unless such conditions precedent are waived in writing by the TSP.

i) Consents

The TSP shall have initiated actions for obtaining the Consents (relevant to the Project) as listed in Schedule-3, for the commencement of the execution of the Project;

- ii) FIPB Clearance
The Foreign Investment and Promotion Board (FIPB) and/or the relevant authority of Govt. of India shall have given clearance (as may be applicable) for the ownership of the TSP and the proposed financing plan for the Project;
- iii) Legal Opinion
The TSP shall have received an opinion of Indian legal counsel, in the Agreed Form, with respect to Beneficiary(s) authority to enter into this Agreement and the enforceability of the provisions;
- iv) Board Resolution
The TSP shall have received copies [Certified as true copies by a duly authorised officer of Beneficiary(s)] of resolutions adopted by their Board of Directors authorising the execution, delivery and performance by Beneficiary(s) of each Project Documents to which it is a party;
- (v) Transmission License
Transmission License shall have been issued in favour of the TSP by Competent Authority;
- (vi) Transmission Service Agreement
The Transmission Service Agreement shall have been executed in a form satisfactory to Beneficiary(s).
- (vii) Financial Close
The TSP shall have achieved Financial Close;
- (viii) Project Approvals
Initial Approval to facilitate commencement of the implementation of the Project, shall have been obtained by TSP.

3.1.3 Allocation of Responsibilities

- (i) The TSP shall be responsible at its own expenses for
 - (a) satisfying with Beneficiary(s), the Conditions Precedent referred to in Clause, 3.1.2 (v) and 3.1.2 (vi).

(b) satisfying the Conditions Precedent referred to in Clause 3.1.1(ii), 3.1.2(i), 3.1.2(ii), 3.1.2(vii) and 3.1.2(viii).

(ii) The Beneficiary(s) shall be responsible at their own expenses for

(a) satisfying with TSP, the Conditions Precedent referred to in Clause 3.1.2 (v) and 3.1.2 (vi).

(b) satisfying the Conditions Precedent referred to in Clause 3.1.1(i), 3.1.2(iii), 3.1.2 (iv) and 3.1.2 (viii).

3.2 Obligation to satisfy/Waive Conditions Precedent

3.2.1 Parties shall use their reasonable endeavors to ensure either the satisfaction or waiver of the conditions precedent relating to the effectiveness of their obligations under this Agreement as specified in Clause 3.1.

3.2.2 Each party shall take all reasonable efforts to satisfy the conditions for which it is responsible in accordance with Clause 3.1.3 as soon as practicable and shall notify the other party, when each of the conditions to which its obligations are subject, are satisfied or waived.

3.3 Right to Terminate

Subject to Clause 3.5, if any of the Conditions Precedent in Clause 3.1 except 3.1.2 (vii) have neither been satisfied nor duly waived within 5 (Five) months from Effective Date, either party may terminate this Agreement by giving a written notice of termination to the other party. In the event of a termination of this Agreement due to reasons other than a TSP Event of Default, the Development Security shall not be encashed by and the same shall be returned to the TSP without any deductions whatsoever. Provided that apart from the above obligation with regard to the Development Security, both parties shall have no financial or other liability towards each other in the event of a termination of this Agreement due to non-fulfillment of the conditions precedent.

3.4 Reports

Each party shall notify the other party in writing at least once a month on the progress made in satisfying the Conditions Precedent referred to at Clause 3.1 and shall promptly inform in writing if any condition precedent for which it is responsible has been satisfied.

3.5 The TSP shall be required to inform to Beneficiary(s) the expected target date of financial close atleast 3 months before such date. Beneficiary(s) shall then inform

the TSP, within 30 days of the receipt of such information, whether it wishes to extend the target dates of achievement of the Conditions Precedent and the Required Commercial Operation Date. In such an event, the TSP shall be required to extend the above dates, provided such extension is not greater than 3 months. For any extension requested by Beneficiary(s) that is greater than 3 months, the TSP shall have the right to accept or reject the proposal of Beneficiary(s) and, should agreement not be reached between the parties on the extensions to be made to such dates within 30 days of Beneficiary(s) request first being made, shall be entitled to terminate this Agreement in accordance with Clause 3.3.

In case, Beneficiary(s) informs the TSP, 3 months prior to the target date of financial close, that it wishes to extend the target dates of achievement of the Conditions Precedent and the Required Commercial Operation Date, the TSP shall be required to extend the above dates, provided such extension is not greater than 3 months. For any extension requested by Beneficiary(s) that is greater than 3 months, the TSP shall have the right to accept or reject the proposal of Beneficiary(s) and, should agreement not be reached between the parties on the extensions to be made to such dates within 30 days of Beneficiary(s) request first being made, shall be entitled to terminate this Agreement in accordance with Clause 3.3.

SECTION-4

4.0 DEVELOPMENT OF PROJECT

4.1 TSP's obligations in development of the Project

Subject to the terms and conditions of this Agreement, the TSP at its own cost and expense shall observe, comply with, perform, undertake and be responsible:

- i) for procuring and maintaining in full force and effect the Consents, required by it pursuant to this Agreement and in accordance with Law;
- ii) to finance, build, own and commission each of the element of the Project for the scope of work set out in this Agreement and in accordance with:
 - a) the Technical Particulars as per Schedule 5 and the Technical Specifications;
 - b) the Prudent Utility Practices and the Law;
not later than the Required Commercial Operation Date ;
- iii) for owning the Project throughout the term of this Agreement free and clear of encumbrance except those permitted under this Agreement;
- iv) to make available the total transmission capacity of the Project to Beneficiary(s) i.e.[Name of Beneficiaries] (herein referred to as "Beneficiary" in individual capacity and collectively as "Beneficiaries") for safe transmission of power at their discretion as per the TSA. Provided, however, it is agreed and understood between the parties hereto that other than the use of transmission capacity which is governed under the TSA, Beneficiaries and TSP shall review use of Project for installation of OPGW subject to the terms and conditions to be mutually agreed upon ;
- v) providing all assistance to the Adjudicator and Arbitrator as they may require for the performance of their duties and services;
- vi) for appointing Contractors as per the provisions of this Agreement;
- vii) to comply with its obligations under this Agreement.

4.2 Beneficiary(s) obligations in implementation of the Project

Subject to the terms and conditions of this Agreement, Beneficiary(s), at its own cost and expense (other than in case of paragraphs (i) and (vi) below, for which Beneficiary(s) shall be reimbursed in accordance with Clause 3.1.3 (iii) of this Agreement) undertakes to be responsible;

- i) for obtaining the initial approval of the Project from Competent Authority to facilitate commencement of implementation of the Project pursuant to this Agreement and in accordance with the Law;
- ii) for arranging, on or prior to the Required Commercial Operation Date, for the connection of each element of the Project with the Interconnection Facilities. However, the TSP shall be required to coordinate and liaise with the concerned agency in this regard;
- iii) for complying with its obligations under this Agreement;
- iv) for providing all assistance to the Adjudicator and Arbitrator as they may require for the performance of their duties and services;
- v) for assisting and supporting the TSP in obtaining the necessary Consents and wayleaves required for the Project by providing letters of recommendation to the concerned Indian Governmental Instrumentality, as may be requested by the TSP from time to time;
- vi) for providing reasonable support and assistance to the TSP in connection with the finalisation of the Financing Agreements by giving due consideration to the requirements of the prospective lenders.

4.3 Time for Commencement and Completion

- (i) The TSP shall take all necessary steps to commence work on the Project from Effective Date of the Agreement and shall proceed with the Project in accordance with the time schedule specified in this Agreement.
- (ii) The Commercial Operation Date of each element of the Project shall occur on the Required Commercial Operation Date or within such extended time to which the TSP shall be entitled under Clause 4.4 hereto.
- (iii) Time shall be of essence of this Agreement. However, the parties may meet at such intervals as they may decide to discuss the progress and implementation of the Project and accordingly may mutually agree on the adjustment of the Required Commercial Operation Date.

4.4 Extension of time

4.4.1 If:

- (i) The TSP is prevented from performing its obligations under Clause 4.1 by the Required Commercial Operation Date of an element due to Beneficiary(s) default (including without limitation, Beneficiary(s) failure to arrange for the connection of each element of such Project with Interconnection Facilities in accordance with Clause 4.2); or
- (ii) subject to Clause 4.4.2 and Section 9, the Project cannot be Commissioned by its Required Commercial Operation Date,
the Required Commercial Operation Date shall be extended on a day for day basis for the duration of such events.

4.4.2 The Required Commercial Operations Date of the Project may be extended up to one hundred eighty (180) days from its Required Commercial Operation Date first determined pursuant to this Agreement by reason of one or more Force Majeure Events. In case there is a further delay on account of Force Majeure, the Required Commercial Operations Date of such Project may be extended further (beyond 180 days), with the mutual consent of the parties.

In case the parties could not reach an agreement and the Force Majeure Event continues to be present, Beneficiary(s) shall have the right to cause termination of the Agreement by giving a notice to the TSP in this regard. The TSP shall also have the right to cause termination of the Agreement by giving a notice to Beneficiary(s) in this regard.

4.5 Liquidated Damages for Delay in Commissioning of Project

4.5.1 If the TSP fails, for reasons solely attributable to it, to commission any element of the Project by its Required Commercial Operation Date as extended under Clause 4.4.1 or 4.4.2, then the TSP shall pay to Beneficiary(s) a sum equivalent to half percent (0.5%) of the cost of element subject to delay, as liquidated damages for such delay and not as penalty, without prejudice to Beneficiary(s) rights under the Agreement, for each week or part thereof which shall elapse between the above Required Commercial Operation Date and actual Commercial Operation Date, subject to the maximum limit of 5% of the cost of the element subject to delay.

4.5.2 The TSP shall make payment of the liquidated damages amount calculated pursuant to Clause 4.5.1 within ten (10) days of the earlier of; (i) the date on which the

applicable element is Commissioned; and (ii) the date of termination of this Agreement. The payment of such damages shall not relieve the TSP from its obligations to complete the Project or from any other obligation and liabilities under the Agreement.

4.5.3 If the TSP is not in a position to commission any element of the Project by its Required Commercial Operation Date due to Beneficiary(s) failure to complete and make available the Interconnection Facilities for testing and commissioning of the Project, then Beneficiary(s) shall pay to TSP a sum equivalent to half percent (0.5%) of the cost of the element subject to delay, as liquidated damages for such delay and not as penalty, without prejudice to TSP's rights under the Agreement, for each week or part thereof which shall elapse between the above Required Commercial Operation Date and actual Commercial Operation Date, subject to the maximum limit of 5% of the cost of the element subject to delay.

4.5.4 Beneficiary(s) shall make payment of the liquidated damages amount calculated pursuant to Clause 4.5.3 within ten (10) days of the earlier of; (i) the date on which the applicable element is Commissioned; and (ii) the date of termination of this Agreement. The payment of such damages shall not relieve Beneficiary(s) from its obligations to complete the Interconnection Facilities or from any other obligation and liabilities under the Agreement.

4.6 Claims against Beneficiary(s) or the TSP

4.6.1 Except as provided under Clauses 4.5 and 4.7, nothing shall entitle the TSP or Beneficiary(s) to make any claim against the other party, whether in contract, tort, strict liability or any other legal theory, for any indirect, consequential, punitive or exemplary damages.

4.7 Development Security

"Development Security" means the security in the prescribed form furnished to Beneficiary(s) by.....(Name of TSP) Limited in the form of a bank guarantee amounting to Rs.....million valid upto three months beyond Required Commercial Operation Date to secure performance and obligation of the TSP under this Agreement .

4.8 Monitoring of the Project

To ensure the timely completion of the transmission system Project by the TSP, the Central Electricity Authority(CEA) shall monitor the progress of the execution of the Project as per the conditions of the license issued by the Central Electricity Regulatory Commission(CERC).

SECTION-5

5.0 CONSTRUCTION OF PROJECT

5.1 TSP's Construction Responsibilities.

- i) The TSP, at its own cost and expense, shall be responsible for constructing and completing each element of the Project and put into beneficial use by the Required Commercial Operation Date in accordance with the Consents, Technical Particulars, Prudent Utility Practices and other legal requirements applicable to the Project.
- ii) The TSP acknowledges and agrees that it shall not be relieved from any of its obligations under this Agreement or be entitled to any extension of time or financial compensation by reason of the unsuitability of the Site or line route(s) for whatever reason except to the extent approved by the CERC responsible for approving the Transmission Charge.
- iii) The TSP shall be responsible for establishing the complete Project as per the Scope of Project given in Schedule 4 of this Agreement.
- iv) The TSP shall be responsible to obtain all permits, clearances, approvals as required under the Law for construction of the Project.
- v) The TSP shall be responsible to obtain approval of Transmission Charge from CERC.

5.2 Selection of site of Sub-station & Route of the Transmission Lines

5.2.1 The TSP shall be responsible for final selection of Sub-station site including its geo-technical investigation, Survey and final geo-technical investigation of line in order to determine the final route of the Transmission Lines.

5.2.2 It shall be the responsibility of the TSP to arrange consents including, PTCC, civil aviation, road/ rail /river/ canal/power line crossings, way leaves and, environmental & forest clearances from Competent Authority, at its own cost. Beneficiary(s) shall, however, assist the TSP in obtaining the above consents/clearances by providing letters of recommendation to the concerned authorities. Beneficiary(s) shall also make available to the TSP details / correspondence, pursuant to advance action taken, if any, by BPC or any other Agency in this regard.

5.2.3 Actual access and entries to the Site shall also be the responsibility of TSP, at its own cost, including crop compensation on each occasion, but not limited to it.

5.2.4 The TSP shall meet the requirements of the civil aviation authorities by providing, including without limitation, aviation lighting, aviation spheres and painting of towers, at its own cost.

5.3 Appointing Contractors

TSP shall conform to the technical requirements of the Bid Documents while appointing Contractor(s) for procurement of goods & services. The TSP shall finalise the award to each Contractor at an optimal cost in accordance with its policy, system, procedure and terms & conditions to meet its obligations in the Agreement .

The appointment of such Contractor(s) shall neither relieve the TSP of any of its responsibilities under this Agreement nor make Beneficiary(s) liable for the performance of such Contractor(s).

5.3 Information to Beneficiary(s)

The TSP shall provide to Beneficiary(s) with a copy to CEA, on a monthly basis, progress reports with regard to the Project and its execution (in accordance with the approved formats) to enable Beneficiary(s)/CEA to monitor and co-ordinate the development of the Project with the Interconnection Facilities.

5.5 Quality of Workmanship

The TSP shall ensure that the Project is, built and completed in a good workman like manner using sound engineering and construction practices.

The TSP shall be responsible for any discrepancies, errors or omissions in the specifications, drawings and other technical documents for this Project.

5.6 Inspection by Beneficiary(s)

Beneficiary(s) shall designate, from time to time, by a written notice to the TSP, any of its employees who shall have access at all reasonable times to the manufacturers' work place and Site for the purpose of inspecting the progress and the quality of the work being carried on there.

5.7 Supervision of work

The TSP shall provide all necessary superintendence for execution of the Project and its supervisory personnel shall be constantly available on the Site to provide full-time superintendence. The TSP shall provide and employ only skilled personnel who are experienced in their respective fields.

5.8 Remedial Measures

The TSP shall take necessary actions for remedying the lapses or shortfalls, if any, as intimated by Beneficiary(s) with regard to execution of the Project. However, such intimation by Beneficiary(s) shall not relieve the TSP of its obligations in the Agreement.

5.9 Taxes and Duties

5.9.1 Except as otherwise specifically provided in the Agreement, the TSP shall ensure payment of all taxes, duties, levies and charges assessed on the TSP, its employees by all municipal, state or national government authorities as per law in connection with the Project.

5.9.2 The TSP shall bear and promptly pay all customs and import duties as well as other local taxes including all Value Added Taxes (VAT), works contract taxes and tax on earnings (including the earnings of its employees) that are required to be paid by the TSP as per Law.

5.9.3 Beneficiary(s) shall be indemnified and held harmless by the TSP against any claims that may be made against Beneficiary(s) in relation to the matters set out in Clauses 5.9.1 and 5.9.2 above.

5.9.4 Beneficiary(s) shall not be liable for any payment of dues, taxes, duties, levies, cess whatsoever for work done by Beneficiary(s) on behalf of TSP or its personnel provided the TSP has consented in writing to Beneficiary(s) commencing such work, which consent shall not be unreasonably withheld.

5.10 During the implementation of the Project, the TSP shall make all efforts to ensure strict adherence to the time schedule.

5.11 Changes in the Project

5.11.1 Subject to the provisions under this Agreement, implementation of any change, modification, addition or deletion to, in or from the Project (hereinafter called "Change") shall be mutually agreed between the parties.

5.11.2 The TSP may from time to time during its performance of the Agreement propose to Beneficiary(s) any Change that the TSP considers necessary or desirable to improve the quality, efficiency or safety of the Project. Beneficiary(s) may at its discretion approve or reject any Change proposed by the TSP.

- 5.11.3 Within 60 (sixty) days of the receipt of the proposal of Beneficiary(s) or the acceptance by Beneficiary(s) of the proposal of the TSP as per Clause 5.11.2, the TSP shall provide to Beneficiary(s) an estimate of the expenditure and time required to be incurred for the Change, its impact on the Project and any other matter which in the opinion of the TSP is relevant to the Change. In case Beneficiary(s) does not accept the details provided by the TSP with regard to the Change, the matter shall be mutually discussed and resolved.
- 5.11.4 Notwithstanding Clauses 5.11.1 and 5.11.2 above no Change necessitated because of any default of the TSP in the performance of its obligations under the Agreement shall be deemed to be a Change, and such Change shall not result in any adjustment of the TSC or the Availability of the Project favourable to the TSP.
- 5.11.5 Any change in route length arising in spite of there being no change in the Interconnection Points of the line, shall not constitute a Change in the Project.
- 5.12 The TSP shall submit the detailed bar chart, for approval by Beneficiary(s) 60 days prior to Financial Close which shall set out works in relation to, including without limitation, design, procurement, manufacturing, testing, shipment and field erection activities which shall be used for monitoring of the Project.

SECTION-6

6.0 COMMISSIONING AND CONNECTION OF PROJECT

6.1 Connection with the Transmission System (or Grid)

6.1.1 The TSP shall give Beneficiary(s) at least sixty (60) days advance written notice of the date on which it intends to commission an element of the Project, which date shall be not earlier than its Required Commercial Operation Date unless Beneficiary(s) otherwise agrees.

6.1.2 Subject to Clause 6.1.1, any element of Project may be connected with the Interconnection Facilities when:

- i) it has been completed in accordance with this Agreement; and
- ii) it meets all other Indian legal requirements including but not limited to Electrical Inspector's clearance for connection of such element of Project with the Interconnection Facilities.

6.1.3 The TSP shall notify Beneficiary(s) as soon as it believes that any element of the Project has been completed and ready to be connected with the Interconnection Facilities in accordance with this Agreement.

6.1.4 Beneficiary(s) shall inspect the element of the Project which the TSP intends to connect with the Interconnection Facilities within thirty (30) days after being notified in writing by the TSP pursuant to Clause 6.1.3 to determine whether the requirements of Clause 6.1.2 have been met. The TSP shall provide Beneficiary(s) employees with such access to the Site as it reasonably requires to make such determination.

6.1.5 If Beneficiary(s) is satisfied that the element of the Project is ready to be connected with the Interconnection Facilities in accordance with Clause 6.1.2, it shall promptly notify the TSP to that effect and provide the TSP with all reasonable assistance in connection of the element of the Project with the Interconnection Facilities as soon as reasonably practicable.

6.1.6 If Beneficiary(s) does not inspect the element of the Project when required pursuant to Clause 6.1.4 or having inspected the element of the Project determines that the requirements of Clause 6.1.2 are not met, the TSP shall nevertheless be entitled to connect the element of the Project with the Interconnection Facilities and

Beneficiary(s) shall provide the TSP with all reasonable assistance in this regard as soon as practicable, if an Independent Engineer:

- i) certifies to Beneficiary(s) in writing that in its opinion the element of the Project may be connected with the Interconnection Facilities in accordance with Clause 6.1.2; and
- ii) gives in writing the reasons why, in its opinion, any objections raised by Beneficiary(s) are not well founded.

6.2 Commissioning

6.2.1 The TSP shall be responsible for ensuring commissioning of each element of the Project in accordance with the Technical Specifications and Technical Particulars, at its own cost.

6.2.2 The TSP shall give Beneficiary(s) and the Independent Engineer not less than ten (10) days prior written notice of each Commissioning Test.

6.2.3 Beneficiary(s) may for reasonable cause defer Commissioning Tests for up to fifteen (15) days from the date originally notified by the TSP pursuant to Clause 6.2.2 if it notifies the TSP in writing before the Commissioning Tests starts of the reason for the deferral and when the test is to be rescheduled. However, no such deferment by Beneficiary(s) on one or more occasions would be for more than an aggregate period of 30 days. Further, the Required Commercial Operation Date would be extended as required, for all such deferments on day by day basis.

6.2.4 The TSP and Beneficiary(s) shall each designate qualified and authorised representative to monitor each Commissioning Test.

6.2.5 The Commissioning Tests shall be carried out in the manner and applying the criteria as set out in the Technical Particulars and Technical Specifications. Testing and measuring procedures applied during each Commissioning Test shall be in accordance with codes, practices and procedures of Bureau of Indian Standards and, wherever applicable, international testing codes/ standards/ Prudent Utility Practices and shall be mutually agreed between the TSP & Beneficiary(s) sufficiently in advance.

6.2.6 Within five (5) days of Commissioning Tests, the TSP shall provide Beneficiary(s) and the Independent Engineer each with copies of detailed test reports.

6.3 Commercial Operation

- 6.3.1 An element of the Project shall be declared Commissioned and the Commercial Operation Date shall be achieved on the earlier of the date that Beneficiary(s) is satisfied with the test report or the date the Independent Engineer has issued a Final Test Certificate stating that the Commissioning Tests have been carried out in accordance with this Agreement and satisfy the criteria for the Commissioning of such element of the Project.
- 6.3.2 Part Commissioning: In case, only part of the Project is ready for Commissioning, Beneficiary(s), in the interest of security of that part of the Project may at its sole discretion allow its connection with the Interconnection Facilities or alternatively keep the transmission system element of the Project duly charged and consequently may make use of it till the Commercial Operation Date. The Transmission Charges for such commissioned circuits shall become payable by Beneficiary States.

Under above circumstances, TSP shall operate the line in accordance with Prudent Utility Practices under supervision and control of Beneficiary(s).

6.4 Appointment of Independent Engineer

Beneficiary(s) and the TSP shall jointly identify five technical expert organizations of repute and experience, prior to Financial Close. The parties shall mutually appoint an Independent Engineer from the above organizations sufficiently in advance of the Independent Engineer having to carry out its obligations under this Section 6 and this Agreement.

SECTION-7

7.0 SAFETY RULES AND PROCEDURES

7.1 Site Regulations and Safety

- 7.1.1 The TSP shall establish Site regulations as per the Prudent Utility Practices setting out the rules to be observed in the execution of the Agreement at the Site and shall comply therewith.
- 7.1.2 Such Site regulations shall include, but shall not be limited to, rules in respect of security, safety of the Project, gate control, sanitation, medical care, and fire prevention.

7.2 Emergency Work

- 7.2.1 If, by reason of an emergency arising in connection with and during the execution of the Agreement, any protective or remedial work is necessary as a matter of urgency to prevent damage to the Project, the TSP shall immediately carry out such work.
- 7.2.2 If the TSP is unable or unwilling to do such work immediately, Beneficiary(s) may do or cause such work to be done as Beneficiary(s) may determine is necessary in order to prevent damage to the Project. In such event Beneficiary(s) shall, as soon as practicable after the occurrence of any such emergency, notify the TSP in writing of such emergency, the work done and the reasons therefor. If the work done or caused to be done by Beneficiary(s) is work that the TSP was liable to do at its own expense under the Agreement, the costs incurred by Beneficiary(s) in connection therewith shall be paid by the TSP to Beneficiary(s).

7.3 Site Clearance

- 7.3.1 Site Clearance in Course of Performance: In the course of carrying out the Agreement, the TSP shall keep the Site reasonably free from all unnecessary obstruction, store or remove any surplus materials, clear away any wreckage, rubbish or temporary works from the Site, and remove any Equipment no longer required for execution of the Agreement.
- 7.3.2 Clearance of Site after Completion: After completion of all parts of the Project, the TSP shall clear away and remove all wreckage, rubbish and debris of any kind from the Site, and shall leave the Site clean and safe.

7.4 Watching and Lighting

- 7.4.1 The TSP shall provide and maintain at its own expense all lighting, fencing, and watching when and where necessary for the proper execution and the protection of the Project, or for the safety of the owners and occupiers of adjacent property and for the safety of the public.

SECTION-8

8.0 INSURANCE

8.1 Insurance during the Construction Period

The TSP shall effect and maintain or cause to be effected and maintained during the Construction Period, insurance against various risks, with suitable deductibles and with suitable endorsements and co-insured as may be necessary in accordance with Prudent Utility Practices and such insurances as may be required under:

- a) any of the Financing Agreements, and
- b) the Laws.

8.2 Beneficiary(s) shall be named as co-insured for insurance policies taken out by the TSP pursuant to Clause 8.1 except for insurances in respect of workers' compensation.

8.3 The TSP may affect the insurances covering different risks, deductibles, endorsements, co-insured or other terms. The certificates shall provide that no less than twenty-one (21) days notice shall be given to Beneficiary(s) by insurers prior to cancellation or material modification of a policy.

8.4 If the TSP fails to effect and/or maintain any Insurance, Beneficiary(s) may affect such Insurance (but it shall have no obligation to do so), during the period the TSP does not, at the full cost and expense of the TSP. The amount paid by Beneficiary(s) in this regard shall be paid to it by the TSP within a period of thirty (30) days of issue of notice from Beneficiary(s). The TSP shall ensure that each policy of Insurance contains an endorsement providing that each shall not be cancelled or reduced without at least twenty-one (21) days prior written notice being given by the insurer to Beneficiary(s), provided that each such Insurance shall provide:

- i) that the insurer may not cancel the coverage for non-payment of premium without first giving Beneficiary(s) 10 days written notice that the TSP has failed to make timely payments of the premium (including details of the amount owing); and
- ii) that Beneficiary(s) shall, after having received the notice referred to in para (i) above have the option to pay such premium directly to the relevant insurer.

8.5 Evidence of Insurer cover

8.5.1 The TSP shall furnish to Beneficiary(s) copies of certificates and policies of the Insurances as soon as they are effected and renewed by or on behalf of the TSP and from time to time (at the request of Beneficiary(s)) shall furnish evidence to Beneficiary(s) that all relevant premiums have been paid as soon as they have been so paid, and that the relevant policy or policies remain in existence.

8.5.2 Failure by the TSP to obtain the insurance coverage or certificates of insurance required pursuant to this Agreement shall not relieve the TSP of its obligations under this Section or in any way relieve or limit the TSP's obligations or liabilities under any other provision of this Agreement.

8.6 Preference for Indian Insurers

8.6.1 The Insurances shall be effected with Indian insurance companies to the extent that the Insurances can be effected with them in accordance with this Agreement.

8.7 Application of Insurance Proceeds

8.7.1 Save as expressly provided in this Agreement, the policies of Insurances and the Financing Agreements, the proceeds of any insurance claim made due to loss or damage to the Project or any part of the Project shall be first applied to reinstatement, replacement or renewal of such loss or damage.

8.7.2 If a Force Majeure Event or a similar natural event or circumstance renders the Project no longer economically and technically viable and the insurers under the Insurances make payment on a "total loss" basis, the portion of the proceeds of such Insurance available to the TSP (after payment to the Lenders of the Total Debt Amount) shall be allocated to the TSP.

8.7.3 .Subject to the requirements of the Lenders under the Financing Agreements, any dispute or difference between the parties as to whether the Project is no longer economically and technically viable due to a Force Majeure Event or a similar natural event or circumstance or whether that event was adequately covered in accordance with this Agreement by the Insurances shall be determined in accordance with Section 15.

8.7.4. Notwithstanding any liability or obligation that may arise under this Agreement, any loss, damage, liability, payment, obligation or expense for which compensation is due to the TSP under any Insurance shall not be charged to or payable by Beneficiary(s).

8.8 Waiver of Subrogation

8.8.1 All insurance policies supplied by the TSP shall include a waiver of any rights of subrogation of the insurers there under against, inter-alia, Beneficiary(s) and its assigns, 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.

8.8.2. The TSP hereby further releases, assigns and waives any and all rights of recovery against, inter-alia, the Beneficiary(s) and its affiliates, subsidiaries, employees, successors, permitted assigns, insurers and underwriters, which the TSP may otherwise have or acquire in or from or in any way connected with any loss covered by the policies of insurance maintained in accordance with this Section-8.

8.9 Excuse in Failing to Insure

8.9.1 The TSP shall not be in breach of its obligations to procure an insurance under Clause 8.1 to the extent and only for the period that:

- (i) The particular insurance is not available to it in the International and Indian insurance markets for reasons other than any negligence or default by, or condition (financial or otherwise) of the TSP or the TSP's Contractors;
- (ii) The TSP effects and maintains for the period referred to in Clause 8.9.1 (i) complementary insurance cover having regard to the capacity of the International and Indian insurance markets.

8.9.2 In the event of any dispute between the TSP and Beneficiary(s) as to the capacity of any insurance or reinsurance for the purpose of this Clause 8.9 the matter shall be referred to a leading independent insurance agency in India experienced in the Indian insurance market and mutually acceptable to the TSP and Beneficiary(s) and the agency so appointed shall be deemed to be an Adjudicator acting pursuant to the provisions of Section 15 of this Agreement.

SECTION-9

9.0 FORCE MAJEURE

9.1 Available Relief for a Force Majeure Event

Except as expressly provided in this Agreement, no party shall be in breach of its obligations pursuant to this Agreement or otherwise liable to the other party for any hindrance or delay in performance or any non-performance of any such obligations if and to the extent that such hindrance or delay or non-performance is due to a Force Majeure Event as defined in Clause 9.3 provided that;

- (i) the affected party could not have avoided the effect of Force Majeure by taking precautions which having regard to all matters known to it before occurrence of the Force Majeure Event and all relevant factors it ought reasonably to have taken but did not take; and
- (ii) the affected party has used its best endeavours to mitigate the effect of the Force Majeure Event and to carry out its obligations under this Agreement in any other way that is reasonably practicable.

Either party may claim relief as per Clause 4.4.2 of the Agreement.

9.2 Duty to Report

9.2.1 Neither party may claim relief for a Force Majeure Event even if it is likely to have a Material Adverse Effect on its performance of its obligations under this Agreement, unless it shall have notified the other party in writing of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event within seven (7) days after the affected party knew, or ought reasonably to have known, of its occurrence and that the Force Majeure Event would be likely to have a Material Adverse Effect on its performance of its obligations under this Agreement.

9.2.2 Any notice pursuant to Clause 9.2.1 shall include full particulars of:

- i) the nature of each Force Majeure Event which is the subject of any claim for relief under this Agreement;
- ii) the effect which such Force Majeure Event is having on the affected party's performance of its obligations under this Agreement;
- iii) the measures which the affected party is taking, or proposes to take, to

alleviate the impact of those Force Majeure Events; and

- iv) any other information relevant to the affected party's claim and the same shall be notified within fifteen (15) days after the affected party knew of the occurrence of the Force Majeure Event.

9.2.3 For so long as the affected party continues to claim to be affected by a Force Majeure Event, it shall provide the other party with regular written reports, at least once in every month, containing:

- i) the information called for by Clause 9.2.2; and
- ii) such other information as the other party may reasonably request about the affected party's claim.

9.2.4 Where the TSP is the affected party, it shall promptly notify CEA, the Agency monitoring the progress of execution of the Project in writing when any Force Majeure Event which is the subject of any claim under this Agreement ceases or when there is any material change in its impact on the TSP's performance of its obligations under this Agreement.

9.3 Force Majeure Events:

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

- (i) act of God, including, but not limited to lightning, drought, fire and explosion (to the extent originating from a source external to the Site), earthquake, volcanic eruption, landslide, flood, cyclone, typhoon, tornado, or exceptionally adverse weather conditions which are in excess of the statistical measures for the last hundred (100) years, or
- (ii) any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, terrorist or military action ;
- (iii) Change in Law to the extent not covered under tariff adjustments as per Section 11;
- (iv) expropriation or compulsory acquisition by any Indian Governmental Agency of any material assets or rights of the TSP;
- (v) any event or circumstance of a nature analogous to any of the above.

- 9.4 None of the following conditions shall constitute a Force Majeure Event unless due to a Force Majeure Event, they affect the TSP's Contractors:
- i) late delivery of plant, machinery, equipment, materials, spare parts, fuel, water or consumable for the Project; or
 - ii) a delay in the performance of any of the TSP's Contractors.

9.5 Notwithstanding anything contained in this Section-9, insufficiency of funds shall not constitute a Force Majeure Event.

9.6 Duty to Mitigate

For so long as a Force Majeure Event which is the subject of any claim under this Agreement is continuing, the affected party shall use all reasonable endeavors to alleviate its effects on the affected party's performance of its obligations under this Agreement.

9.7 Breakdown of Communication

If a Force Majeure Event causes a breakdown of communications such that a party is unable to serve any notice under this Agreement, the period for the serving of such notice (if any) shall be extended for every day whilst such Force Majeure Event prevents the service of such notice.

9.8 Continuance of Financial Obligations

It is hereby expressly clarified and agreed between the parties hereto:

- (a) For Natural Force Majeure events as per clause no 9.3(i) and (v), if the Force Majeure event's nature is analogous to the events mentioned under 9.3(i), no Party shall be in breach of its obligations pursuant to this Agreement to the extent that the performance of its obligations was prevented, hindered or delayed due to such Force Majeure Event and every Party shall be entitled to claim relief in relation to such Force Majeure Event in regard to his obligations including relief in payment of transmission charges.
- (b) For Force Majeure events other than natural Force Majeure events as per above clause no 9.3(ii) to (iv) and (v), if the Force Majeure event's nature is analogous to the events mention under (ii) to (iv) for which no insurance is available, beneficiaries shall pay IPTC equivalent to Debt servicing obligation for the Force Majeure period. For working out debt servicing obligation, average loan in any of the first ten (10) Contract Years shall be taken as $\{(147-14n)/2\}$ percent of the estimated cost of the Project B or C (as the case may be) specified in the RfS document, where n denotes the Contract Year in which the Force Majeure event has occurred. [Explanation: The debt:equity ratio considered as 70:30 of the estimated Project Cost say Rs. 100/-. It is assumed that repayment of debt shall be over in ten (10) Contract Years from

COD. Therefore the debt service re-payment for each Contract year shall be Rs.7/- (i.e. Rs.70/10). Now the debt service obligation at the beginning of any Contract year shall be $\{70-7(n-1)\}$ and debt service obligation at the end of any Contract year shall be $\{70-7n\}$. The average of the loan amount at the beginning and end of the Contract year shall be $[\{70-7(n-1)\} + \{70-7n\}]/2$ i.e. $\{(147-14n)/2\}$ % of the estimated Project Cost for any n^{th} year of the Contract Year during which Force Majeure has occurred.] The debt service obligation for the period of Force Majeure event will be worked out based on the average loan for the relevant Contract Year pro-rata to the period of Force Majeure event and Prime Lending Rate of State Bank of India on Date of Commercial Operation. Debt service obligation beyond first ten (10) Contract Years shall be nil.

SECTION-10

10.0 REPRESENTATIONS AND WARRANTIES

10.1 Beneficiary(s) hereby represents and warrants to and agrees with TSP as follows and acknowledges and confirms that TSP is relying on such representations and warranties in connection with the transactions described in this Agreement:

- (a) It has all requisite power authorising and has been duly authorised to execute and consummate this Agreement;
- (b) This Agreement is enforceable against it in accordance with its terms;
- (c) The consummation of the transactions contemplated by this Agreement on the part of Beneficiary(s) will not violate any provision of nor constitute a default under, nor give rise to a power to cancel any charter, mortgage, deed of trust or lien, lease, agreement, license, permit, evidence of indebtedness, restriction, or other contract to which Beneficiary(s) is a party or to which Beneficiary(s) is bound, which violation, default or power has not been waived;
- (d) Beneficiary(s) is not insolvent and no insolvency proceedings have been instituted, nor threatened or pending by or against Beneficiary(s);
- (e) There are no actions, suits, claims, proceedings or investigations pending or, to the best of Beneficiary(s) knowledge, threatened in writing against Beneficiary(s) at law, in equity, or otherwise, and whether civil or criminal in nature, before or by, any court, commission, arbitrator or governmental agency or authority, and there are no outstanding judgements, decrees or orders of any such courts, commission, arbitrator or governmental agencies or authorities, which materially adversely affect its ability to execute the Project or to comply with its obligations under this Agreement.

10.2 Representation and Warranties of the TSP

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

- (a) It has all requisite power authorising and has been duly authorised to execute and consummate this Agreement;

- (b) This Agreement is enforceable against it in accordance with its terms;
- (c) The consummation of the transactions contemplated by this Agreement on the part of the TSP will not violate any provision of nor constitute a default under, nor give rise to a power to cancel any charter, mortgage, deed of trust or lien, lease, agreement, license, permit, evidence of indebtedness, restriction, or other contract to which the TSP is a party or to which the TSP is bound which violation, default or power has not been waived;
- (d) The TSP is not insolvent and no insolvency proceedings have been instituted, not threatened or pending by or against the TSP;
- (e) There are no actions, suits, claims, proceedings or investigations pending or, to the best of TSP's knowledge, threatened in writing against the TSP at law, in equity, or otherwise, and whether civil or criminal in nature, before or by, any court, commission, arbitrator or governmental agency or authority, and there are no outstanding judgements, decrees or orders of any such courts, commission, arbitrator or governmental agencies or authorities, which materially adversely affect its ability to comply with its obligations under this Agreement.

SECTION-11

11.0 CHANGE IN LAW

11.1 This Section-11 shall apply only in the event that if directly due to one or more Changes in Law defined in Clause 11.3:

- i) the TSP's costs or revenues directly attributable to the Project are increased or decreased;
- ii) the TSP is required to undertake capital expenditure directly attributable to the Project in order to perform its obligations or exercise its rights pursuant to this Agreement.

11.2 Notification of Change in Law

11.2.1 If the TSP is affected by a Change in Law in accordance with Clause 11.1 and wishes to claim a Change in Law under this Section-11, it shall give notice to Beneficiary(s) of such Change in Law as soon as reasonably practicable after becoming aware of the same.

11.2.2 Notwithstanding Clause 11.2.1, the TSP shall be obliged to serve a notice to Beneficiary(s) under this Clause 11.2 if it is beneficially affected by a Change in Law.

11.2.3 Any notice served pursuant to this Clause 11.2 shall provide, amongst other things, precise details of the Change in Law and its effect on the TSP.

11.3 Change in Law

Change in Law means the occurrence of any of the following with respect to the law applicable on the date, which is seven (7) days before the date of submission of bid by the Bidder:

- the enactment or issuance of any new Indian Law,
- the repeal, modification or re-enactment in whole or in part of any existing Indian Law,
- the commencement of any Indian Law which has not yet entered into effect,
- a change in the interpretation or application of any Indian Law by any Indian Governmental Instrumentality having the legal power to interpret or apply such Law,
- the imposition (other than for cause) of a requirement for a Consent which did not exist as at the date of this Agreement,

- a change (other than for cause) in the terms and conditions attaching to a Consent after it has been given or the attachment of any new terms or conditions to such Consent, or
- the revocation or cancellation (other than for cause) of any Consent.

Notwithstanding anything contained in this Agreement, Change in Law shall not cover any change

- (i) in any Tax on any income stream which is not proposed to be reimbursed as a part of Transmission Charge payable pursuant to TSA prior to such change unless such change is subsequently permitted by Competent Authority to be reimbursed as part of Transmission Charge,
- (ii) on account of regulatory measures by CERC ;
- (iii) in any Tax applied on the income or profits distributed to TSP unless allowed to be reimbursed by Competent Authority as part of Transmission Charge.

Provided that for the purpose of any Change in Law relating to any introduction or changes in the time, rate or incidence applicable to Taxes, Change in Law protection shall be provided only for those Taxes which had been considered by CERC while awarding the Tariff Approval for the Project and for Taxes which were not in existence at the time of award of such Tariff Approval and which are subsequently approved by the CERC.

11.4 Amendment to this Agreement

11.4.1 Within sixty (60) days of a notice being served pursuant to Clause 11.2, the parties shall meet and endeavor to agree on what amendments to be made to this Agreement to ensure that the TSP is put into the same financial position as it would have been in but for the Change in Law.

11.4.2 Upon reaching agreement on the amendments required to be incorporated in this Agreement pursuant to Clause 11.4.1 the parties shall execute such amending agreement to give effect to that agreement within sixty (60) days thereof.

11.4.3 If within sixty (60) days of the commencement of the meetings between the parties pursuant to Clause 11.4.1:

- i) the parties are unable to reach agreement on the amendments required pursuant to Clause 11.4.1; or

- ii) having reached agreement on the amendments required pursuant to Clause 11.4.1, no amending agreement has been executed within a further sixty (60) days of such agreement, either party may refer any areas of disagreement to be settled in accordance with Section 15 so that the necessary amendments to this Agreement pursuant to Clause 11.4.1 are executed. The parties shall execute such amending agreement so determined in accordance with Section 15 as soon as reasonably practicable.

SECTION-12

12.0 Termination on Default

12.1 Termination

12.1.1 TSP Events of Default

The occurrence and continuation of any of the following events shall constitute a TSP Event of Default, unless any such TSP Event of Default occurs as a result of a breach by Beneficiary(s) of its obligation under this Agreement, a Beneficiary(s) Event of Default or a Force Majeure Event. Beneficiary(s) shall have the right to invoke the Development Security as furnished by the TSP in case of happening of any of the following TSP Events of Default:

- i) The failure of the TSP to effect the Financial Close within six (6) months from Effective Date provided all other Conditions Precedent (excluding achievement of Financial Close) have been satisfied or waived in accordance with Section 3;
- ii) After having taken up the construction of the Project, the abandonment by the TSP or the TSP's Contractors of the construction of the Project provided that the TSP and the TSP's Contractors shall not be deemed to have abandoned construction of the Project if and for so long as it is using its diligent efforts to restart such construction;
- iii) The failure of any element of Project to be Commissioned by the date falling six (6) months after its Required Commercial Operation Date;
- iv) Any breach by the TSP of any of its Material obligations under this Agreement as a result of (Name of the Company) failing to effect the Financial Close in circumstances where the conditions precedent (excluding achievement of Financial Close) have not been satisfied or waived in accordance with Section 3 ;
- iv) If, without the prior written consent of Beneficiary(s), any employee, agent or representative of the TSP or a TSP's Contractors tampers with the Interconnection Facilities, except to take reasonable precautions to prevent an imminent material danger to persons or an imminent danger of material damage to property;

- vi) If the TSP:
 - a) assigns, mortgages or charges or purports to assign, mortgage or charge any of its assets or rights in contravention of the provision of this Agreement; or
 - b) transfers or novates any of its obligations pursuant to this Agreement, in a manner contrary to the provisions of this Agreement;
- vii) The transfer, pursuant to law, of either:
 - (a) the rights and/or obligations of the TSP under this Agreement; or
 - (b) all or a substantial portion of the assets or undertakings of the TSP;
 except where such transfer
 - (1) does not affect the ability of the transferee to perform, and such transferee has the financial and technical capability to perform, its obligations under this Agreement;
 - (2) is to a transferee who assumes such obligations under the Project and this Agreement remains effective with respect to the transferee;
- viii) The dissolution, pursuant to law, of the TSP except for the purpose of a merger, consolidation or re-organisation that does not affect the ability of the resulting entity to perform its obligations under this Agreement and provided that such resulting entity expressly assumes such obligations;
- ix) Revocation of Transmission License of TSP; and
- x) Non-payment of any amount due to Beneficiary(s) even after sixty days of issue of notice to pay by Beneficiary(s).

12.1.2 Beneficiary(s) Events of Default

The occurrence and continuation of any of the following events shall constitute a Beneficiary(s) Event of Default, unless any such Beneficiary(s) Event of Default occurs as a result of a breach by the TSP of its obligations under this Agreement, an TSP Event of Default or a Force Majeure Event;

- i)
 - a) The dissolution, pursuant to Law, of Beneficiary(s) or all or a substantial portion of the assets or undertakings of Beneficiary(s), unless such dissolution is in connection with the reorganization or restructuring of the power sector and provided that (i) Beneficiary(s) successor under this Agreement expressly assumes the obligations of Beneficiary(s) under this Agreement and (ii) is otherwise capable of performing the obligations of Beneficiary(s) under this Agreement;
 - (b) The transfer pursuant to Law of either the rights and/or obligations of Beneficiary(s) hereunder or all or a substantial portion of the assets or undertakings of Beneficiary(s), unless such transfer is in connection with the reorganization or restructuring of the power sector and the conditions set out in paragraphs (i) to (iii) in (a) above are satisfied;
- ii) Beneficiary(s) is in breach of any of its Material obligations pursuant to this Agreement pursuant to a Beneficiary(s) default;
- iii) The failure of any Part of the Project to be Commissioned by the date falling six months after its Required Commercial Operation Date (as such COD may have been extended under Section-4) due to the fault of Beneficiary(s);
- iv) Non-payment of any amount due to TSP even after sixty days of issue of notice to pay by TSP; and
- v) If Beneficiary(s) transfers or novates any of its obligations pursuant to this Agreement, in a manner contrary to the provisions of this Agreement.

12.1.3 Termination Procedure for TSP Events of Default

12.1.3.1 Upon the occurrence of a TSP Event of Default, Beneficiary(s) may serve notice on TSP of its intention to terminate this Agreement (a Beneficiary(s) Preliminary Termination Notice") which notice shall specify in reasonable detail, the circumstances giving rise to such Beneficiary(s) Preliminary Termination Notice. Provided that in case of revocation of Transmission License as mentioned under Clause 12.1.1 (ix), Beneficiary(s) or its nominee shall have the right (but not the obligation) to take over the implementation of the Project immediately subject to approval of CERC.

12.1.3.2 Following the giving of a Beneficiary(s) Preliminary Termination Notice, the parties shall consult for a period of up to two (2) months (or such longer period as they may agree) (the "Notice Period") as to what steps shall be taken with a

view to mitigating the consequences of the relevant event having regard to all the circumstances. Provided that in case of a Preliminary Termination Notice served under Clause 12.1.1 (x), the Notice Period shall be reduced to one month. Provided further that during such period, the TSP shall not remove any equipment or any part of the Project, without the prior written consent of Beneficiary(s).

12.1.3.3 During any Notice Period, both parties shall, save as otherwise provided in this Agreement, continue to perform their respective obligations under this Agreement.

12.1.3.4 Within the period of five (5) days following the expiry of the Notice Period and unless the parties shall have otherwise agreed or the circumstances giving rise to Beneficiary(s) Preliminary Termination Notice shall have ceased to exist or shall have been remedied, Beneficiary(s) may terminate this Agreement by giving written notice ("Termination Notice") to the TSP (with a copy to the Lenders' Representative) whereupon:

- (i) subject to the terms and conditions of this Agreement and the Financing Agreements, this Agreement shall terminate on the date of such Termination Notice, and
- (ii) Beneficiary(s) shall have right exercisable by notice served on the TSP within one hundred and twenty (120) days of such notice to require the TSP to sell the Project to XYZ[Party selected by CERC, who Buys-out the Project] at a Buy-out Price determined by CERC in accordance with provisions of Electricity Act,2003.

12.1.4 Termination Procedure for Beneficiary(s) Events of Default

12.1.4.1 Upon the occurrence of a Beneficiary(s) Event of default, the TSP may serve notice on Beneficiary(s) of its intention to terminate this Agreement (an "TSP Preliminary Termination Notice") which notice shall specify in reasonable detail the circumstances giving rise to such TSP Preliminary Termination Notice.

12.1.4.2 Following the giving of a TSP Preliminary Termination Notice, the parties shall consult for a period of up to two (2) months (or such longer period as they may agree) (the "Notice Period") as to what steps shall be taken with a view to mitigating the consequences of the relevant event having regard to all the circumstances. Provided that in case of a Preliminary Termination Notice served under Clause 12.1.2 (iv), the Notice Period shall be reduced to one month

12.1.4.3 During any Notice Period, both parties shall, save as otherwise provided in this Agreement, continue to perform their respective obligations under this Agreement.

12.1.4.4 Within the period of five (5) days following the expiry of the Notice Period and unless the parties shall have otherwise agreed or the circumstances giving rise to the TSP Preliminary Termination Notice shall have ceased to exist or shall have been remedied, TSP may terminate this Agreement by giving written notice ("TSP Termination Notice") to Beneficiary(s) whereupon;

(i) subject to the terms and conditions of this Agreement and the Financing Agreements, this Agreement shall terminate on the date of such Termination Notice; and

(ii) the TSP shall have an option, exercisable by notice served on Beneficiary(s) within one hundred and twenty (120) days of such notice to sell the Project to XYZ, the party decided by CERC, in accordance with provisions of Electricity Act, 2003.

12.1.5 Termination due to Force Majeure

In case the parties could not reach an agreement pursuant to Clause 4.4.2 of this Agreement and the Force Majeure Event or its effects continue to be present, Beneficiary(s) shall have the right to cause termination of the Agreement by giving a notice to the TSP in this regard. The TSP shall also have the right to cause termination of the Agreement by giving a notice to Beneficiary(s) in this regard. In case of either of these events, subject to the terms and conditions of Financing Agreements, within one hundred and twenty (120) days of such notice, to require the TSP to sell the Project to XYZ [Party selected by CERC, who Buys-out the Project] at a Buy-out Price determined by CERC in accordance with provisions of Electricity Act, 2003.

12.2 In case of termination of this Agreement, leading to Buy-out of the Project by XYZ, the TSP shall provide to XYZ full names and addresses of its Contractors, Sub-Contractors as well as complete designs, design drawings, manufacturing drawings, material specifications and technical information, as required by XYZ.

SECTION-13

13.0 LIABILITY AND INDEMNIFICATION

13.1 Limitation of Liability

Notwithstanding any other term or provision of this Agreement, the aggregate liability which each of the parties shall have for all claims made under this Section-13 shall not exceed the limit fixed as per the terms of this Agreement.

13.2 Loss of or damage to property, death or injury to person

13.2.1 Indemnification by Beneficiary(s)

Beneficiary(s) agrees with the TSP (itself and as trustee on behalf of TSP's Contractors) to indemnify and hold harmless the TSP and each of the TSP's Contractors for loss of or damage to property, death or injury to person (or any related claim against the TSP and/or any of the TSP's Contractors) and all related expenses (including without limitation reasonable legal fees) suffered by the TSP and/or any of the TSP's Contractors in connection with this Project to the extent resulting from any negligent act or omission of Beneficiary(s) and/or any of Beneficiary(s) contractors or their respective employees, without recourse to the TSP and/or any of TSP's Contractors and hold the TSP and/or the TSP's Contractors fully indemnified in respect of any such loss of or damage to property, death or injury to person provided that;

- i) such indemnity shall not extend to any loss, damage, death or injury (or any related claim) or any related expenses to the extent that:
 - a) it arose from a claim made outside India, or
 - b) it was caused by any act or omission of the TSP and/or any of TSP's Contractors or the failure of the TSP and/or any of the TSP's Contractors to take reasonable steps to mitigate that loss, damage, death or injury; and
- ii) nothing in this Clause 13.2.1 shall apply to any loss, damage, cost or expense in respect of, and to the extent that, the TSP and/or any of the TSP's Contractors are compensated pursuant to the terms of any agreement or under any policy of insurance (including but not limited to the Insurances).

13.2.2 Indemnification by the TSP

The TSP agrees with Beneficiary(s) to indemnify and hold harmless Beneficiary(s) for loss of or damage to property, death or injury to person [or any related claim against Beneficiary(s)] and all related expenses (including without limitation reasonable legal fees) suffered by Beneficiary(s) in connection with this Project to the extent resulting from any negligent act or omission of the TSP and/or any of the TSP's Contractors or their respective employees, without recourse to Beneficiary(s) and will hold Beneficiary(s) fully indemnified in respect of any such loss of or damage to property, death or injury to person provided that;

- i) such indemnity shall not extend to any loss, damage, death or injury (or any related claim) or any related expenses to the extent that:
 - a) it arose from a claim made outside India; or
 - b) it was caused by any act or omission of Beneficiary(s) or the failure of Beneficiary(s) to take reasonable steps to mitigate that loss, damage, death or injury; and
- ii) nothing in this Clause 13.2.2 shall apply to any loss, damage, cost or expense in respect of, and to the extent that Beneficiary(s) is compensated pursuant to the terms of any agreement or under any policy of insurance (including but not limited to the Insurances).

13.3 Patent Indemnity

13.3.1 The TSP shall, subject to Beneficiary(s) compliance with Clause 13.3.2, indemnify and hold harmless Beneficiary(s) and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of whatsoever nature, including attorney's fees and expenses, which Beneficiary(s) may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright or other intellectual property right registered or otherwise existing at the date of the Agreement by reason of the installation of the Project by the TSP.

Such indemnity shall not cover any use of the Project or any part thereof other than for the purpose indicated by or to be reasonably inferred from the Agreement, any infringement resulting from the misuse of the Project or any part thereof, or any products produced in association or combination with any other equipment, plant or materials not supplied by the TSP, pursuant to the Agreement.

13.3.2 If any proceedings are brought or any claim is made against Beneficiary(s) arising out of the matters referred to in Clause 13.3.1, Beneficiary(s) shall promptly give the TSP a notice thereof, and the TSP shall at its own expense take necessary steps and attend such proceedings or claim and any negotiations for the settlement of any such proceedings or claim. The TSP shall promptly notify Beneficiary(s) of all actions taken in such proceedings or claims.

If the TSP fails to notify Beneficiary(s) within twenty-eight (28) days after receipt of such notice that it intends to attend any such proceedings or claim, then Beneficiary(s) shall be free to attend the same on its own behalf at the cost of the TSP. Unless the TSP has so failed to notify Beneficiary(s) within the twenty-eight (28) day period, Beneficiary(s) shall make no admission that may be prejudicial to the defense of any such proceedings or claims.

Beneficiary(s) shall, at the TSP's request, afford all available assistance to the TSP in attending to such proceedings or claim, and shall be reimbursed by the TSP for all reasonable expenses incurred in so doing.

13.3.3 Beneficiary(s) shall indemnify and hold harmless the TSP and its employees, officers and Sub-Contractors from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs and expenses of whatsoever nature, including attorney's fees and expenses, which the TSP may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright or other intellectual property right registered or otherwise existing at the date of the Agreement arising out of or in connection with any design, data, drawing specification, or other documents or materials provided or designed by or on behalf of Beneficiary(s).

13.3.4 If any proceedings are brought or any claim is made against the TSP arising out of the matters referred to in Clause 13.3.3 the TSP shall promptly give Beneficiary(s) a notice thereof, and Beneficiary(s) shall at its own expense take necessary steps and attend such proceedings or claim and any negotiations for the settlement of any such proceedings or claim. The Beneficiary(s) shall promptly notify TSP of all actions taken in such proceedings or claims.

If Beneficiary(s) fails to notify the TSP within twenty-eight (28) days after receipt of such notice that it intends to attend any such proceedings or claim, then the TSP shall be free to attend the same on its own behalf at the cost of the Beneficiary(s). Unless Beneficiary(s) has so failed to notify the TSP within the twenty-eight (28) day period, the TSP shall make no admission that may be prejudicial to the defense of any such proceedings or claim.

The TSP shall, at Beneficiary(s) request, afford all available assistance to Beneficiary(s) in attending to such proceedings or claim, and shall be reimbursed by Beneficiary(s) for all reasonable expenses incurred in so doing.

13.4 Assertion of Claims

Each party shall notify the other party promptly of its entitlement, and intention, to make any claim for indemnification pursuant to this Section-13.

13.5 Defence of Claims

13.5.1 The person indemnified pursuant to this Section-13 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 person in respect of, resulting from indemnified under this Section-13 and the reasonable cost and expenses incurred by the person indemnified shall be subject to the indemnification obligation of the person indemnifying under this Section-13 provided that if the person indemnified is indemnified in respect of loss to the full extent provided by this Section-13, the person indemnifying shall be entitled, at its option, to assume and control the defense of such claim, action, suit or proceeding liabilities, payments and obligations at its expense and through counsel of its choice The person indemnified which exercises its rights under Clause 13.5.1 shall not be entitled to settle or compromise any claim, action, suit or proceeding without the prior written consent of the person indemnifying.

13.5.3 Any person indemnified which exercises its rights under Clause 13.5.1 shall 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 such person indemnified, when and as incurred, unless:

- i) the employment of counsel by such person indemnified has been authorised in writing by the person indemnifying;
- ii) the person indemnified shall have reasonably concluded that there may be a conflict of interest between the person indemnifying and the person indemnified in the conduct of the defense of such action;
 - ii) the person indemnifying shall not in fact have employed independent counsel reasonably satisfactory to the person indemnified to assume the defense of such action and shall have been so notified by the person indemnified; or

- iv) the person indemnified shall have reasonably concluded and specifically notified the person indemnifying either that there may be specific defenses available to it which are different from or additional to those available to the person indemnifying or 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 Clauses 13.5.3(ii), 13.5.3(iii) or 13.5.3 (iv) apply, counsel for the person indemnified shall have the right to direct the defense of such claim, action, suit or proceeding on behalf of the person indemnified and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses under this Section-13.

- 13.5.4 Any person other than the parties seeking the benefit of the indemnity provided pursuant to this Section-13 must acknowledge, on request and in writing to both parties to this Agreement, that, in consideration of receiving such indemnity, such person is bound by the terms of this Clause 13.5.

13.5 Consequential and Indirect Losses

Except as required by this Section-13 neither party shall be liable to the other party in contract, tort, warranty, strict liability or any other legal theory for any indirect, consequential, incidental, punitive or exemplary damages and neither party shall have any liability to the other party except pursuant to or for breach of this Agreement provided that this provision is not intended to constitute a waiver of any rights of one party against the other with regard to matters unrelated to this Agreement.

- 13.6 An act or exercise by any person of powers, functions and authorities so delegated to him or her in accordance with this Agreement shall be deemed to be an act or exercise by the delegating party.

13.7 Duty to Mitigate

The party entitled to the benefit of an indemnity under this Clause 13.0 shall take all reasonable measures to mitigate any loss or damage which has occurred. If the party fails to take such measures, the other party's liabilities shall be correspondingly reduced.

SECTION-14

14.0 ASSIGNMENTS AND CHARGES

14.1 Assignments

Beneficiary(s) shall at all times have the right to assign its rights, benefits and obligations under this Agreement to any entity or entities as Government of India /

Beneficiary(s) may from time to time direct as a part of re-organisation or restructuring of electricity industry provided that such successor entities expressly assume the obligations of Beneficiary(s) under this Agreement and are either an owner or operator of a substantial portion of the transmission system of India and are capable of performing the obligations of Beneficiary(s) under this Agreement.

Subject to Clause 14.2, this Agreement shall not be assigned by the TSP other than by mutual agreement between the parties.

14.2 Permitted Charges

14.2.1 Notwithstanding Clause 14.1, the TSP may create any encumbrance over all or part of the Security Package or the other assets of the Project in favour of the Lenders or the Lender's Representative as security for:

- i) amounts payable under the Financing Agreements; and
- ii) any other amounts agreed by the parties

Provided that:

- a) the Lenders or the Lender's Representative shall have entered into the Financing Agreements; and
- b) any encumbrance granted by the TSP in accordance with this Clause 14.2.1 shall contain provisions pursuant to which the Lenders or the Lender's Representative agrees unconditionally with the TSP to release such encumbrances upon payment by the TSP to the Lenders of all amounts due under the Financing Agreements.

14.2.2 Clause 14.2.1 does not apply to

- i) liens arising by operation of Law (or by an agreement evidencing the same) in the ordinary course of the TSP carrying out the Project;

- ii) pledges of goods, the related documents of title and/or other related documents arising or created in the ordinary course of the TSP carrying out the Project; and
- iii) security arising out of retention of title provisions in relation to goods acquired in the ordinary course of the TSP carrying out the Project.

SECTION-15

15.0 GOVERNING LAW AND DISPUTES

15.1 Governing Law

The Agreement shall be governed by and interpreted in accordance with Laws of India.

15.2 Settlement of Disputes

15.2.1 Mutual Consultation

15.2.1.1 If any dispute or difference of any kind whatsoever shall arise between Beneficiary(s) and the TSP in connection with or arising out of the Agreement, including without prejudice to the generality of the foregoing, any question regarding its existence, validity or termination, or the execution of the Project, whether during the progress of the Project or after its completion and whether before or after the termination, abandonment or breach of the Agreement - the parties shall seek to resolve any such dispute or difference by mutual consultation. If the parties fail to resolve such a dispute or difference by mutual consultation within a period of 30 days, then the dispute shall be referred in writing by either party to the Adjudicator with a copy to the other party.

15.2.2 Adjudicator

The following provisions shall apply between the parties in respect of any difference or dispute which has not been resolved by mutual consultation as provided in Clause 15.2.1:

- i) the parties shall appoint by mutual agreement an Adjudicator. In relation to technical matters, the Adjudicator shall be an Independent Engineer and in relation to financial matters, the Adjudicator shall be a Financial Expert of repute in their respective fields;
- ii) the parties shall finalise the points of such disputes or differences or the terms of reference before referring such disputes or differences to the Adjudicator;
- iii) the Adjudicator will resolve or settle such disputes or differences in such manner as he shall in his absolute discretion deem fit within sixty (60) days of such disputes or differences being referred to him and convey his

recommendations in writing to both the parties;

- iv) the Adjudicator shall, subject to paragraph (v) below, determine which party bears the costs (or a portion of the costs) of settling or determining such dispute or difference; and
- v) if the Adjudicator settles or determine a dispute or difference in a manner entirely consistent with a party's initial position on such dispute or difference, the Adjudicator shall determine that the other party bears the costs of settling or determining the dispute or difference.

15.3 Notwithstanding anything herein above, the Adjudication and Arbitration on disputes or differences shall be as per the provisions of Electricity Act, 2003.

SECTION-16

16.0 CONFIDENTIALITY

16.1 Confidential Information

Subject to Clause 16.2, both parties shall at all times during the continuance of this Agreement:

- i) use their reasonable endeavors to keep all information regarding the terms and conditions of this Agreement and any data or information acquired under or pursuant to this Agreement confidential and accordingly neither party shall disclose the same to any other person; and
- ii) not use any document or other information (whether technical or commercial) obtained by them respectively by virtue of this Agreement concerning the other's undertaking for any purpose other than performance of the party's obligations and exercise of its rights under this Agreement.

Provided that the provisions of this Clause 16.1 shall not apply to information which at the time of disclosure was in the public domain other than by breach of the foregoing obligations of confidentiality.

16.2 Disclosure of Confidential Information

16.2.1 Each of the parties shall hold in confidence the agreements relating to the Project and all documents and other information (whether technical or commercial) which is of a confidential nature disclosed to it by or on behalf of the other party relating to the Project and shall not, save as may be required by Law or appropriate regulatory or statutory authorities, or to any Indian Governmental Instrumentality, or to prospective Lenders or Investors in the TSP or to the professional advisers of the parties or of those prospective Lenders or Investors, publish or otherwise disclose or use the same for its own purposes otherwise than as may be required to perform its obligations under this Agreement.

16.2.2 Either party shall be entitled to disclose the terms and conditions of this Agreement and any data or information acquired by it under or pursuant to this Agreement without the prior written consent of the other party if such disclosure is made in good faith:

- i) to any affiliate of such party, having made if aware of the requirements of this Clause 16.2 or to any Indian Governmental Instrumentality;

- ii) to any outside consultants or advisers engaged by or on behalf of such party and acting in that capacity, having made them aware of the requirements of this Clause 16.2;
- iii) to the Lenders, the Lenders' Representative, any security trustee, any bank or other financial institution and its advisers from which such party is seeking or obtaining finance, having made them aware of the requirements of this Clause 16.2;
- iv) to the extent required by the rules of a relevant and recognised stock exchange;
- v) to the extent required by any Laws of India or pursuant to an order of any court of competent jurisdiction;
- vi) to any insurer under a policy of Insurance;
- vii) to directors, employees and officers of such party having made them aware of the requirements of this Clause 16.2;
- viii) to any person which the parties in their absolute discretion (exercised in good faith) considers such disclosures to be appropriate;

and is necessary to enable such party to perform this Agreement or to protect or enforce its rights under this Agreement or any other Project Document or to enable it to comply with any requirement referred to in Clauses 16.2.2 (iv) and 16.2.2(v) or to carry on its ordinary business.

SECTION-17

17.0 MISCELLANEOUS PROVISIONS

17.1 Amendments

This Agreement shall not be amended except by written agreement between the parties.

This Agreement is intended solely for the benefit of the parties and their respective successors and permitted assigns.

17.2 No Waiver

17.2.1 No waiver by either party of any default or defaults by the other party in the performance of any of the provisions of this Agreement:

- i) shall operate or be construed as a waiver of any other or further default or defaults; and
- ii) shall be effective unless in writing duly executed by a duly authorised representative of such party.

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

17.3 Relationship of the Parties

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.

17.4 Entirety

17.4.1 This Agreement along with its sections, schedules and appendices are intended by the parties as the final expression of their agreement and are intended also as a complete and exclusive statement of the terms of their agreement.

17.4.2 All prior written or oral undertakings, offers or other communications of every kind pertaining to this Agreement under this Agreement between the parties are abrogated and withdrawn.

17.5 Successors and Assigns

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

17.6 Notices

17.6.1 Save as otherwise expressly provided in this Agreement, all notice or other communications which are required or permitted under this Agreement shall be in writing and sufficient if delivered personally or sent by registered or certified mail, fax, telex or telegram addressed as follows:

If to the TSP :
Address :
Attention :
Fax. No. :
Telephone No.

If to Beneficiary(s) :
Address :
Attention :
Fax. No. :
Telephone No.

All notices or communications given by fax shall be confirmed by depositing a copy of the same in the post office in an envelope properly addressed to the appropriate party for delivery by registered or certified mail. All Notices shall be deemed delivered upon receipt.

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

17.7 Compliance with Notifications

Despite anything contained in this Agreement but without prejudice to Section 11, if any provision of this Agreement shall be in deviation of, inconsistent with or repugnant to the provisions contained in the Electricity Act, 2003 such provision shall be deemed to be amended to the extent required to bring it into compliance with the relevant provisions of the Electricity Act, 2003 as amended from time to time.

IN WITNESS WHEREOF, THE PARTIES HAVE CAUSED THIS AGREEMENT TO BE EXECUTED BY THEIR REPRESENTATIVE / DULY AUTHORISED OFFICERS AS OF THE DATE SET FORTH ABOVE.

1. For and on behalf of TSP
2. For and on behalf of
.....Name of Beneficiary
3. For and on behalf of
.....Name of Beneficiary
4. For and on behalf of
.....Name of Beneficiary.
5. For and on behalf of
.....Name of Beneficiary

WITNESSES

1. For and on behalf of
..... Regional Power Committee

SCHEDULE 1

DEFINITIONS

In this Agreement, unless the context otherwise requires:

"Adjudicator" means a person appointed pursuant to Clause 15.2.2;

"Agreed Form" in relation to any document means the form of the document most recently agreed by the parties and initialed by them for identification;

"Beneficiary(s)" means [.....Name of Beneficiary(s)] (herein referred to as "Beneficiary" in individual capacity and collectively as "Beneficiaries") receiving electric energy from the 'Projects' and engaged in generation, transmission, sale, distribution or supply, as the case may be, of energy.

"Bid Documents" means the tender documents containing Technical Specifications and other terms & conditions of contract pursuant to which the TSP shall invite proposals to facilitate procurement of goods and services for the Project;

"Bid Process Co-ordinator or BPC" means Agency responsible for co-ordinating the Bid Process for procurement of required Transmission Services.

"CEA" means the Central Electricity Authority of India constituted under the Electricity (Supply) Act, 1948 and operating under the Electricity Act, 2003 including any successors which fulfil the same role;

"CERC" or "COMMISSION" means Central Electricity Regulatory Commission of India constituted under Section-70 of The Electricity Act, 2003 and any successors which fulfil the same role;

"Change" means the change as defined in Clause 5.11 of this Agreement;

"Commercial Operation Date" in relation to each element of the Project means the date as declared under Clause 6.3 of this Agreement that the Project is Commissioned and under commercial operation;

"Commissioned" in relation to each element of the Project means the date as declared under Clause 6.3 of this Agreement that the Project is commissioned;

"Commissioning" means operation of each element of the Project by TSP as provided under Clause 6.2 of this Agreement;

"Commissioning Tests" means such tests that are required pursuant to Section-7 to ensure successful and safe commissioning of each element of the Project and as defined in the Technical Particulars and the Technical Specifications;

"Competent Authority" means any agency, authority, department, inspectorate, ministry or Board of the GOI or any of the state or local government or the regulator, that has authority under the Laws of India over the Project.

"Contractors" means the engineering, procurement, construction, operation & maintenance contractors, surveyors, advisors, consultants, designers, suppliers to the TSP and each of their respective Sub-Contractors (and each of their respective successors and permitted assigns) in their respective capacities as such;

"Consents" shall mean and include all authorisations, consents, licenses, approvals, registrations, clearances, permits, waivers, privileges, acknowledgements, agreements, or concessions required to be obtained from or provided by any Competent Authority for the execution, delivery and performance of the IA and the TSA, including without limitations the construction, ownership and maintenance of the transmission system elements.

"Construction Period" means the period from (and including) the earliest occurring date upon which TSP is instructed or required to take up work under the Agreement up to (but not including) the Commercial Operation Date of the Project;

"CTU" means Central Transmission Utility as referred to under Section-38 of The Electricity Act, 2003, which is POWERGRID, as specified by Govt. of India.

"D/C" **means Double Circuit;**

"Development Security" **has the meaning given to it in Clause 4.7;**

"Effective Date" means the date on which Implementation Agreement is executed and delivered by parties;

"Electricity Acts" means "Electricity Act, 2003 (Act No. 36 of 2003)" as amended from time to time;

"Electricity Rule" means the rules and regulations pursuant to Electricity Act, 2003,;

"Element" means each circuit of the line (as more fully described in Schedules 4 and 5);

"Environment Clearance" means clearance accorded under Environment Protection Act, 1986.

"Equipment" means all plants, facilities, equipment, machinery, tools, apparatus, appliances or things of every kind required in or for installation, completion and maintenance of Project that are to be arranged by the TSP, but does not include equipment, or other things intended to form or forming part of the Project;

"Event of Default" means the event as defined in Section 12;

"Expiry Date" in relation to the Project is the Commercial Operation Date of the Project or any other date as may be mutually agreed between the parties;

"Final Test Certificate" means a certificate of the Independent Engineer certifying that the results of Commissioning Tests are in order and are acceptable;

"Financial Close" means the first business day on which funds are made available to the TSP pursuant to the Financing Agreements;

"Financing Agreements" means the agreements pursuant to which the TSP is to finance the Project including the loan agreements, security documents, inter-creditor agreements, co-ordination agreements and other ancillary agreements which are a condition to the availability of funds under any such financing agreements;

"Financial Expert" means a person appointed pursuant to Section 8 or 15, as the case may be;

"Force Majeure" this term has the meaning assigned hereto in Section-9;

"Force Majeure Event" this term has the meaning assigned hereto in Section-9;

"Forest Clearance" means an approval accorded by GoI (MOEF) for diversion of forest areas for non-forest purposes under the Forest (Conservation) Act,1980.

"Independent Engineer" means a person appointed pursuant to Section 6 or 15, as the case may be;

"Indian Governmental Instrumentality" means Government of India, Government of any State of India or any Ministry, department, board, authority, instrumentality, agency, corporation or commission under the direct or indirect control of Government of India or any State Government or any political sub-division of any of them or any court or regulatory commission or tribunal or judicial body in India but excluding Beneficiary(s);

"Insurances" means the insurance cover to be obtained and maintained by the TSP in accordance with this Agreement;

"Interconnection Points" means the points, to be identified prior to the target date of Financial Close, where the elements of Project are connected with the transmission systems either with the Beneficiary State's end or with the CTU's end and such points will be at the line take-off gantry for each of the elements of the Project;

"Interconnection Facilities" means the facilities as may be set up for transmission of energy through the use of Project, on both sides of the Interconnection Points, in accordance with this Agreement and Prudent Utility Practice, which shall include, without limitation, all other transmission lines, gantries, sub-stations and associated equipments not forming part of the Project;

"Investors" at any time means all shareholders of the TSP at that time;

"Law or Laws" shall mean and include laws, ordinances, statutes, rules, Notifications & directives, regulations, judgments, decrees, injunctions, orders and stipulations enacted or issued by any Indian Governmental Instrumentality;

"Lenders" means the banks and other financial institutions who have agreed as at Financial Close to provide the TSP with the debt financing described in the Financing Agreements and any successor banks or financial institutions to whom their interests under the Financing Agreements may be transferred or assigned or to whom their obligations under the Financing Agreements may be novated;

"Lenders' Representative" means the person notified by the TSP or Lenders in writing as being the representative of the Lenders, as such person may from time to time be replaced by the TSP or the Lenders pursuant to the Financing Agreements by written notice from the TSP or any of the Lenders;

"Liability" means all claims made under Section 13 to be borne by the parties pursuant to the Agreement;

"Material" (and the meaning of such terms as "materiality" or "materially") in connection with the obligations of the TSP or Beneficiary(s) shall be in each case determined in the context of the financial conditions, business, properties and assets of the TSP considered individually. For any obligations the failure of which to be performed would individually affect the net assets, financial results, financial positions or cash flows from the operations of the TSP, such obligations will be deemed Material if the effect of such non-performance, together with all other non-performances by the TSP or Beneficiary(s) (as the case may be) would impact individually the net asset, financial results, financial positions or cash flows from operations of the TSP in an amount greater than 5% of the gross assets of the TSP;

"Material Adverse Effect" shall mean an effect on the business, results of implementation, operations, financial condition, financial prospects or other conditions of the TSP which is adverse and Material;

"month" means calendar month of Gregorian Calendar;

" Notice Period" means a period pursuant to Section-12;

"Notification" means any notification, issued in the Gazette of India;

"OPGW" means Optical Fiber Ground Wire;

"Project" means the transmission system elements as set out in Schedule 4, together with all associated equipment and facilities to be set up by the TSP;

"Project Under Construction" means each element of the Project that is yet to be Commissioned in accordance with Clause 6.3 of this Agreement;

"Preiminry Termination Notice" means a Beneficiary(s) Preliminary Termination Notice or TSP Preliminary Termination Notice, as the case may be, pursuant to Section 12 ;

"Project" means the ownership, development, design, financing, procuring, engineering, insuring, construction and commissioning of Project under construction (as mentioned under the terms of Schedule 4);

"Project Document" shall include the (i) Implementation Agreement (ii) Transmission Service Agreement (iii) Financing Agreements and any other documents including without limitation construction contracts and the operation & maintenance contracts which may be required or necessary for the implementation, operation & maintenance of the Project;

"Prudent Utility Practices" means the practices, methods and standards that are generally accepted internationally from time to time by electric utilities for the purpose of ensuring the safe, efficient and economic design, construction, commissioning, operation, repair and maintenance of Project equipment and which practices, methods and standards shall be adjusted as necessary, to take account of:

- (i) operation, repair and maintenance guidelines recommended by the manufacturers of plant and equipment to be incorporated in the Project,
- (ii) the requirements of the Laws of India, and
- (iii) the physical conditions at the Site;

"Required Commercial Operation Date" means the date by which each element of the Project is required to be made ready for commercial operation under the Agreement which,

unless extended in accordance with Clause 3.5 or Clause 4.4, shall be

"Security Package" means the security provided by Beneficiary States against payments pursuant to TSA;

"Site" means the land and other places upon which the Project is to be established and such other land or places as may be required to set up the Project ;

"Sub-Contractor" including vendor means any person to whom execution of any part of the Project including preparation of any design or supply or erection of any equipment is subcontracted directly or indirectly by the Contractor of TSP and includes its legal successors or permitted assigns;

"Tariff" means the transmission tariff payable to TSP as may be approved by CERC;

"Tax" means any Indian tax, duty, surcharge, cess, octroi, impost or levy of any nature (whether central, state or local) whatsoever and wherever and whenever charged, levied or imposed by any Indian Governmental Instrumentality;

"Technical Particulars" means the particulars of Project listed in Schedule 5 hereto;

"Technical Specifications" means the technical requirements of the Transmission system elements provided under Functional Specifications attached with Schedule-5 and also provisions contained in the Bid Documents, if any, prepared by BPC, through which goods and services for the Project are procured;

"Termination Notice" means a POWERGRID Termination Notice or TSP Termination Notice, as the case may be;

"Transmission Licensee" or "Licensee" means the TSP to whom the Transmission License is granted by CERC;

"Transmission License" or **"License"** means the authority to be granted by CERC to act as licensee for the Project ;

"Transmission Service Agreement" means the Agreement so entered into, or to be entered into, between Beneficiary States and the TSP in the Agreed Form;

"Transmission Charges" means the charges payable to the TSP by Beneficiary States as defined in the Transmission Service Agreement;

"Week" means a period of seven consecutive days beginning at midnight Indian Standard Time between Sunday and Monday;

SCHEDULE 2

INTERPRETATION

Any reference in this Agreement to:

an "affiliate" of any person shall be construed as a reference to a subsidiary or holding company, or a subsidiary of a holding company, of such person;

"Agreement" shall be construed as including a reference to its Schedules, Appendices and Annexures;

a "business day" shall be construed as a reference to a day other than Sunday on which banks are generally open for business ;

"Dollars and \$" denote lawful currency of United States of America, and "Rupees" and "Rs." denote lawful currency of India;

an "encumbrance" shall be construed as a reference to a mortgage, charge, pledge, lien or other encumbrance securing any obligation of any person or any other type of preferential arrangement (including, without limitation, title transfer and retention arrangements) having a similar effect;

a "holding company" of a company or corporation shall be construed as a reference to any company or corporation of which the other company or corporation is a subsidiary;

"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;

a "person" shall be construed as a reference to any person, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above;

a "subsidiary" of a company or corporation (the first mentioned company) shall be construed as a reference to any company or corporation;

- (i) which is controlled, directly or indirectly, by the first-mentioned company, or
- (ii) more than half the issued share capital of which is beneficially owned, directly or indirectly, by the first-mentioned company, or
- (iii) which is a subsidiary of another subsidiary of the first-mentioned company and, for these purposes, a company or corporation shall be treated as being controlled by

another if that other company or corporation is able to direct its affairs and/or to control the composition of its board of directors or equivalent body; and the "winding-up", "dissolution", "administration", "insolvency", or "re-organisation" of a company or corporation and references to the "liquidator", "assignee", "administrator", "receiver", "administrative receiver", "receiver" and "manager", "manager" or "trustee" of a company or corporation shall be construed so as to include any equivalent or analogous proceedings or, as the case may be, insolvency representatives or officers under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation or, as the case may be, insolvency representatives or officers is incorporated or constituted or any jurisdiction in which such company or corporation or, as the case may be, insolvency representatives or officers carries on business including the seeking of liquidation, winding-up, reorganisation, dissolution, administration, arrangement, adjustment, protection or relief of debtors.

SCHEDULE 3

INITIAL CONSENTS, CLEARANCES, APPROVALS AND PERMISSIONS, RELEVANT TO THE PROJECT, TO BE OBTAINED/ APPLIED FOR BY TSP TO FACILITATE COMMENCEMENT OF IMPLEMENTATION OF THE PROJECT

- 3.1 Trade related registrations, consents, approvals & permissions including registration with authorities for Sales Tax, Works Contract, Labour Commissioner, Income Tax, Excise & Customs, Shop and Establishment Acts, Weights & Measurement Act, PF Commissioner etc. but not limited to it;
- 3.2 Custom duty exemption, as applicable;
- 3.3 Excise duty exemption, as applicable;
- 3.4 Deemed Export Benefits, as applicable;
- 3.5 Approval for Foreign equity participation from Competent Authority;
- 3.6 Approval for Fund mobilization in Foreign and Indian Currency;
- 3.7 Approval for Repatriation of dividend by Foreign Investors;
- 3.8 Environment/Forest Clearances;
- 3.9 Any other clearance, approval, permission, no-objection or consent required for the commencement of construction or required by Lenders as a precondition to the disbursement of funds for financing the Project Cost.

SCHEDULE 4

SCOPE OF PROJECT

4.1 The Project

The Project shall comprise of the following Transmission System Elements :

S.No.	Transmission System elements under[Name of Project]
I.	Transmission Lines :
II.	Sub-stations :
III.	Switching-stations:
IV.	HVDC links including terminal stations:
V.	HVDC transmission line:

4.2 Scope of the Project

The TSP's Scope of work for the Project shall comprise :

- 4.2.1 Establishment and maintenance of the Project on build, own, maintain & operate basis.
- 4.2.2 Financing for the Project including import duties, other Taxes and duties, Levies and Cess, Insurances etc. by way of mobilizing necessary equity capital & total debt.
- 4.2.3 The TSP shall finalize the award and appoint the Contractors in line with the provisions of this Agreement.
- 4.2.4 The work also includes all the activities associated with establishment and maintenance of the Project other than those specifically covered in the scope of Beneficiary(s).

The TSP shall ensure timely completion of entire scope of Projects in all respects and its operation to ensure highest level of reliability, availability and maintainability as per Prudent Utility Practices.

- 4.2.5** The TSP shall agree to and sign Transmission Service Agreement (TSA) with the Beneficiary(s) for receiving payments of Transmission Charge, linked to availability of the system.

SCHEDULE – 5

**GENERAL TECHNICAL PARTICULARS OF TRANSMISSION SYSTEM
ELEMENTS AND FUNCTIONAL SPECIFICATIONS**

**[Based on Functional Specifications finalized by CEA; as per the requirements of
the “Scope of Work” covered in the Project.]**

'DRAFT'

**TRANSMISSION SERVICE AGREEMENT (Volume-III)
FOR TRANSMISSION SYSTEM ELEMENTS
ASSOCIATED WITH**

.....NAME OF PROJECT

BETWEEN

**..... (NAME OF
TRANSMISSION SERVICE PROVIDER)**

AND

.....NAME OF BENEFICIARY(S)

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THIS TRANSMISSION SERVICE AGREEMENT hereinafter called "TSA/Agreement/this Agreement", entered into on the day of Two Thousand andbetween M/s.....(Name of the TSP)", incorporated under the Companies Act, 1956, having its registered office at ----- (hereinafter referred to as Transmission Service Provider or "TSP" which expression shall unless repugnant to the context or meaning thereof include its successors and permitted assigns) as party of the First Part; and[Name of Beneficiary(s)] (collectively referred to as "the Beneficiaries" and Individually referred to as respectively)" which expression shall unless repugnant to the context or meaning thereof include their successors and assigns as parties of the Other Part respectively.

AND WHEREAS:

- a) The TSP (Transmission Service Provider) is formed under Companies Act, 1956 for implementation of the Transmission Lines & Substations associated with Project.**
- b) The TSP proposes to set up the Project on a build, own, maintain and operate basis for the purpose of selling all the Project's available capacity exclusively to the Beneficiaries of Region (i.e.) on the terms and conditions contained in this Agreement and the Implementation Agreement.**
- c) The TSP shall apply for a Transmission License to CERC for setting up the Project.**
- d) Beneficiaries are bodies constituted by statute under "Electricity Act, 2003" and are State Transmission Utility(s) (STUs) or successor companies of (erstwhile Electricity Boards) incorporated under Companies Act,1956. They are responsible for receiving electric energy from the 'Projects' and are engaged in generation, transmission, sale, distribution or supply, as the case may be, of energy;**
- e) Bid Process Co-ordinator(BPC) is facilitating the execution of transmission system elements associated withProject through TSP for the exclusive use of Beneficiaries;**
- f) Beneficiaries agree, on the terms and subject to the conditions of this Agreement, to use the available transmission capacity of the Project and pay TSP the charges as determined in accordance with the terms of this Agreement.**
- g) The terms and conditions stipulated in the Transmission License issued by CERC to TSP shall be applicable to this Agreement. In case of disparity between the License terms & conditions and the conditions of this Agreement, the conditions stipulated in the License granted by CERC shall prevail.**

NOW, THEREFORE, IN CONSIDERATION OF THE PREMISES AND MUTUAL AGREEMENT, COVENANTS AND CONDITIONS SETFORTH HEREIN IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:

SECTION-1

1.0 DEFINITIONS & INTERPRETATIONS

1.1 Definitions

Terms shall bear those meanings when used in this Agreement as defined in Schedule-1 (Definitions) unless the context requires otherwise.

1.2 Interpretations

This Agreement shall be interpreted in accordance with Schedule-2 (Interpretation) unless the context requires otherwise.

1.3 Agreement Documents

All documents forming part of the Agreement (and all parts thereof) are intended to be correlative, complementary and mutually explanatory. The Agreement shall be read as a whole.

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

- i) words importing the singular shall include the plural and vice versa;
- ii) a person shall be construed as including a reference to its successors, permitted transferees and permitted assigns in accordance with their respective interests. Words importing persons or parties shall include firms, corporations and government entities;
- iii) this Agreement or any other agreement or document shall be construed as a reference to that agreement or document as it may have been, or may from time to time be, amended, varied, novated, replaced or supplemented;
- iv) a statute or enactment shall be construed as a reference to such statute as it may have been or may from time to time be modified, amended or re-enacted;
- v) a time of day shall be construed as a reference to Indian Standard Time;
- vi) references to Clauses and Sections shall be to Clauses and Sections of this Agreement.

1.5 Table of Contents and Headings

The table of contents and any headings in this Agreement are for ease of reference only and shall not affect the interpretation of this Agreement.

1.6 Interest

All interest payable under the Agreement shall accrue from day to day and be calculated on the basis of a year of three hundred and sixty five days.

1.7 General Clauses Act

Any word or expression used in this Agreement shall, unless otherwise defined or construed in this Agreement shall bear the meaning in General Clauses Act failing which it shall bear its ordinary English meaning.

1.8 Language

All agreements, all correspondence and communications to be given and all other documentation to be prepared and supplied under the Agreement shall be written in English, and the Agreement shall be construed and interpreted in accordance with that language.

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

1.9 Discretion

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

1.10 Discrepancy

In case of discrepancy between terms and conditions stipulated in Transmission License issued by CERC to the TSP and the agreement(s) executed between Beneficiary(s) and TSP, the terms and conditions of Transmission License shall prevail.

1.11 Independent Entity

The TSP shall be an independent entity performing its obligations pursuant to the Agreement.

Subject to the provisions of the Agreement, the TSP shall be solely responsible for the manner in which its obligations under this Agreement are performed. All employees, representatives of TSP or Contractors engaged by the TSP in connection with the performance of the Agreement shall be under the complete control of the

TSP and shall not be deemed to be employees, representatives, contractors of Beneficiary(s) and nothing contained in the Agreement or in any agreement or contract awarded by the TSP shall be construed to create any contractual relationship between any such employees, representatives or Contractors and Beneficiary(s).

SECTION-2

2.0 EFFECTIVENESS AND TERM

2.1 Effective Date

This Agreement is effective when it is executed and delivered by the parties.

2.2 Term and Termination

2.2.1 Subject to Clause 2.2.2, this Agreement shall continue to be effective in relation to each element of the Project under operation until the Expiry Date (subject to Clause 2.3), when it shall automatically terminate.

2.2.2 This Agreement shall terminate before the Expiry Date:

- i) If the Conditions Precedent referred to in Section 3 are neither satisfied nor waived and either party serves a notice to terminate in accordance with Clause 3.3;
- ii) If a Termination Notice is served in accordance with Section 12
 - a) by Beneficiary(s) following a TSP Event of Default; or
 - b) by the TSP following a Beneficiary(s) Event of Default;
- iii) If Beneficiary(s) or the TSP serves a notice to terminate in accordance with Clause 12.1.5.

2.3 Survival

The expiry or termination of this Agreement shall not affect any accrued rights, obligations and liabilities of the parties under this Agreement including but not limited to those specifically provided in this Agreement nor shall it affect any continuing obligations which this Agreement provides either expressly or by necessary implication, which are to survive its expiry or termination including those under Section -13, 15 and 16 to this Agreement.

SECTION-3

3.0 CONDITIONS PRECEDENT

3.1 The respective obligations of the parties (other than those set out in Clause 4.2(v) and 4.2(vi) under this Agreement in connection with each element of the Project under operation are subject to the satisfaction in full of the following condition precedent ("Condition Precedent") as brought out in clause 3.1.1 for which both the parties shall be responsible for satisfying the same:

3.1.1 The expiry date of the Project shall have been achieved under the IA.

3.2 Obligation to satisfy/Waive Condition Precedent

3.2.1 Parties shall use their reasonable endeavors to ensure the satisfaction of the condition precedent relating to the effectiveness of their obligations under this Agreement.

3.2.2 Each party shall take all reasonable efforts to satisfy the conditions to which its obligations are subject to as soon as practicable and notify the other party, when such condition is satisfied.

3.3 Right to Terminate

This Agreement shall automatically terminate on the termination of the IA entered between Beneficiary(s) and the TSP at any time prior to the expiry date of the IA.

SECTION-4

4.0 OPERATION & MAINTENANCE OF PROJECT

4.1 TSP's obligations in operation and maintenance of the Project

Subject to the terms and conditions of this Agreement, the TSP at its own cost and expense shall observe, comply with, perform, undertake and be responsible:

- i) for procuring and maintaining in full force and effect the Consents, required by it pursuant to this Agreement and in accordance with Law.
- ii) to operate, repair and maintain the Project belonging to it as per the Technical Specifications and the Technical Particulars as stipulated in Schedule 1 of RfQ document, Prudent Utility Practices & Law. TSP shall cooperate with CTU and all Beneficiaries of the Region, so as to maintain the system parameters within acceptable/ reasonable limits except where it is necessary to take measures to prevent imminent damage to any equipment.
- iii) for owning the Project throughout the term of this Agreement free and clear of encumbrance except those permitted under this Agreement and the IA;
- iv) to make available the total transmission capacity of the Project to Beneficiary(s) as per this Agreement. Provided, however, it is agreed and understood between the parties hereto that other than the use of transmission capacity which is governed under the TSA, Beneficiary(s) and TSP shall review use of Project for installation of OPGW subject to the terms and conditions to be mutually agreed upon and subject further to regulations, if any, framed by CERC in this regard. ;
- v) to appoint an O&M Contractor (in case the TSP so decides) atleast two month before the applicable Required Commercial Operation Date;
- vi) for providing all assistance to the Adjudicator and arbitrator as they may require for the performance of their duties and services; and
- vii) to comply with its obligations under this Agreement.

4.2 Beneficiary(s) obligations in Operation of the Project

Subject to the terms and conditions of this Agreement, Beneficiary(s), at its own cost and expense undertakes to be responsible:

- i) to ensure that the Project remains connected with the Interconnection Facilities. However, the TSP shall be required to coordinate and liaise with the concerned agencies in this regard;
- ii) for complying with its obligations under this Agreement;
- iii) to operate the Inter-connection Facilities in accordance with Prudent Utility Practices;
- iv) providing all assistance to the Adjudicator and arbitrator as they may require for the performance of their duties and services;
- v) for assisting and supporting the TSP in obtaining the necessary Consents and wayleaves required for the Project by providing letters of recommendation to the concerned Indian Governmental Instrumentalities, as may be requested by the TSP from time to time; and
- vi) for providing reasonable support and assistance to the TSP in connection with the finalisation of the Financing Agreements by giving due consideration to the requirements of the prospective lenders.

4.3 In case of emergencies, in order to facilitate that the Project remains optimally available, Beneficiary(s) shall be entitled to carry out repair and maintenance of the Project in accordance with Prudent Utility Practices, if in their opinion the situation so warrants. While doing so, they may use the resources at their own disposal or those belonging to the TSP. The TSP shall be obliged to provide its full co-operation, without demur and free of cost.

It is hereby agreed between the parties hereto that the TSP shall reimburse Beneficiary(s) its reasonable costs and expenses including direct and indirect overheads of such actions, as may be incurred by Beneficiary(s) from time to time, duly certified by a Chartered Accountant within 30 (thirty) days from the date of a notice to that effect by Beneficiary(s) to the TSP.

4.4 Operating Procedures

4.4.1 Not later than one hundred and eighty (180) days prior to the Required Commercial Operation Date of the Project, the TSP shall provide the Beneficiary(s) and CTU with a draft of the operating procedures (the "Operating Procedures") dealing with all operational interfaces between the TSP, Beneficiary(s) and CTU including, but not

limited to:

- i) methods of round the clock communication between the TSP, Beneficiary(s) and CTU;
- ii) safety co-ordination;
- iii) seeking permits to work for attending to outages;
- iv) contingency planning in the event of a partial or total shutdown of the grid;
- v) incident reporting;
- vi) testing, inspection and monitoring of the Project;
- vii) maintenance & repair during Scheduled Outages, Unscheduled Outages, Forced Outages and during Force Majeure Events;
- viii) reckoning of unavailability of the element(s) of the Project.

4.4.2 The Operating Procedures shall be consistent with;

- i) the terms and conditions of this Agreement;
- ii) the Technical Specifications;
- iii) Prudent Utility Practices;
- iv) the Indian Electricity Grid Code (IEGC) ; and
- v) the Laws

In case of any conflict amongst the above, the matter shall be mutually resolved between the parties.

4.4.3 Within sixty (60) days after receiving the draft of the Operating Procedures Beneficiary(s) and CTU shall notify TSP in writing specifying its objections to TSP's draft and the deletions, amendments or additions that it requires, and both parties shall meet to discuss the draft Operating Procedures and try to reach agreement on the Operating Procedures duly considering observations of CTU. If the parties have failed to reach agreement within twenty (20) days after TSP's receipt of the Beneficiary(s)'s notice pursuant to this Clause, the matter shall be referred to an Independent Engineer and determined in accordance with Section 15. The decision of Independent Engineer in this regard shall be final and binding on the parties.

4.4.4 Either party may from time to time propose amendments to the Operating Procedures in any manner consistent with Clause 4.4.2 by giving written notice to the other party stating the reasons for the proposed amendment. The process in Clause 4.4.3 shall apply if one party objects within sixty (60) days to any proposed amendment.

4.4.5 The Operating Procedures shall take effect on the date agreed by the parties or determined by the Independent Engineer or, if there is no objection to the Operating Procedures proposed by the TSP pursuant to Clause 4.4.1, the expiry of the sixty (60) day objection period or such later date as may be set out in the proposal.

4.4.6 The parties shall comply with the Operating Procedures.

4.4.7 Beneficiary(s) and the TSP shall jointly identify five technical expert organizations of repute and experience, prior to Financial Close. The parties shall mutually appoint an Independent Engineer from the above organizations sufficiently in advance of the Independent Engineer having to carry out its obligations under this Clause 4.4 and this Agreement.

4.5 Operation and Maintenance of the Project

4.5.1 The TSP shall be responsible at its own cost and expense for ensuring that the Project is fit to be operated and is maintained in accordance with the Indian Electricity Grid Code (IEGC), Operating Procedures, Regional Load Despatch Centres' instructions, Prudent Utility Practices, legal requirements including the terms of Consents so as not to have an adverse effect on the safety, expected life, operation and maintenance expenses and Availability of the entire transmission capacity of the Project.

4.5.2 In case TSP decides to engage other Contractor(s) for maintenance & repair of the Project, TSP shall appoint only recognized agencies/contractors with significant experience in relation to the maintenance and repair of equipment and facilities similar to those forming part of the Project.

4.5.3 The TSP shall ensure that for maintenance and repair of the Project, twenty four (24) hours a day, seven (7) days a week throughout the year, competent and qualified personnel are employed. Personnel employed by the TSP shall meet applicable Laws.

4.6 Information to Beneficiary(s)

TSP shall provide to Beneficiary(s), on a monthly basis, all reasonable information with regard to operation and maintenance of the Project as required by Beneficiary(s) to ensure optimum Availability of the Project and quality of maintenance and repair work.

4.7 Inspections by Beneficiary(s)

Beneficiary(s) may designate from time to time by a written notice to the TSP, any of Beneficiary's employees who shall inspect the Project for the purpose of verifying the TSP's compliance with Operating Procedures and who shall have access to the Project.

4.8 Scheduled Outages

4.8.1 By such date in each year as ...RPC/...RLDC may from time to time prescribe for the submission of outage plans from TSP for the Project, the TSP shall submit to Beneficiary(s) in writing, its firm proposals in advance for the Scheduled Outages to be taken in the next Contract Year and its provisional proposals for Scheduled Outages to be taken in the subsequent Contract Years, during the months of low demand. Months of high and low demand shall be informed to the TSP at least one year in advance, by Beneficiary(s)

- 4.8.2 Unless otherwise requested to do so by Beneficiary(s), the TSP shall not plan to take any Scheduled Outages during the months of high demand (of electricity) and will use all reasonable endeavors to plan to take Scheduled Outages during the months of low demand.
- 4.8.3 Within two (2) months after receiving the TSP's proposals, Beneficiary(s) shall notify the TSP in writing whether its proposed Scheduled Outages are acceptable and, if not, and after discussing the matter with the TSP, shall indicate the periods that would be acceptable, which shall be:
- i) of the same duration as the periods requested by the TSP; or
 - ii) within the time limits required by any legal requirement relating to routine maintenance; or
 - iii) within the time limits required or recommended by the manufacturer or supplier of the Project equipment which is to undergo maintenance.
- 4.8.4 The TSP may only object to a revised proposal for Scheduled Outages by Beneficiary(s) on the grounds that it would be inconsistent with the requirements of Clause 4.8.3. Unless the TSP objects in writing within twenty (20) days after receiving the revised proposal, it shall be deemed to have agreed to the Scheduled Outages proposed by Beneficiary(s). If the TSP does object to the proposed Scheduled Outages within that period and the parties cannot reach agreement within ten (10) days after the TSP's objection was sent to Beneficiary(s), the matter shall be referred to the Independent Engineer and determined in accordance with Section 15. The decision of Independent Engineer in this regard shall be final and binding on the Parties.
- 4.8.5 The Scheduled Outages accepted by Beneficiary(s) or agreed to by the TSP pursuant to Clause 4.8.4 shall be confirmed to the extent that they relate to the next Contract Year and shall be provisionally confirmed to the extent that they relate to subsequent Contract Years. Provisionally confirmed Schedule Outages may be changed by either party for good cause.
- 4.8.6 In an emergency, Beneficiary(s) may require the TSP to use its best efforts to reschedule a confirmed Scheduled Outage (including one which has already begun) to a more convenient time.
- 4.8.7 Beneficiary(s) shall give notice to the TSP of its maintenance program for the Interconnection Facilities and shall use its reasonable endeavours to coordinate such maintenance with the Scheduled Outages approved pursuant to this Clause 4.8 so as to minimize the disruption to the operation of the Project.

4.9 Unscheduled Outages (including those due to Force Majeure Events)

4.9.1 Whenever the TSP needs a Unscheduled Outage it shall advise Beneficiary(s) and Concerned RLDC in accordance with the Operating Procedures of the nature of the work to be carried out, the estimated time required to complete it and the latest time by which in the TSP's opinion the work should begin consistent with Prudent Utility Practices.

4.9.2 After discussing the matter with the TSP and Concerned RLDC, the Beneficiary(s) shall advise the TSP, when the requested Unscheduled Outage is scheduled to begin (which shall be not later than the latest time indicated by the TSP). The TSP shall use its reasonable endeavors consistent with Prudent Utilities Practices to carry out the maintenance in accordance with the time schedule set out in its request for the Unscheduled Outage.

4.10 Supervision of Operation & Maintenance

The TSP shall provide all necessary superintendence for maintenance and repair of the Project and its supervisory personnel shall be constantly available on the Site to provide full time superintendence in accordance with Prudent Utility Practices. The TSP shall provide and employ only skilled personnel who are experienced in their respective fields.

4.11 Taxes and Duties

4.11.1 Except as otherwise specifically provided in the Agreement, the TSP shall bear and pay all taxes, duties, levies and charges assessed on the TSP, its Contractors or their employees by all municipal, state or national government authorities in connection with the Project.

4.11.2 The TSP shall bear and promptly pay all customs and import duties as well as other local taxes including all Value Added Tax (VAT), works contract taxes and tax on earnings (including the earning of its employees) that are required to be paid by the TSP as per the Law.

4.11.3 Beneficiary(s) shall be indemnified and held harmless by the TSP against any claims that may be made against Beneficiary(s).

4.11.4 Beneficiary(s) shall not be liable for any payment of dues, taxes, duties, levies, cess whatsoever for work done by Beneficiary(s) on behalf of TSP or its personnel provided the TSP has consented in writing to Beneficiary(s) for such work, which consent shall not be unreasonably withheld.

4.12 Changes in the Project

4.12.1 Subject to the provisions under this Agreement, any change, modification, addition or deletion to, in or from the Project (hereinafter called "Change") shall be mutually agreed between the parties, provided that such Change falls within the general scope of the Project.

4.12.2 In the event of a Change which shall need to be performed in accordance with Prudent Utility Practices, the modalities of execution of such Changes, the party to this Agreement responsible for performing such Change and its impact on Transmission Charge and Availability shall be mutually agreed by the parties, subject to approval of CERC.

4.12.3 Notwithstanding Clauses 4.12.1 above no Change necessitated because of any default of the TSP in the performance of its obligations under the Agreement shall be deemed to be a Change, and such Change shall not result in any adjustment of the Transmission Charge or the Availability of the Project favourable to the TSP.

SECTION - 5

5.0 AVAILABILITY OF SYSTEM

5.1 Availability of Elements of the Project

For the purpose of calculating Availability, each circuit of the transmission lines & each bay of Sub-stations (as more fully described in Schedule 3) shall be considered as an "element" of the Project and shall be considered to be "Available" when it is capable or deemed capable of transmitting electricity at its rated voltage from the supply point to the delivery point.

5.2 An element shall be considered available/unavailable as per the extant regulations of CERC in force, from time to time.

5.3 Calculation of Availability of the Project

The availability of the Project shall be calculated and certified by Member Secretary, Concerned RPC as per the rules/regulations/codes/methodology as may be made/prescribed by CERC, from time to time.

5.4 Normative Availability

The normative Availability of the Project shall be 98%.

5.5 Notwithstanding anything contained herein before, definitions, interpretations and the methods of calculations of Availability given above, shall not conflict with any orders of the Central Electricity Regulatory Commission (CERC) issued from time to time in this regard. In case there is any discrepancy between the provisions of this Agreement and any orders of CERC issued from time to time, the provisions of CERC orders shall prevail.

SECTION - 6

PAYMENT & BILLING OF TRANSMISSION CHARGES

6.0 TRANSMISSION CHARGES

6.1 Subject to the other provisions of this Section - 6, Beneficiary(s) shall pay to the TSP, on a monthly basis, the Transmission Charge from the date on which an element is first Commissioned until this Agreement expires or is terminated (called "Monthly Transmission Charge Payment").

6.2 Calculation of Monthly Transmission Charge Payment:

CERC would grant Transmission Charge to the TSP, on the basis of quoted Transmission Charge approved while granting the Transmission License. The Monthly Transmission Charge Payment shall be calculated in accordance with annual Transmission Charge quoted by Bidders in Indian Rupees for each of the transmission line elements. Monthly Transmission Charge payable in Indian Rupees shall be annual Transmission Charge divided by 12, apportioned amongst the Beneficiaries as reflected in the energy accounting prepared by concerned RLDC for the purpose of billing and subsequently raising invoices by the TSP to the respective Beneficiary(s).

Other charges such as incentive/disincentive, linked with transmission system availability, Income-Tax, Cess etc. of the TSP shall be as per the notification issued by CERC. In case there is any discrepancy between the provisions of this Agreement and any orders of CERC issued from time to time, the provisions of CERC orders shall prevail.

6.3 Delivery of Invoices

6.3.1 TSP's Invoice

- i) Commencing with the month following the month in which the Commercial Operation Date of the element (which is first Commissioned) occurs, the TSP shall submit to Beneficiary(s) by the fifth day of such and each succeeding month (or, if such day is not a business day, the immediately following business day) an invoice in the Agreed Form (the "Monthly Transmission Charge Invoice") setting out the computation of the Monthly Transmission Charge Payment payable by Beneficiary(s) to the TSP in respect of the immediately preceding month in accordance with this Agreement; and
- ii) Each Monthly Transmission Charge Invoice shall include detailed calculations of the amounts payable under it, together with such further supporting documentation and information as Beneficiary(s) may require/ request, from time to time. Any supplementary bill shall be submitted to Beneficiary(s) alongwith supporting documentation and calculation for the same.

6.3.2 Beneficiary(s) Invoice

- i) Beneficiary(s) shall, on the fifth day of each month (or, if such day is not a business day, the immediately following business day) submit to the TSP an invoice in the Agreed Form (the "Beneficiary(s) Invoice") setting out Beneficiary's computation of any amount that may be payable to it by the TSP for the immediately preceding month pursuant to this Agreement.
- ii) Each Beneficiary(s) Invoice shall include detailed calculations of the amounts payable under it, together with such further supporting documentation as the TSP may require/request, from time to time.

6.4 Payment of Invoices

6.4.1 Subject to Clause 6.2, any amount payable under an invoice, shall be paid in immediately available and freely transferable cleared funds, for value on or before the Due Date, to such account of the TSP or Beneficiary(s) as shall have been previously notified to Beneficiary(s) or the TSP, as the case may be.

6.4.2 Where in respect of any month there is both:

- i) an amount payable by Beneficiary(s) to TSP pursuant to a Monthly Transmission Charge Invoice and
- ii) an amount payable by the TSP to Beneficiary(s) pursuant to a Beneficiary(s) Invoice pursuant to this Agreement,

the two amounts may, at the option of Beneficiary(s), be set off against each other and the balance, if any, shall be paid by Beneficiary(s) to the TSP or by TSP to Beneficiary(s) as the case may be.

6.4.3 In case Beneficiary(s) pays to the TSP through direct payment or through a letter of credit in respect of a Monthly Transmission Charge Invoice, the following shall apply:

- (a) For payment of bills through Letter of Credit on presentation, a rebate of 2% shall be allowed on the Monthly Transmission Charge Invoice, provided the such amount is not the subject of an Invoice Dispute Notice pursuant to Clause 6.5; or
- (b) For payment of bills of Transmission Charge subsequently through Letter of Credit or otherwise, but within a period of 30 days of presentation, a rebate of 1% shall be allowed on the Monthly Transmission Charge Invoice, provided the such amount is not the subject of an Invoice Dispute Notice pursuant to Clause 6.5,

then the full amount owing by Beneficiary(s) under such Monthly TSC Invoice, to the extent not the subject of an Invoice Dispute Notice pursuant to Clause 6.5, shall be deemed to have been paid in full by Beneficiary(s) to the TSP.

6.4.4 In case the TSP pays to Beneficiary(s) in respect of a Beneficiary(s) Invoice within the Due Date of such Beneficiary(s) Invoice, an amount equal to the amount due and payable under the Beneficiary(s) Invoice except to the extent such amount as is subject of an Invoice Dispute Notice pursuant to Clause 6.5, then the full amount owing by the TSP under such Beneficiary(s) Invoice, to the extent not the subject of an Invoice Dispute Notice pursuant to Clause 6.5, shall be deemed to have been paid by the TSP to Beneficiary(s).

6.4.5 Any amount properly due from one party to the another pursuant to this Agreement and remaining unpaid after the Due Date shall bear surcharge @ 1.25% (one and a quarter percent) per month. Such surcharge shall be calculated on simple rate basis and shall accrue from the Due Date until the amount due is actually received by the payee.

6.5 Disputed Invoices

6.5.1 If either party does not question or dispute an invoice within ninety (90) days of receiving it, the invoice shall be considered correct and complete and conclusive between the parties except in the case where that party could not reasonably have identified any error or omission in the invoice, taking into account the information then available to it during the above ninety (90) day period.

6.5.2 If either party disputes any item or part of an item set out in any invoice then that party shall serve a notice (an "Invoice Dispute Notice") on the other party setting out the item or part of an item set out in such invoice which is in dispute together with its estimate of what such item or part of an item should be.

6.5.3 In the event that either party has issued an Invoice Dispute Notice in accordance with Clause 6.5.2 it shall be required to pay to the other party:

- i) the remainder of the items set out in the relevant invoice in relation to which there is no dispute; and
- ii) its estimate, as set out in the Invoice Dispute Notice pursuant to Clause 6.5.2, of what the item or part of an item which is disputed should be.

6.5.4 If the party issuing the invoice agrees with the Invoice Dispute Notice to which it relates it shall:

- i) in the case of the TSP being the issuing party, adjust the invoice (if Beneficiary(s) has not paid) or refund the applicable amount within five (5) days (if Beneficiary(s) has paid); or
- ii) in the case of Beneficiary(s) being the issuing party, adjust the invoice (if TSP has not paid) or refund the applicable amount to the TSP within five (5) days (if TSP has paid).

6.5.5 In the event that the parties do not, within fourteen (14) days of the delivery of an Invoice Dispute Notice, resolve any dispute arising under Clause 6.5.2, either party may refer the matter to be determined in accordance with Section 16.

6.6 Payment Security Mechanism

6.6.1 Establishment of Letter of Credit

- 6.6.1.1 Beneficiary(s) shall, not later than two(2) months before the Required Commercial Operation Date provide the TSP at its own cost with an irrevocable and confirmed revolving letter of credit issued in favour of the TSP by a scheduled bank or banks in India, (such letter of credit, a "Beneficiary(s) Letter of Credit"), to be in the form agreed to between Beneficiary(s) and the TSP and to be provided on the basis that:
- a) In respect of a Monthly Transmission Charge Invoice, in case the TSP fails to receive from Beneficiary(s) within 30 (thirty) days of receipt of such Monthly Transmission Charge invoice by Beneficiary(s), an amount equal to the amount due and payable under the Monthly Transmission Charge Invoice set out in a Beneficiary(s) Invoice and/or an Invoice Dispute Notice pursuant to Clause 6.5.4, the TSP may draw upon the Beneficiary(s) Letter of Credit for payment of the Monthly Transmission Charge Invoice due to the TSP from Beneficiary(s) by presenting to the relevant issuing bank a copy of the Monthly Transmission Charge Invoice that has been delivered by the TSP to Beneficiary(s) in accordance with this Agreement, acknowledged by Beneficiary(s) and accompanied by a declaration by the TSP that the amount due under such Monthly Transmission Charge Invoice has not been paid by Beneficiary(s) as on the date of presentation of the Monthly Transmission Charge Invoice to the bank;
 - b) The value of a Beneficiary(s) Letter of Credit on the date of issue and on the first day of each Contract Year will be equal to 105% of the estimated value of one month's Monthly Transmission Charge Payment, assuming normative Availability;
 - c) Any change required in the value of Beneficiary(s) Letter of Credit shall be notified by TSP to Beneficiary(s) not later than fourteen (14) days before such change is

required;

- d) The Beneficiary(s) Letter of Credit shall be fully revolving so that it will be renewed to its full value upon each call being made on the Beneficiary(s) Letter of Credit; and
- e) The Beneficiary(s) Letter of Credit shall be for a term of not less than twelve (12) months and shall be renewed for, or replaced with another letter of credit acceptable to the TSP for, a similar term, at least thirty (30) days prior to the date on which the current Beneficiary(s) Letter of Credit is expressed to expire.

6.6.1.2 The TSP may transfer the Beneficiary(s) Letter of Credit to or for the benefit of the Lenders' Representative. However, Beneficiary(s) will open L/C in the name of TSP only.

6.6.1.3 The mere provision of the Beneficiary(s) Letter of Credit shall not relieve Beneficiary(s) of any of its payment obligations under this Agreement. Beneficiary(s) shall only be relieved of such obligation to the extent that the issuing bank actually pays under the Beneficiary(s) Letter of Credit in accordance with this Agreement.

6.6.2 Escrow Arrangement

6.6.2.1 To provide security to TSP for payment obligations under this Agreement, payment by Beneficiary(s) through L/C shall be backed by Credible Escrow Arrangement, wherein Beneficiary(s) & TSP along with a scheduled commercial bank ("the Escrow Agent") shall enter into an Escrow Agreement within 4 weeks of signing this Agreement for the establishment and the operation of an Escrow Account in favour of the TSP. The operations of the Escrow Account shall be governed by a separate escrow agreement signed by and between Beneficiary(s), the TSP and the Banker with whom the escrow account shall vest.

6.6.2.2 Beneficiary(s) shall demarcate with the Escrow Agent the main account, wherein all its revenues are getting collected and are being deposited on a regular basis. The account shall be known as the Escrow Account (hereinafter referred to as "the Account"), with a ceiling on the amount that can be withdrawn by the TSP upto 120% of the estimated amount of invoice (hereinafter referred to as "the Escrow Amount") raised by the TSP on a monthly basis to the extent as provided in the Escrow Agreement, as per Schedule-5. Subject to Clause 6.2, any amount payable under any invoice shall be paid from the Account on or before the Payment Date, to

such account of the TSP as shall have been previously notified to the Escrow Agent and Beneficiary(s). However, any adjustment/reconciliation of the amount pertaining to any of the TSP's invoices and/or any supplementary bills which could not be paid due to the above ceiling on the amount shall be claimed by way of raising a bill directly on the Beneficiary(s) and which shall be paid by the Beneficiary(s) within a period of 7 (seven) days of the bill being raised in the same account of the TSP as notified above. The TSP shall have the first right on the escrow account.

Same rebate shall be given for payment made through Account within 3 days as is applicable for payment made through LC.

6.7 Concerned RLDC will assist the TSP in case there is any default in payment by any of the Beneficiary(s). For this, transmission services could be regulated if Transmission Charges become overdue from any of the Beneficiary(s). Further, CERC Regulations on "Generic Procedure of Curtailment of Power Supply" shall be applicable as and when notified and as amended from time to time.

SECTION-7

7.0 SAFETY RULES & PROCEDURES

7.1 Site Regulations and Safety

7.1.1 The TSP shall establish Site regulations as per Prudent Utility Practices setting out the rules to be observed in the execution of the Agreement at the Site and shall comply therewith.

7.1.2 Such Site regulations shall include, but shall not be limited to, rules in respect of security, safety of the Project, gate control, sanitation, medical care, and fire prevention.

7.2 Emergency Work

7.2.1 If, by reason of an emergency arising in connection with and during the execution of the Agreement, any protective or remedial work is necessary as a matter of urgency to prevent damage to the Project, the TSP shall immediately carry out such work.

7.3 Watching and Lighting

7.3.1 The TSP shall provide and maintain at its own expense all lighting, fencing, and watching when and where necessary for the proper maintenance/repair of the Project, or for the safety of the owners and occupiers of adjacent property and for the safety of the public, during such maintenance/repair.

SECTION-8

8.0 INSURANCE

8.1 Insurance during the Operating Period

Not later than three (3) months prior to the Required Commercial Operation Date of the Project, TSP shall take Operating Period insurances against various risks, with suitable deductibles and with suitable endorsements and co-insured as may be necessary in accordance with Prudent Utility Practices and such insurances as may be required under:

- a) any of the Financing Agreements, and
- b) the applicable Laws.

8.2 Beneficiary(s) shall be named as co-insured under all insurance policies taken out by the TSP pursuant to Clause 8.1 except for insurance in respect of workers' compensation.

8.3 The TSP may effect the insurances covering different risks, deductibles, endorsements, co-insured or other terms. The certificates shall provide that no less than twenty-one (21) days' notice shall be given to Beneficiary(s) by insurers prior to cancellation or material modification of a policy.

8.4 If the TSP fails to effect and/or maintain any Insurance, Beneficiary(s) may effect such Insurance (but it shall have no obligation to do so), during the period the TSP does not, at the full cost and expense of the TSP. The amount paid by Beneficiary(s) in this regard shall be paid to it by the TSP within a period of 30 days of issue of notice from Beneficiary(s). The TSP shall ensure that each policy of Insurance contains an endorsement providing that each shall not be cancelled or reduced without at least 21 days prior written notice being given by the insurer to Beneficiary(s), provided that each such Insurance shall provide:

- i) that the insurer may not cancel the coverage for non-payment of premium without first giving Beneficiary(s) 10 days written notice that the TSP has failed to make timely payments of the premium (including details of the amount owing); and
- ii) that Beneficiary(s) shall, after having received the notice referred to para (i) above have the option to pay such premium directly to the relevant insurer.

8.5 Evidence of Insurance cover

8.5.1 The TSP shall furnish to Beneficiary(s) copies of certificates and policies of the Insurances as soon as they are effected and renewed by or on behalf of the TSP and from time to time (at the request of Beneficiary(s)) shall furnish evidence to Beneficiary(s) that all relevant premiums have been paid as soon as they have been so paid, and that the relevant policy or policies remain in existence.

8.5.2 Failure by the TSP to obtain the insurance coverage or certificates of insurance required pursuant to this Agreement shall not relieve the TSP of its obligations under this Section or in any way relieve or limit the TSP's obligations or liabilities under any other provision of this Agreement.

8.6 Preference for Indian Insurers

8.6.1 The Insurances shall be effected with Indian insurance companies to the extent that the Insurances can be effected with them in accordance with this Agreement.

8.7 Application of Insurance Proceeds

8.7.1 Save as expressly provided in this Agreement, the policies of Insurances and the Financing Agreements, the proceeds of any insurance claim made due to loss or damage to the Project or any part of the Project shall be first applied to reinstatement, replacement or renewal of such loss or damage.

8.7.2 If a Force Majeure Event or a similar natural event or circumstance renders the Project no longer economically and technically viable and the insurers under the Insurances make payment on a "total loss" basis, the portion of the proceeds of such Insurance available to the TSP (after payment to the Lenders of the Total Debt Amount) shall be allocated to TSP.

8.7.3. Subject to the requirements of the Lenders under the Financing Agreements, any dispute or difference between the parties as to whether the Project is no longer economically and technically viable due to a Force Majeure Event or a similar natural event or circumstance or whether that event was adequately covered in accordance with this Agreement by the Insurances shall be determined in accordance with Section 15

8.7.4. Notwithstanding any liability or obligation that may arise under this Agreement, any loss, damage, liability, payment, obligation or expense for which compensation is due to the TSP under any Insurance shall not be charged to or payable by Beneficiary(s).

8.8 Waiver of Subrogation

8.8.1 All insurance policies supplied by the TSP shall include a waiver of any rights of subrogation of the insurers there under against, inter-alia, Beneficiary(s) and its assigns, 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.

8.8.2. The TSP hereby further releases, assigns and waives any and all rights of recovery against, inter-alia, the Beneficiary(s) and its affiliates, subsidiaries, employees, successors, permitted assigns, insurers and underwriters, which the TSP may otherwise have or acquire in or from or in any way connected with any loss covered by the policies of insurance maintained in accordance with this Section 8.

8.9 Excuse in Failing to Insure

8.9.1 The TSP shall not be in breach of its obligations to procure an insurance under Clause 8.1 to the extent and only for the period that:

- a. The particular insurance is not available to it in the International and Indian insurance markets for reasons other than any negligence or default by, or condition (financial or otherwise) of the TSP or the TSP's Contractors;
- b. The TSP effects and maintains for the period referred to in Clause 8.9.1 (i) complementary insurance cover having regard to the capacity of the Indian insurance markets.

8.9.2 In the event of any dispute between the TSP and Beneficiary(s) as to the capacity of any insurance or reinsurance market for the purpose of this Clause 8.8 the matter shall be referred to a leading independent insurance agency in India experienced in the Indian insurance market and mutually acceptable to the TSP and Beneficiary(s) and the agency so appointed shall be deemed to be an Adjudicator acting pursuant to the provisions of Section 15 of this Agreement.

SECTION-9

9.0 FORCE MAJEURE

9.1 Available Relief for a Force Majeure Event

Except as expressly provided in this Agreement, no party shall be in breach of its obligations pursuant to this Agreement or otherwise liable to the other party for any hindrance or delay in performance or any non-performance of any such obligations if and to the extent that such hindrance or delay or non-performance is due to a Force Majeure Event as defined in Clause 9.3.3 provided that:

- (i) the affected party could not have avoided the effect of Force Majeure by taking precautions which having regard to all matters known to it before occurrence of the Force Majeure Event and all relevant factors it ought reasonably to have taken but did not take; and
- (ii) the affected party has used its best endeavours to mitigate the effect of the Force Majeure Event and to carry out its obligations under this Agreement in any other way that is reasonably practicable.

9.2 Duty to Report

9.2.1 Neither party may claim relief for a Force Majeure Event unless it shall have notified the other party in writing of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event within seven(7) days after the affected party knew, or ought reasonably to have known, of its occurrence and that the Force Majeure Event would be likely to have a Material Adverse Effect on its performance of its obligations under this Agreement.

9.2.2 Detailed notice subsequent to intimation pursuant to Clause 9.2.1 shall include full particulars of:

- i) the nature of each Force Majeure Event which is the subject of any claim for relief under this Agreement;
- ii) the effect which such Force Majeure Event is having on the affected party's performance of its obligations under this Agreement;
- iii) the measures which the affected party is taking, or proposes to take, to alleviate the impact of those Force Majeure Events; and
- iv) any other information relevant to the affected party's claim.

9.2.3 For so long as the affected party continues to claim to be affected by a Force Majeure Event, it shall provide the other party with regular written reports, at least once in every month containing:

- i) the information called for by Clause 9.2.2; and
- ii) such other information as the other party may reasonably request about the affected party's claim.

9.2.4 Where the TSP is the affected party, it shall promptly notify Beneficiary(s) in writing when any Force Majeure Event which is the subject of any claim under this Agreement ceases or when there is any material change in its impact on the TSP's performance of its obligations under this Agreement.

9.3 Force Majeure Events

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

- (i) act of God, including, but not limited to lightning, drought, fire and explosion (to the extent originating from a source external to the Site), earthquake, volcanic eruption, landslide, flood, cyclone, typhoon, tornado, or exceptionally adverse weather conditions which are in excess of the statistical measures for the last hundred (100) years, or
- (ii) any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, terrorist or military action ;
- (iii) Change in Law to the extent not covered under tariff adjustments as per Section 11;
- (iv) expropriation or compulsory acquisition by any Indian Governmental Agency of any material assets or rights of the IPTC;
- (v) any event or circumstance of a nature analogous to any of the above.

9.4 None of the following conditions shall constitute a Force Majeure Event unless due to a Force Majeure Event affecting the TSP's Contractors:

- i) late delivery of plant, machinery, equipment, materials, spare parts, fuel, water or consumable for the Project; or
- ii) a delay in the performance of any of the TSP's Contractors.

9.5 Notwithstanding anything contained in this Section-9, insufficiency of funds shall not constitute a Force Majeure Event.

9.6 Duty to Mitigate

For so long as a Force Majeure Event which is the subject of any claim under this Agreement is continuing, the affected party shall use all reasonable endeavors to alleviate its effects on the affected party's performance of its obligations under this Agreement.

9.7 Breakdown of Communication

If a Force Majeure Event causes a breakdown of communications such that a party is unable to serve any notice under this Agreement, the period for the serving of such notice (if any) shall be extended for every day whilst such Force Majeure Event prevents the service of such notice.

9.8 Continuance of Financial Obligations

It is hereby expressly clarified and agreed between the parties hereto:

- (b) For Natural Force Majeure events as per clause no 9.3(i) and (v), if the Force Majeure event's nature is analogous to the events mentioned under 9.3(i), no Party shall be in breach of its obligations pursuant to this Agreement to the extent that the performance of its obligations was prevented, hindered or delayed due to such Force Majeure Event and every Party shall be entitled to claim relief in relation to such Force Majeure Event in regard to his obligations including relief relating to transmission charges.
- (b) For Force Majeure events other than natural Force Majeure events as per above clause no 9.3(ii) to (iv) and (v), if the Force Majeure event's nature is analogous to the events mention under (ii) to (iv) for which no insurance is available, beneficiaries shall pay IPTC equivalent to Debt servicing obligation for the Force Majeure period. For working out debt servicing obligation, average loan in any of the first ten (10) Contract Years shall be taken as $\{(147-14n)/2\}$ percent of the estimated cost of the Project B or C (as the case may be) specified in the RfS document, where n denotes the Contract Year in which the Force Majeure event has occurred. [Explanation: The debt:equity ratio considered as 70:30 of the estimated Project Cost say Rs. 100/-. It is assumed that repayment of debt shall be over in ten (10) Contract Years from COD. Therefore the debt service re-payment for each Contract year shall be Rs.7/- (i.e. Rs.70/10). Now the debt service obligation at the beginning of any Contract year shall be $\{70-7(n-1)\}$ and debt service obligation at the end of any Contract year shall be $\{70-7n\}$. The average of the loan amount at the beginning and end of the Contract year shall be $[\{70-7(n-1)\} + \{70-7n\}]/2$ i.e. $\{(147-14n)/2\}$ % of the estimated Project Cost for any n^{th} year of the Contract Year during which Force Majeure has occurred.] The debt service obligation for the period of Force Majeure event will be worked out based on the average loan for the relevant Contract Year pro-rata to the period of Force Majeure event and Prime Lending Rate of State Bank of India on Date of Commercial Operation. Debt service obligation beyond first ten (10) Contract Years shall be nil.

SECTION-10

10.0 REPRESENTATIONS AND WARRANTIES

10.1 Beneficiary(s) hereby represents and warrants to and agrees with TSP as follows and acknowledges and confirms that TSP is relying on such representations and warranties in connection with the transactions described in this Agreement:

- (a) It has all requisite power authorising and has been duly authorised to execute and consummate this Agreement;
- (b) This Agreement is enforceable against it in accordance with its terms;
- (c) The consummation of the transactions contemplated by this Agreement on the part of Beneficiary(s) will not violate any provision of nor constitute a default under, nor give rise to a power to cancel any charter, mortgage, deed of trust or lien, lease, agreement, license, permit, evidence of indebtedness, restriction, or other contract to which Beneficiary(s) is a party or to which Beneficiary(s) is bound, which violation, default or power has not been waived;
- (d) Beneficiary(s) is/are not insolvent and no insolvency proceedings have been instituted, nor threatened or pending by or against Beneficiary(s);
- (e) There are no actions, suits, claims, proceedings or investigations pending or, to the best of Beneficiary's knowledge, threatened in writing against Beneficiary(s) at law, in equity, or otherwise, and whether civil or criminal in nature, before or by, any court, commission, arbitrator or governmental agency or authority, and there are no outstanding judgements, decrees or orders of any such courts, commission, arbitrator or governmental agencies or authorities, which materially adversely affect its ability to comply with its obligations under this Agreement;

10.2 Representation and Warranties of the TSP

TSP hereby represents and warrants to and agrees with Beneficiary(s) as follows and acknowledges and confirms that Beneficiary(s) is relying on such representations and warranties in connection with the transactions described in this Agreement:

- (a) It has all requisite power authorising and has been duly authorised to execute

and consummate this Agreement;

- (b) This Agreement is enforceable against it in accordance with its terms;
- (c) The consummation of the transactions contemplated by this Agreement on the part of TSP will not violate any provision of nor constitute a default under, nor give rise to a power to cancel any charter, mortgage, deed of trust or lien, lease, agreement, license, permit, evidence of indebtedness, restriction, or other contract to which TSP is a party or to which TSP is bound which violation, default or power has not been waived;
- (d) TSP is not insolvent and no insolvency proceedings have been instituted, nor threatened or pending by or against TSP;
- (e) There are no actions, suits, claims, proceedings or investigations pending or, to the best of TSP's knowledge, threatened in writing against TSP at law, in equity, or otherwise, and whether civil or criminal in nature, before or by, any court, commission, arbitrator or governmental agency or authority, and there are no outstanding judgments, decrees or orders of any such courts, commission, arbitrator or governmental agencies or authorities, which materially adversely affect its ability to execute the Project or to comply with its obligations under this Agreement.

SECTION-11

11.0 CHANGE IN LAW

11.1 This Section-11 shall apply only in the event that if directly due to one or more Changes in Law defined in Clause 11.3, during the term of this Agreement:

- i) the TSP's revenues directly attributable to the Project are increased or decreased by not less than an aggregate of Rs. 10 million for that Contract Year; or
- ii) the TSP is required to undertake capital expenditure directly attributable to the Project of not less than an aggregate amount of Rs. 10 million for that Contract Year in order to perform its obligations or exercise its rights pursuant to this Agreement.

The amount mentioned in this Clause 11.1 shall be escalated on the first day of each Contract Year by the increase in the Indian Wholesale Price Index from that in the immediately preceding Contract Year.

11.2 Notification of Change in Law

11.2.1 If the TSP is affected by a Change in Law in accordance with Clause 11.1 and wishes to claim a Change in Law under this Section-11, it shall give notice to Beneficiary(s) of such Change in Law as soon as reasonably practicable after becoming aware of the same.

11.2.2 Notwithstanding Clause 11.2.1, the TSP shall be obliged to serve a notice to Beneficiary(s) under this Clause 11.2 if it is beneficially affected by a Change in Law.

11.2.3 Any notice served pursuant to this Clause 11.2 shall provide, amongst other things, precise details of the Change in Law and its effect on the TSP.

11.3 Change in Law

Change in Law means the occurrence of any of the following after the date of this Agreement:

- the enactment or issuance of any new Indian Law,
- the repeal, modification or re-enactment in whole or in part of any existing Indian Law,
- the commencement of any Indian Law which has not yet entered into effect,
- a change in the interpretation or application of any Indian law by any Indian Governmental Instrumentality having the legal power to interpret or apply such Law,
- the imposition (other than for cause) of a requirement for a Consent which did not exist as at the date of this Agreement,

- a change (other than for cause) in the terms and conditions attaching to a Consent after it has been given or the attachment of any new terms or conditions to such Consent, or
- the revocation or cancellation (other than for cause) of any Consent.

Notwithstanding anything contained in this Agreement, Change in Law shall not cover any change

- (iv) in any Tax on any income stream which is not proposed to be reimbursed as a part of Transmission Charge payable pursuant to TSA prior to such change unless such change is subsequently permitted by CERC to be reimbursed as part of Transmission Charge,
- (v) on account of regulatory measures by CERC,
- (vi) in any Tax applied on the income or profits distributed to shareholders of the TSP unless allowed to be reimbursed by CERC as part of Transmission Charge.

Provided that for the purpose of any Change in Law relating to any introduction or any changes in the time, rate or incidence applicable to Taxes which have an effect on the Transmission Charge, Change in Law protection shall be provided only for those Taxes which had been considered by CERC, while granting of Transmission License to TSP for the Project on the basis of Transmission Charge quoted.

11.4 Amendment to this Agreement

11.4.1 Within sixty (60) days of a notice being served pursuant to Clause 11.2, the parties shall meet and endeavor to agree on what amendments need to be made to this Agreement to ensure that the TSP is put into the same financial position as it would have been in but for the Change in Law.

11.4.2 Upon reaching agreement on the amendments required to this Agreement pursuant to Clause 11.4.1 the parties shall execute such amending agreement to give effect to that agreement within sixty (60) days thereof.

11.4.3 If within sixty (60) days of the commencement of the meetings between the parties pursuant to Clause 11.4.1:

- i) the parties are unable to reach agreement on the amendment required pursuant to Clause 11.4.1; or
- iii) having reached agreement on the amendment required pursuant to Clause 11.4.1, no amending agreement has been executed within a further sixty (60) days of such agreement,

either party may refer any areas of disagreement to be settled in accordance with Section 15 so that the necessary amendments to this Agreement pursuant to Clause 11.4.1 are executed. The parties shall execute such amending agreement so determined in accordance with Section 15 as soon as reasonably practicable.

SECTION-12

12.0 Termination on Default

12.1 Termination

12.1.1 TSP Events of Default

The occurrence and continuation of any of the following events shall constitute a TSP Event of Default, unless any such TSP Event of Default occurs as a result of a breach by Beneficiary(s) of its obligation under this Agreement, a Beneficiary(s) Events of Default, a Force Majeure Event:

- i) The failure of TSP to appoint an O&M Contractor, if the TSP so decides which decision has been notified to Beneficiary(s) in writing, within one month of the applicable Commercial Operation Date or such date as mutually agreed;
- ii) The Material failure of TSP to maintain the Project in accordance with Prudent Utility Practices;
- iii) Any breach by the TSP of any of its Material obligations under this Agreement pursuant to TSP default;
- iv) If, without the prior written consent of Beneficiary(s), any employee, agent or representative of the TSP or TSP's Contractors tampers with the Interconnection Facilities, except to take reasonable precautions to prevent an imminent material danger to persons or an imminent danger of material damage to property;
- v) If the TSP:
 - a) assigns, mortgages or charges or purports to assign, mortgage or charge any of its assets or rights in contravention to the provision of this Agreement; or
 - b) transfer or novates any of its obligations pursuant to this Agreement, in a manner contrary to the provisions of this Agreement;
- vi) The transfer, pursuant to law, of either:
 - (a) the rights and/or obligations of the TSP under this Agreement; or
 - (b) all or a substantial portion of the assets or undertakings of the TSP,

except where such transfer

- (1) does not affect the ability of the transferee to perform, and such transferee has the financial and technical capability to perform, its obligations under this Agreement;
- (2) is to a transferee who assumes such obligations under this Agreement and this Agreement remains effective with respect to the transferee;
- vii) The dissolution, pursuant to law, of the TSP except for the purpose of a merger, consolidation or re-organisation that does not affect the ability of the resulting entity to perform its obligations under this Agreement and provided that such resulting entity expressly assumes such obligations;
- viii) Revocation of Transmission License of the TSP; and
- ix) If the Availability of the Project is less than the norms specified in clause 5.4 of this Agreement or any such norms prescribed by the CERC for six consecutive months, the procurer of transmission service or the billing or accounting agency or the operator of the transmission system may seek revocation of transmission license as per the procedure laid down under the Electricity Act, 2003 and in accordance with rule 5 of Electricity Rules, 2005.

12.1.2 Beneficiary(s) Events of Default

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

- i) (a) The dissolution, pursuant to Law, of Beneficiary(s) or all or a substantial portion of the assets or undertakings of Beneficiary(s), unless such dissolution is in connection with the reorganization or restructuring of the power sector and provided that (i) Beneficiary(s) successor under this Agreement expressly assumes the obligations of Beneficiary(s) under this Agreement and (ii) is otherwise capable of performing the obligations of Beneficiary(s) under this Agreement;
- (b) The transfer pursuant to Law of either the rights and/or obligations of Beneficiary(s) hereunder or all or a substantial portion of the assets or undertakings of Beneficiary(s), unless such transfer is in connection with the reorganization or restructuring of the power sector and the conditions set out in paragraphs (i) to (ii) in (a) above are satisfied;

- ii) Beneficiary(s) is in breach of any of its Material obligations pursuant to this Agreement pursuant to a Beneficiary(s) default;
- iii) provided the TSP has made a valid demand on the Beneficiary(s) Letter of Credit & on Escrow Account and without satisfaction to the TSP, at least 30% payment of TSP under the Monthly Transmission Charge Invoice has remained unpaid for a period of more than 90 days from the Due Date of such invoice;
- iv) Failure to operate the interconnection facilities in accordance with Prudent Utility Practices or in accordance with Connection Agreement, if any.
- v) If Beneficiary(s) transfers or novates any of its obligations pursuant to this Agreement, in a manner contrary to the provisions of this Agreement.

12.1.3 Termination Procedure for TSP Events of Default

12.1.3.1 Upon the occurrence of a TSP Event of Default, Beneficiary(s) may serve notice on TSP of its intention to terminate this Agreement (a "Beneficiary(s) Preliminary Termination Notice") which notice shall specify in reasonable detail, the circumstances giving rise to such Beneficiary(s) Preliminary Termination Notice.

12.1.3.2 Following the giving of a Beneficiary(s) Preliminary Termination Notice, the parties shall consult for a period of up to two (2) months (or such longer period as they may agree) (the "Notice Period") as to what steps shall be taken with a view to mitigating the consequences of the relevant event having regard to all the circumstances. Provided that in case of a Preliminary Termination Notice served under Clause 12.1.1 (x), the Notice Period shall be reduced to one month. Provided further that during such period, the TSP shall not remove any equipment or any part of the Project, without the prior written consent of Beneficiary(s).

12.1.3.3 During any Notice Period, both parties shall, save as otherwise provided in this Agreement, continue to perform their respective obligations under this Agreement.

12.1.3.4 Within the period of five (5) days following the expiry of the Notice Period and unless the parties shall have otherwise agreed or the circumstances giving rise to Beneficiary(s) Preliminary Termination Notice shall have ceased to exist or shall have been remedied, Beneficiary(s) may terminate this Agreement by giving written notice ("Beneficiary(s) Termination Notice") to the TSP whereupon:

- (i) subject to the terms and conditions of the Financing Agreements, this Agreement shall terminate on the date of such Termination Notice and
- (ii) TSP shall within one hundred and twenty (120) days of such notice sell the Project to XYZ [Party selected by CERC, who Buys-out the Project] at a Buy-out Price determined by CERC in accordance with provisions of Electricity Act,2003.

12.1.4 Termination Procedure for Beneficiary(s) Events of Default

12.1.4.1 Upon the occurrence of a Beneficiary(s) Event of Default, the TSP may serve notice on Beneficiary(s) of its intention to terminate this Agreement (a "TSP Preliminary Termination Notice") which notice shall specify in reasonable detail the circumstances giving rise to such TSP Preliminary termination Notice.

12.1.4.2 Following the giving of a TSP Preliminary Termination Notice, the parties shall consult for a period of up to two (2) months (or such longer period as they may agree) (the "Notice Period") as to what steps shall be taken with a view to mitigating the consequences of the relevant event having regard to all the circumstances. Provided that in case of a Preliminary Termination Notice served under Clause 12.1.2 (iii), the Notice Period shall be reduced to one month.

12.1.4.3 During any Notice Period, both parties shall, save as otherwise provided in this Agreement, continue to perform their respective obligations under this Agreement.

12.1.4.4 Within the period of five (5) days following the expiry of the Notice Period and unless the parties shall have otherwise agreed or the circumstances giving rise to the TSP Preliminary Termination Notice shall have ceased to exist or shall have been remedied, the TSP may terminate this Agreement by giving written notice ("TSP Termination Notice") to Beneficiary(s) whereupon:

- (i) subject to the terms and conditions of this Agreement and Financing Agreements, this Agreement shall terminate on the date of such Termination Notice; and
- (ii) Beneficiary(s) shall within one hundred and twenty (120) days of such notice sell the Project to XYZ[Party selected by CERC, who Buys-out the Project] at a Buy-out Price determined by CERC in accordance with provisions of Electricity Act,2003.

12.1.5 Termination due to Force Majeure

In case, the Force Majeure Event or effects thereof, having adverse impact on the

Project, cause the Availability of the Project to be reduced, for a continuous period of 180 days or longer (disregarding any deemed Availability during such period), below 85%, Beneficiary(s) shall have the right to cause termination of the Agreement by giving a Beneficiary(s) Termination Notice to the TSP in this regard. The TSP shall also have the right to cause termination of the Agreement by giving a TSP Termination Notice to Beneficiary(s) in this regard. In case of either of these events, subject to the terms and conditions of Financing Agreements, within one hundred and twenty (120) days of such notice, to require the TSP to sell the Project to XYZ[Party selected by CERC, who Buys-out the Project] at a Buy-out Price determined by CERC in accordance with provisions of Electricity Act,2003.

- 12.2 In case of termination of this Agreement, leading to Buy-out of the Project by XYZ, the TSP shall provide to XYZ full names and addresses of its Contractors, Sub-Contractors as well as complete designs, design drawings, manufacturing drawings, material specifications and technical information, as required by XYZ.

SECTION-13

13.0 LIABILITY AND INDEMNIFICATION

13.1 Limitation of Liability

Notwithstanding any other term or provision of this Agreement, the aggregate liability which each of the parties shall have for all claims made under this Section-13 shall not exceed the limit fixed as per the terms of this Agreement.

13.2 Loss of or damage to property, death or injury to person

13.2.1 Indemnification by Beneficiary(s)

Beneficiary(s) agrees with the TSP (itself and as trustee on behalf of TSP's Contractors) to indemnify and hold harmless the TSP and each of the TSP's Contractors for loss of or damage to property, death or injury to person (or any related claim against the TSP and/or any of the TSP's Contractors) and all related expenses (including without limitation reasonable legal fees) suffered by the TSP and/or any of the TSP's Contractors in connection with this Project to the extent resulting from any negligent act or omission of Beneficiary(s) and/or any of Beneficiary(s)'s contractors or their respective employees, without recourse to the TSP and/or any of TSP's Contractors and hold the TSP and/or the TSP's Contractors fully indemnified in respect of any such loss of or damage to property, death or injury to person provided that:

- i) such indemnity shall not extend to any loss, damage, death or injury (or any related claim) or any related expenses to the extent that;
 - a) it arose from a claim made outside India, or
 - b) it was caused by any act or omission of the TSP and/or any of TSP's Contractors or the failure of the TSP and/or any of the TSP's Contractors to take reasonable steps to mitigate that loss, damage, death or injury; and
- ii) nothing in this Clause 13.2.1 shall apply to any loss, damage, cost or expense in respect of, and to the extent that, the TSP and/or any of the TSP's Contractors are compensated pursuant to the terms of any agreement or under any policy of insurance (including but not limited to the Insurances).

13.2.2 Indemnification by the TSP

The TSP agrees with Beneficiary(s) to indemnify and hold harmless Beneficiary(s) for loss of or damage to property, death or injury to person (or any related claim against Beneficiary(s)) and all related expenses (including without limitation reasonable legal fees) suffered by Beneficiary(s) in connection with this Project to the extent resulting from any negligent act or omission of the TSP and/or any of the TSP's Contractors or their respective employees, without recourse to Beneficiary(s) and will hold Beneficiary(s) fully indemnified in respect of any such loss of or damage to property, death or injury to person provided that;

- i) such indemnity shall not extend to any loss, damage, death or injury (or any related claim) or any related expenses to the extent that:
 - a) it arose from a claim made outside India; or
 - b) it was caused by any act or omission of Beneficiary(s) or the failure of Beneficiary(s) to take reasonable steps to mitigate that loss, damage, death or injury; and
- ii) nothing in this Clause 13.2.2 shall apply to any loss, damage, cost or expense in respect of, and to the extent that Beneficiary(s) is/are compensated pursuant to the terms of any agreement or under any policy of insurance (including but not limited to the Insurances).

13.3 Patent Indemnity

13.3.1 The TSP shall, subject to Beneficiary(s) compliance with Clause 13.3.2, indemnify and hold harmless Beneficiary(s) and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of whatsoever nature, including attorney's fees and expenses, which Beneficiary(s) may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright or other intellectual property right registered or otherwise existing at the date of the Agreement by reason of the installation of the Project by the TSP.

Such indemnity shall not cover any use of the Project or any part thereof other than for the purpose indicated by or to be reasonably inferred from the Agreement, any infringement resulting from the misuse of the Project or any part thereof, or any products produced in association or combination with any other equipment, plant or materials not supplied by the TSP, pursuant to the Agreement.

13.3.2 If any proceedings are brought or any claim is made against Beneficiary(s) arising out of the matters referred to in Sub-Clause 13.3.1, Beneficiary(s) shall promptly give the TSP a notice thereof, and the TSP shall at its own expense take necessary steps and attend such proceedings or claim and any negotiations for the settlement of any such proceedings or claim. The TSP shall promptly notify Beneficiary(s) of all actions taken in such proceedings or claims.

If the TSP fails to notify Beneficiary(s) within twenty-eight (28) days after receipt of such notice that it intends to attend any such proceedings or claim, then Beneficiary(s) shall be free to attend the same on its own behalf at the cost of the TSP. Unless the TSP has so failed to notify Beneficiary(s) within the twenty (28) day period, Beneficiary(s) shall make no admission that may be prejudicial to the defense of any such proceedings or claims.

Beneficiary(s) shall, at the TSP's request, afford all available assistance to the TSP in attending to such proceedings or claim, and shall be reimbursed by the TSP for all reasonable expenses incurred in so doing.

13.3.3 Beneficiary(s) shall indemnify and hold harmless the TSP and its employees, officers and Sub-Contractors from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs and expenses of whatsoever nature, including attorney's fees and expenses, which the TSP may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright or other intellectual property right registered or otherwise existing at the date of the Agreement arising out of or in connection with any design, data, drawing specification, or other documents or materials provided or designed by or on behalf of Beneficiary(s) .

13.3.4 If any proceedings are brought or any claim is made against the TSP arising out of the matters referred to in Clause 13.3.3 the TSP shall promptly give Beneficiary(s) a notice thereof, and Beneficiary(s) shall at its own expense take necessary steps and attend such proceedings or claim and any negotiations for the settlement of any such proceedings or claim. Beneficiary(s) shall promptly notify the TSP of all actions taken in such proceedings or claims.

If Beneficiary(s) fails to notify the TSP within twenty-eight (28) days after receipt of such notice that it intends to attend any such proceedings or claim, then the TSP shall be free to attend the same on its own behalf at the cost of Beneficiary(s). Unless Beneficiary(s) has so failed to notify the TSP within the twenty (28) day period, the TSP shall make no admission that may be prejudicial to the defense of any such proceedings or claim.

The TSP shall, at Beneficiary(s) request, afford all available assistance to Beneficiary(s) in attending to such proceedings or claim, and shall be reimbursed by Beneficiary(s) for all reasonable expenses incurred in so doing.

13.4 Assertion of Claims

Each party shall notify the other party promptly of its entitlement, and intention, to make any claim for indemnification pursuant to this Section-13.

13.5 Defence of Claims

13.5.1 The person indemnified pursuant to this Section-13 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 person in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified under this Section-13 and the reasonable cost and expenses incurred by the person indemnified shall be subject to the indemnification obligation of the person indemnifying under this Section-13 provided that if the person indemnified is indemnified in respect of loss to the full extent provided by this Section-13, the person indemnifying 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 counsel of its choice if it gives prompt notice of its intention to do so to the person indemnified and reimburses the person indemnified for the reasonable cost and expenses incurred by the person indemnified prior to the assumption by the person indemnifying of such defence.

13.5.2 The person indemnified which exercises its rights under Clause 13.5.1 shall not be entitled to settle or compromise any claim, action, suit or proceeding without the prior written consent of the person indemnifying.

13.5.3 Any person indemnified which exercises its rights under Clause 13.5.1 shall 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 such person indemnified, when and as incurred, unless:

- i) the employment of counsel by such person indemnified has been authorised in writing by the person indemnifying;
- ii) the person indemnified shall have reasonably concluded that there may be a conflict of interest between the person indemnifying and the person

indemnified in the conduct of the defence of such action;

- iii) the person indemnifying shall not in fact have employed independent counsel reasonably satisfactory to the person indemnified to assume the defence of such action and shall have been so notified by the person indemnified; or
- iv) the person indemnified shall have reasonably concluded and specifically notified the person indemnifying either that there may be specific defences available to it which are different from or additional to those available to the person indemnifying or 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 Clauses 13.5.3(ii), 13.5.3(iii) or 13.5.3 (iv) apply, counsel for the person indemnified shall have the right to direct the defence of such claim, action, suit or proceeding on behalf of the person indemnified and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses under this Section-13.

13.5.4 Any person other than the parties seeking the benefit of the indemnity provided pursuant to this Section-13 must acknowledge, on request and in writing to both parties to this Agreement, that, in consideration of receiving such indemnity, such person is bound by the terms of this Clause 13.5.

13.6 Consequential and Indirect Losses

Except as required by this Section-13 neither party shall be liable to the other party in contract, tort, warranty, strict liability or any other legal theory for any indirect, consequential, incidental, punitive or exemplary damages and neither party shall have any liability to the other party except pursuant to or for breach of this Agreement provided that this provision is not intended to constitute a waiver of any rights of one party against the other with regard to matters unrelated to this Agreement.

13.7 An act or exercise by any person of powers, functions and authorities so delegated to him or her in accordance with this Agreement shall be deemed to be an act or exercise by the delegating party.

13.8 Duty to Mitigate

The party entitled to the benefit of an indemnity under this Clause 13.0 shall take all reasonable measures to mitigate any loss or damage which has occurred. If the party fails to take such measures, the other party's liabilities shall be correspondingly reduced.

SECTION-14

14.0 ASSIGNMENTS AND CHARGES

14.1 Assignments

Beneficiary(s) shall at all times have the right to assign its rights, benefits and obligations under this Agreement and also convey, transfer and vest all interest held by the Beneficiary(s) in the Project together with all beneficial interest to any entity or entities as Government of India/ State Government may from time to time direct as a part of re-organisation or restructuring of electricity industry provided that such successor entities expressly assume the obligations of Beneficiary(s) under this Agreement and are capable of performing the obligations of Beneficiary(s) under this Agreement.

Subject to Clause 14.2, this Agreement shall not be assigned by the TSP other than by mutual agreement between the parties.

14.2 Permitted Charges

14.2.1 Notwithstanding Clause 14.1, the TSP may create any encumbrance over all or part of the Security Package or the other assets of the Project in favour of the Lenders or the Lender's Representative as security for:

- i) amounts payable under the Financing Agreements; and
- ii) any other amounts agreed by the parties

Provided that:

- a) the Lenders or the Lender's Representative shall have entered into the Financing Agreements; and
- b) any encumbrance granted by the TSP in accordance with this Clause 14.2.1 shall contain provisions pursuant to which the Lenders or the Lender's Representative agrees unconditionally with the TSP to release such encumbrances upon payment by the TSP to the Lenders of all amounts due under the Financing Agreements.

14.2.2 Clause 14.2.1 does not apply to

- i) liens arising by operation of Law (or by an agreement evidencing the same) in the ordinary course of the TSP carrying out the Project;

- ii) pledges of goods, the related documents of title and/or other related documents arising or created in the ordinary course of the TSP carrying out the Project; and
- iii) security arising out of retention of title provisions in relation to goods acquired in the ordinary course of the TSP carrying out the Project.

SECTION-15

15.0 GOVERNING LAW AND DISPUTES

15.1 Governing Law

The Agreement shall be governed by and interpreted in accordance with the Laws of India.

15.2 Settlement of Disputes

15.2.1 Mutual Consultation

15.2.1.1 If any dispute or difference of any kind whatsoever shall arise between Beneficiary(s) and the TSP in connection with or arising out of the Agreement, including without prejudice to the generality of the foregoing, any question regarding its existence, validity or termination, or the execution of the Project, whether during the progress of the Project or after its completion and whether before or after the termination, abandonment or breach of the Agreement - the parties shall seek to resolve any such dispute or difference by mutual consultation. If the parties fail to resolve such a dispute or difference by mutual consultation within a period of (30) days, then the dispute shall be referred in writing by either party to the Adjudicator with a copy to the other party.

15.2.2 Adjudicator

The following provisions shall apply between the parties in respect of any difference or dispute, which has not been resolved by mutual consultation as provided in Clause 15.2.1:

- j) the parties shall appoint by mutual agreement an Adjudicator. In relation to technical matters, the Adjudicator shall be an Independent Engineer and in relation to financial matters, the Adjudicator shall be a Financial Expert of repute in their respective fields;
- ii) the parties shall finalize the points of such disputes or differences or the terms of reference before referring such disputes or differences to the Adjudicator;
- iii) the Adjudicator will resolve or settle such disputes or differences in such manner as he shall in his absolute discretion deemed fit within sixty (60) days of such disputes or differences being referred to him and convey his recommendations in writing to both the parties;

- iv) if the Adjudicator shall, subject to paragraph (v) , determine which party bears the costs (or a portion of the costs) of settling or determining such dispute or difference; and
- v) if the Adjudicator settles or determine a dispute or difference in a manner entirely consistent with a party's initial position on such dispute or difference, the Adjudicator shall determine that the other party bears the costs of settling or determining the dispute or difference.

15.3 Notwithstanding anything herein above, the Adjudication and Arbitration on disputes or differences shall be as per the provisions of Electricity Act, 2003.

SECTION-16

16.0 CONFIDENTIALITY

16.1 Confidential Information

Subject to Clause 16.2, both parties shall at all times during the continuance of this Agreement;

- i) use their reasonable endeavors to keep all information regarding the terms and conditions of this Agreement and any data or information acquired under or pursuant to this Agreement confidential and accordingly neither party shall disclose the same to any other person; and
- ii) not use any document or other information (whether technical or commercial) obtained by them respectively by virtue of this Agreement concerning the other's undertaking for any purpose other than performance of the party's obligations and exercise of its rights under this Agreement.

Provided that the provisions of this Clause 16.1 shall not apply to information which at the time of disclosure was in the public domain other than by breach of the foregoing obligations of confidentiality.

16.2 Disclosure of Confidential Information

16.2.1 Each of the parties shall hold in confidence the agreements relating to the Project and all documents and other information (whether technical or commercial) which is of a confidential nature disclosed to it by or on behalf of the other party relating to the Project and shall not, save as may be required by Law or appropriate regulatory or statutory authorities, or to any Indian Governmental Instrumentality, or to prospective Lenders to, or Investors in the TSP or to the professional advisers of the parties or of those prospective Lenders or Investors, publish or otherwise disclose or use the same for its own purposes otherwise than as may be required to perform its obligations under this Agreement.

16.2.2 Either party shall be entitled to disclose the terms and conditions of this Agreement and any data or information acquired by it under or pursuant to this Agreement without the prior written consent of the other party if such disclosure is made in good faith:

- i) to any affiliate of such party, having made if aware of the requirements of this Clause 16.2 or to any Indian Governmental Instrumentality;
- ii) to any outside consultants or advisers engaged by or on behalf of such party and acting in that capacity, having made them aware of the requirements of

this Clause 16.2;

- iii) to the Lenders, the Lenders' Representative, any security trustee, any bank or other financial institution and its advisers from which such party is seeking or obtaining finance, having made them aware of the requirements of this Clause 16.2;
- iv) to the extent required by the rules of a relevant and recognised stock exchange;
- v) to the extent required by any Laws of India or pursuant to an order of any court of competent jurisdiction;
- vi) to any insurer under a policy of Insurance;
- vii) to directors, employees and officers of such party having made them aware of the requirements of this Clause 16.2;
- viii) to any person which the parties in their absolute discretion (exercised in good faith) considers such disclosures to be appropriate;

and is necessary to enable such party to perform this Agreement or to protect or enforce its rights under this Agreement or any other Project Document or to enable it to comply with any requirement referred to in Clauses 16.2.2 (iv) and 16.2.2(v) or to carry on its ordinary business.

SECTION-17

17.0 MISCELLANEOUS PROVISIONS

17.1 Amendments

This Agreement shall not be amended except by written agreement between the parties.

This Agreement is intended solely for the benefit of the parties and their respective successors and permitted assigns.

17.2 No Waiver

17.2.1 No waiver by either party of any default or defaults by the other party in the performance of any of the provisions of this Agreement:

- i) shall operate or be construed as a waiver of any other or further default or defaults; and
- ii) shall be effective unless in writing duly executed by a duly authorised representative of such party.

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

17.3 Relationship of the Parties

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.

17.4 Entirety

17.4.1 This Agreement alongwith its sections, schedules and appendices are intended by the parties as the final expression of their agreement and are intended also as a complete and exclusive statement of the terms of their agreement.

17.4.2 All prior written or oral undertakings, offers or other communications of every kind pertaining to this Agreement under this Agreement between the parties are abrogated and withdrawn.

17.5 Successors and Assigns

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

17.6 Notices

17.6.1 Save as otherwise expressly provided in this Agreement, all notice or other communications which are required or permitted under this Agreement shall be in writing and sufficient if delivered personally or sent by registered or certified mail, fax, telex or telegram addressed as follows:

If to the TSP :
Address :
Attention :
Email :
Fax. No. :
Telephone No. :

If to Beneficiary(s):
(i)Name of Beneficiary
Address :
Attention :
Email :
Fax. No. :
Telephone No.

(ii)Name of Beneficiary.
Address :
Attention :
Email :
Fax. No. :
Telephone No. :

(iii)Name of Beneficiary
Address :
Attention :
Email :
Fax. No. :
Telephone No.

(iv)Name of Beneficiary
Address :
Attention :
Email :
Fax. No. :
Telephone No.

All notices or communications given by fax shall be confirmed by depositing a copy of the same in the post office in an envelope properly addressed to the appropriate party for delivery by registered or certified mail. All Notices shall be deemed delivered upon receipt.

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

17.7 Compliance with Notifications

Despite anything contained in this Agreement but without prejudice to Section 11, if any provision of this Agreement shall be in deviation of, inconsistent with or repugnant to the provisions contained in the Electricity Act ,2003, such provision shall be deemed to be amended to the extent required to bring it into compliance with the relevant provisions of the Electricity Act,2003 as amended from time to time.

IN WITNESS WHEREOF, THE PARTIES HAVE CAUSED THIS AGREEMENT TO BE EXECUTED BY THEIR REPRESENTATIVE / DULY AUTHORISED OFFICERS AS OF THE DATE SET FORTH ABOVE.

- 2. For and on behalf of TSP
- 2. For and on behalf of
.....Name of Beneficiary
- 3. For and on behalf of
.....Name of Beneficiary
- 4. For and on behalf of
.....Name of Beneficiary.
- 6. For and on behalf of
.....Name of Beneficiary

WITNESSES

- 1. For and on behalf of
----Regional Power Committee

SCHEDULE 1

DEFINITIONS

The words/expressions used in this Agreement unless repugnant to the context shall have the same meaning as assigned to them by Electricity Act, 2003 as amended from time to time and the Rules framed there under. The words/expressions mentioned below shall have the meanings respectively as assigned hereunder.

"Adjudicator" means a person appointed pursuant to Clause 15.2.2;

"Agreed Form" in relation to any document means the form of the document most recently agreed by the parties and initialed by them for identification;

"Available" shall have the meaning as in Clause 5.1 of this Agreement;

"Availability" shall have the meaning as in Clause 5.3 of this Agreement;

"Beneficiaries" means SEBs /STUs / Power Deptts./Long Term Customers in WR referred to in this Agreement;

"Bid Documents" means the tender documents containing Technical Specifications and other terms and conditions of contract pursuant to which the TSP shall invite proposals to facilitate procurement of goods and services for the Project;

"BPC" means Agency responsible for co-ordinating the Bid Process for procurement of required Transmission Services;

"CEA" means the Central Electricity Authority of India constituted under the Electricity (Supply) Act, 1948 and operating under the Electricity Act,2003 and any successors which fulfil the same role ;

"CERC" means Central Electricity Regulatory Commission of India constituted under "The Electricity Regulatory Commissions Act, 1998 and operating under the Electricity Act,2003 , and any successors which fulfil the same role;

"Change" means the change as defined in Clause 4.12 of this Agreement;
--

"Commissioned" in relation to each transmission line of the Project means the date as declared under Clause 6.3 of the Implementation Agreement that the Project is commissioned;

"Commissioning" means operation of each Project by TSP as provided under Clause 6.2 of the Implementation Agreement;

"Commissioning Tests" means such tests that are required to ensure successful and safe commissioning of each of the transmission line of Project and as defined in the Technical Particulars and the Technical Specifications;

"Competent Authority" means any Indian Governmental Instrumentality which has legal right over the Project, but excluding Beneficiary(s);

"Connection Agreement" means Connection Agreement as described in IEGC.

"Contractors" means the engineering, procurement, construction , operation & maintenance contractors, surveyors, advisors, consultants, designers suppliers to the TSP and each of their respective Sub-Contractors (and each of their respective successors and permitted assigns) in their respective capacities as such;

"Consent" shall mean and include all authorisations, consents, licenses, approvals, registrations, clearances, permits, waivers, privileges, acknowledgements, agreements, concessions and approvals from any Indian Governmental Instrumentality required for the Project;

"Construction Period" means the period from (and including) the earliest occurring date upon which TSP is instructed or required to take up work under the Agreement up to (but not including) the Commercial Operation Date of Project;

"Contract Year" means:

(i) the period beginning on the Date of Commercial Operation and ending on the following March 31,

(ii) each succeeding twelve (12) month period beginning on April 1 during the term of this Agreement, and

(iii) if the last day of the term of this Agreement is not March 31, the period beginning on the immediately preceding April 1 and ending on the last day of the term of this Agreement;

"CTU" means Central Transmission Utility as referred to in the Electricity Act ,2003 which is BPC as specified by Govt of India;

"Date of Commercial Operation" means the date of commercial operation declared by BPC in respect of transmission system elements which are constructed, tested and commissioned by TSP;

"Day" means Calendar day of Gregorian Calendar;

"D/C" means Double Circuit;

"Due Date" in relation to any invoice means the thirtieth day after that invoice is received (or, if that day is not a business day, the immediately following business day);

"Effective Date" means the date on which Transmission Service Provider Agreement is executed and delivered by parties;

"Electricity Act" means the Electricity Act, 2003 as amended from time to time;

"Electricity Rule" means the rules and regulations pursuant to Electricity Act as amended from time to time;

"Element" means each circuit of the transmission lines & each bay of Sub-stations (as more fully described under schedule 3) of this Agreement;

"Equipment" means all plants, facilities, equipment, machinery, tools, apparatus, appliances or things of every kind required in or for installation, completion and maintenance of Project that are to be arranged by the TSP, but does not include equipment, or other things intended to form or forming part of the Project;

"Escrow Agreement" means an Agreement amongst Beneficiary(s) & TSP alongwith a scheduled commercial Bank("the Escrow Agent"), wherein all revenues of Beneficiary(s) are getting collected and are being deposited on a regular basis, for providing back up payment security to TSP.

"Event of Default" means the event as defined in Section 12;

"Expiry Date" is the date which is 25 (twenty five) years from the date of issue of Transmission License or such extended period as granted by CERC;

"Feasibility Report" means the report submitted by BPC to Competent Authority;

"Financial Close" means the first business day on which funds are made available to the TSP pursuant to the Financing Agreements;

"Financing Agreements" means the Agreements pursuant to which the TSP is to finance the Project including the loan agreements, security documents, inter-creditor agreements, coordination agreements and other ancillary agreements which are a condition to the availability of funds under any such financing agreements;

"Financial Expert" means a person appointed pursuant to Section 8 or 15, as the case may be;

"Financial Year" means period of twelve months at midnight Indian Standard Time (IST) between first April & thirty first March;

"Force Majeure" this term has the meaning assigned hereto in Section-9;

"Force Majeure Event" this term has the meaning assigned hereto in Section-9;

"Forced Outage" means any interruption in transmission of energy through the Project and consequent reduction in Availability of the Project which is not the result of a Scheduled Outage, Unscheduled Outage or a Force Majeure Event;

"GOI" means Govt. of India;

"Implementation Agreement" means the Agreement so entered into, or to be entered into, between Beneficiary(s) and the TSP in the Agreed Form;

"Independent Engineer" means a person appointed pursuant to Clause 4.4 or Section 15, as the case may be;

"Indian Consumers Price Index" means the weighted price index of CPI for industrial workers (CPI-IW) published by Government of India;

"Indian Governmental Instrumentality" means Government of India, Government of any State of India or any Ministry, department, board, authority, instrumentality, agency, corporation or commission under the direct or indirect control of Government of India or any State Government or any political sub-division of any of them or any court or regulatory commission or tribunal or judicial body in India but excluding TSP;

"IEGC" means Indian Electricity Grid Code notified by CERC and as amended from time to time.

"Insurances" means the insurance cover to be obtained and maintained by the TSP in accordance with this Agreement;

"Connection Agreement" means Connection Agreement as described in IEGC.

"Interconnection Points" means the points, to be identified prior to the target date of Financial Close, where the Project is connected with the transmission systems that are outside the scope of the Project;

"Interconnection Facilities" means the facilities as may be set up for transmission of energy through the use of Project, on either one or both side of CTU or Beneficiary(s) substations or Beneficiary(s) substation on one end and CTU's substation on other side of the Interconnection Points in accordance with this Agreement and which shall include, without limitation, all other transmission lines, gantries, sub-stations and associated equipments not forming part of the Project;

"Investors" at any time means all shareholders of the TSP at that time;

"Invoice Dispute Notice" is as defined in Clause 6.5.2 of this Agreement;

"Law or Laws" shall mean and include laws, ordinances, statutes, rules, Notifications & directives, regulations, judgements, decrees, injunctions, orders and stipulations enacted or issued by any Indian Governmental Instrumentality;

"LC" means Irrevocable Revolving Letter of credit;

"Lenders" means the banks and other financial institutions who have agreed as at Financial Close to provide the TSP with the debt financing described in the Financing Agreements and any successor banks or financial institutions to whom their interests under the Financing Agreements may be transferred or assigned or to whom their obligations under the Financing Agreements may be novated;

"Lenders Representative" means the person notified by the TSP or Lenders in writing as being the representative of the Lenders, as such person may from time to time be replaced by the TSP or the Lenders pursuant to the Financing Agreements by written notice from the TSP or any of the Lenders;

"Liability" means all claims made under Section 13 to be borne by the parties pursuant to the Agreement;

"Material" (and the meaning of such terms as "materiality" or "materially") in connection with the obligations of the TSP or Beneficiary(s) shall be in each case determined in the context of the financial conditions, business, properties and assets of the TSP considered individually. For any obligations the failure of which to be performed would individually affect the net assets, financial results, financial positions or cash flows from the operations of the TSP, such obligations will be deemed Material if the effect of such non-performance, together with all other non-performances by the TSP or Beneficiary(s) (as the case may be) would impact individually the net asset, financial results, financial positions or cash flows from operations of the TSP in an amount greater than 5% of the annual future projected cash flows of the TSP available for distribution as dividends;

"Material Adverse Effect" shall mean an effect on the business, results of implementation, operations, financial condition, financial prospects or other conditions of the TSP which is adverse and Material;

"Month" means calendar month of Gregorian Calendar;

"Notice Period" means a period pursuant to Section-12;

"Notification" means any notification, issued in the Gazette of India;

"O & M Contractor" means the entity appointed from time to time by the TSP to maintain & repair the Project;

"OPGW" means Optical Fibre Ground Wire;

"Preliminary Termination Notice" means a Beneficiary(s) Preliminary Termination Notice or TSP Preliminary Termination Notice, as the case may be;

"Project" means the ownership, insuring, repair and maintenance of all element of transmission system Project Under Operation;

"Project Document" shall include the (i) Implementation Agreement (ii) Transmission Service Agreement, (iii) Financing Agreements, and any other documents including without limitation construction contracts and operation and maintenance contracts which may be required or necessary for the implementation, operation & maintenance of the Project;

"Project Under Operation" means each transmission element of the Project that has been Commissioned in accordance with Clause 6.3 of the Implementation Agreement;

"Prudent Utility Practices" means the practices, methods and standards that are generally accepted internationally from time to time by electric utilities for the purpose of ensuring the safe, efficient and economic design, construction, commissioning, operation, repair and maintenance of Project equipment and which practices, methods and standards shall be adjusted as necessary, to take account of:

- (i) operation, repair and maintenance guidelines recommended by the manufacturers of plant and equipment to be incorporated in the Project,
- (ii) the requirements of Law, and
- (iv) the physical conditions at the Site;

"Required Commercial Operation Date" means the date determined pursuant to IA;

"RLDC" means Regional Load Dispatch Centre;

"RPC" means Regional Power Committee duly established by Govt. of India vide Resolution no. 23/1/2004-R&R dated 25.05.2005 and as defined in the Electricity Act, 2003.

"Scheduled Outage" means a planned reduction in any period of Availability of the Project;

"Security Package" means the security provided by Beneficiary(s) against payments pursuant to TSA;

"Site" means the land and other places upon which the Project is to be established and such other land or places as may be required to set up the Project;

"Sub-Contractor" including vendor means any person to whom execution of any part of the Project including preparation of any design or supply or erection of any equipment is subcontracted directly or indirectly by the Contractor and includes its legal successors or permitted assigns;

"Transmission Charge" means the transmission charge payable to TSP as approved by CERC;

"Tax" means any Indian tax, duty, surcharge, cess, octroi, impost or levy of any nature (whether central, state or local) whatsoever and wherever and whenever charged, levied or imposed by any Indian Governmental Instrumentality;

"Technical Particulars" means the particulars of each transmission element of Project listed in Schedule 5 of the Implementation Agreement;

"Technical Specifications" means the provisions contained in the Bid Documents through which goods and services for the Project are procured;

"Termination Notice" means a Beneficiary(s) Termination Notice or TSP Termination Notice, as the case may be; solely attributable to the TSP not due to Force Majeure Events or Beneficiary(s) default;

"Transmission Licensee" or "Licensee" means the TSP to whom the Transmission License is granted by CERC;

"Transmission License" or "License" means the authority to be granted by CERC to act as licensee for the Project;

"Transmission Charge " means the charges payable to the TSP by Beneficiary(s) as defined in this Agreement;

"TSP" means the Transmission Service Provider that will execute the Project Agreements necessary to build, own, maintain & operate the Project.

“Unscheduled Outage” means an interruption or reduction of the transmission capacity of the Project that (a) is not a Scheduled Outage, (b) has been scheduled in accordance with Clause 4.9 and (c) is for the purpose of performing work on specific components, which work could not be postponed till the next Scheduled Outage;

"Week" means a period of seven consecutive days beginning at midnight Indian Standard Time between Sunday and Monday;

SCHEDULE 2

INTERPRETATION

Any reference in this Agreement to:

an "affiliate" of any person shall be construed as a reference to a subsidiary or holding Company, or a subsidiary of a holding Company, of such person;

"Agreement" shall be construed as including a reference to its Schedules, Appendices and Annexures;

"business day" shall be construed as a reference to a day other than Sunday on which bank are generally open for business ;

"Rupee", "Rupees" and "Rs." denote lawful currency of India;

"encumbrance" shall be construed as a reference to a mortgage, charge, pledge, lien or other encumbrance securing any obligation of any person or any other type of preferential arrangement (including, without limitation, title transfer and retention arrangements) having a similar effect;

"holding Company " of a Company or corporation shall be construed as a reference to any Company or corporation of which the other Company or corporation is a subsidiary;

"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;

"person" shall be construed as a reference to any person, firm, Company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above;

"subsidiary" of a Company or corporation (the first mentioned Company) shall be construed as a reference to any Company or corporation:

- (i) which is controlled, directly or indirectly, by the first-mentioned Company, or
- (ii) more than half the issued share capital of which is beneficially owned, directly or indirectly, by the first-mentioned Company, or
- (iii) which is a subsidiary of another subsidiary of the first-mentioned Company and, for these purposes, a Company or corporation shall be treated as being

controlled by another if that other Company or corporation is able to direct its affairs and/or to control the composition of its board of directors or equivalent body; and

the "winding-up", "dissolution", "administration", "insolvency", or "re-organisation" of a Company or corporation and references to the "liquidator", "assignee", "administrator", "receiver", "administrative receiver", "receiver" and "manager", "manager" or "trustee" of a Company or corporation shall be construed so as to include any equivalent or analogous proceedings or, as the case may be, insolvency representatives or officers under the law of the jurisdiction in which such Company or corporation is incorporated or any jurisdiction in which such Company or corporation or, as the case may be, insolvency representatives or officers is incorporated or constituted or any jurisdiction in which such Company or corporation or, as the case may be, insolvency representatives or officers carries on business including the seeking of liquidation, winding-up, re-organisation, dissolution, administration, arrangement, adjustment, protection or relief of debtors.

SCHEDULE 3

SCOPE OF PROJECT

S.No.	Transmission System elements under[Name of Project]
I.	Transmission Lines :
II.	Sub-stations :
III.	Switching-stations:
IV.	HVDC links including terminal stations:
V.	HVDC transmission line:

SCHEDULE 4

VALUATION AND TRANSFER OF ASSETS ON TERMINATION

- 4.1** Valuation and Transfer of Assets on Termination in case of default occurred by the TSP or Beneficiary(s) whensoever, whosoever and whatsoever shall be to XYZ[Party selected by CERC] at a Buy-out Price determined by CERC in accordance with provisions of Electricity Act, 2003.