

'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 inspite 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 Inter- connection 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 affected 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 ;
- v) 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;
- iii) 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.

13.7 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.

13.6 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 it 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 subdivision 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, substations 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;

"Preiminary 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.]